RUSH TO JUDGMENT:

How South Carolina's Summary Courts Fail to Protect Constitutional Rights

National Association of Criminal Defense Lawyers
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SOUTH CAROLINA REPORT

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How South Carolina's Summary Courts Fail to Protect Constitutional Rights

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About the National Association of Criminal Defense Lawyers

The National Association of Criminal Defense Lawyers (NACDL) is the preeminent organization in the United States advancing the goal of the criminal defense bar to ensure justice and due process for persons charged with a crime or wrongdoing. NACDL's core mission is to: *Ensure justice and due process for persons accused of crime … Foster the integrity, independence and expertise of the criminal defense profession … Promote the proper and fair administration of criminal justice.*

Founded in 1958, NACDL has a rich history of promoting education and reform through steadfast support of America's criminal defense bar, *amicus curiae* advocacy and myriad projects designed to safeguard due process rights and promote a rational and humane criminal justice system. NACDL's approximately 9,200 direct members — and 90 state, local and international affiliate organizations totalling up to 40,000 members — include private criminal defense lawyers, public defenders, active U.S. military defense counsel, and law professors committed to preserving fairness in America's criminal justice system. Representing thousands of criminal defense attorneys who know firsthand the inadequacies of the current system, NACDL is recognized domestically and internationally for its expertise on criminal justice policies and best practices.

The Foundation for Criminal Justice (FCJ) is a 501(c)(3) charitable non-profit organized to preserve and promote the core values of America's criminal justice system guaranteed by the Constitution — among them access to effective counsel, due process, freedom from unreasonable search and seizure, and fair sentencing. The FCJ supports NACDL's charitable efforts to improve America's public defense system, and other efforts to preserve core criminal justice values through resources, education, training, and advocacy tools for the public and the nation's criminal defense bar.

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This report was prepared by Alisa Smith, JD, Ph.D., of the University of Central Florida; Sean Maddan, Ph.D., of the University of Tampa; Diane DePietropaolo Price, JD, of NACDL; and Colette Tvedt, JD, of NACDL. Dr. Smith served as the lead researcher on this report, and Dr. Maddan served as the primary statistician. Diane DePietropaolo Price and Colette Tvedt served as co-authors. Dr. Smith is the chair of the Legal Studies Department at the University of Central Florida and Dr. Maddan is a professor of criminology and criminal justice at the University of Tampa; both seek to improve our criminal justice systems through the development and dissemination of criminal justice research. Diane DePietropaolo Price is the Public Defense Training Manager for NACDL, and Colette Tvedt is the Director of Public Defense Training and Reform for NACDL; both work to improve the quality of public defense services nationwide through a combination of training, advocacy, and reform efforts.

The authors express their thanks to all those who assisted in the research and data collection for this report. Individuals from the ACLU, University of South Carolina Law School (USC), Charleston School of Law (CSOL), University of Tampa (UT), and Yale Law School (Yale) all participated in data gathering. Emma Andersson, staff attorney for the ACLU Criminal Law Reform Project, provided valuable feedback on the survey tool and recruited volunteers from Yale Law School to participate in the project. Nathan Rouse, fellow with the ACLU Criminal Law Reform Project, coordinated the work of the Yale Law students and also participated in data gathering. Susan Dunn of the South Carolina ACLU connected the researchers with local faculty to identify student volunteers and provided helpful background information. Neena Speer, National Affairs Intern for NACDL, called dozens of courts to learn about court schedules and docket availability. Pam Robinson, Seth Stoughton, Susan Kwo, and Michelle Condon were instrumental in helping to recruit student volunteers from the South Carolina schools. Thanks to all those who gathered data for their participation: Michael del Bianco (CSOL), Imani Byas (USC), Kaitlin Godwin (UT), Wally Hilke (Yale), Sarah Horne (USC), Sarah Kirk (UT), Butch Mathenia (UT), Laura McCready (Yale), Joseph Meyers (Yale), Andrew Miller (Yale), Matthew G. Miller (CSOL), Laura Ocampo (UT), Caitlyn Pennington (USC), Pamela Robinson (USC), Nathan Rouse (ACLU), Jamie Rutkoski (USC), William Sefcik (USC), Rachel Shur (Yale), George T. Sink (CSOL), Jonathan Taft (CSOL), Rebecca Turner (UT), Ugonna Udogwu (USC), Max Wesemann (USC), and Crayton Williams (CSOL). Special thanks to Caitlyn Pennington of USC Law, who personally collected and entered data on more than 200 cases.

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Foreword

Several months ago, the National Association of Criminal Defense Lawyers (NACDL) launched a project to reach out into communities in several states to conduct firsthand observation to assess the quality of justice in the nation's lowest criminal courts. The initiative was the result of widespread concern that these courts have become overburdened with minor criminal offenses, and employ processes that violate fundamental notions of justice and breed distrust between citizens and their government. In some cases, lower criminal courts are used to generate fees and fines to support local government, without regard to the greater costs imposed upon society.

One direct consequence of this project was the publication of *Summary Injustice: A Look at Constitutional Deficiencies in South Carolina's Summary Courts.* That report provided anecdotal evidence of widespread injustice and systemic violations of basic rights in municipal and magistrate courts in the Palmetto State. Observers documented routine denial of the right to counsel, the misuse of monetary bail to extract speedy guilty pleas, the failure to have any lawyer present in many of these courts, and pervasive failure to advise accused persons of their fundamental rights.

Spurred on by the initial observational report, NACDL commissioned a more in-depth empirical study of South Carolina's summary courts. This report is the product of that study. Researchers systematically gathered data from magistrate and municipal courts in five counties. The research confirms that there is a pervasive lack of procedural justice and fairness in these courts. Far too many accused persons are not advised of basic constitutional rights, and even when they are, those rights are not respected. As a result, many lose their liberty, sustain the life-altering consequences of a criminal conviction, and are saddled with fees and fines, the non-payment of which can have cascading impacts for years to come. And with alarming frequency these outcomes arise in derogation of the fundamental right to counsel.

Aside from the adverse impact on individuals, there are more far-reaching consequences. First and foremost, for the thousands of South Carolinians who pass through these courts each year, it is their primary contact with their local government. When that contact leaves individuals with a sense of injustice, it widens the chasm between individuals and democratic institutions, and breeds division and distrust. More practically, the stigma of these criminal convictions and the long-term impact of burdensome financial sanctions lead to consequences that render people less employable. Complicated and costly procedures for expungements make it difficult for South Carolinians to put minor offenses behind them, decimating the workforce in some areas. A sound and financially prudent system of justice must reintegrate people into the workforce, rather than drive them out of it. For these reasons, the recommendations contained in this report are designed to provide a roadmap to achieve meaningful reform of South Carolina's summary courts that will be good for business, good for justice, and good for communities.

Norman L. Reimer
Executive Director, NACDL

Executive Summary

In a recent public defense report, *Summary Injustice: A Look at Constitutional Deficiencies in South Carolina's Summary Courts*, the National Association of Criminal Defense Lawyers (NACDL), the American Civil Liberties Union (ACLU), and the ACLU of South Carolina shared observations gathered from visits to South Carolina's lower courts. That report provides a brief overview of the state's criminal legal system along with stories of individuals who were adversely impacted by the lack of due process in lower courts. The *Summary Injustice* report observed that there was a "denial of fundamental constitutional rights in South Carolina's summary courts" that "urgently call[ed] for comprehensive study and real solutions."

This follow up to the *Summary Injustice* report presents the findings from additional study of South Carolina's summary courts accomplished through the systematic gathering of data from magistrate and municipal courts in five counties. Over three months in the winter and spring of 2016, observers collected information on criminal cases in summary courts. Lack of access to court dockets and the number of cases resolved through off-the-record discussions made it difficult to get complete information. However, the information that observers did gather supports the following findings:

- Defense attorneys and prosecutors are rare in summary courts. Fewer than 10% of defendants in the study were represented by counsel. In 89% of the cases observed, the charging officers were the prosecutors in the summary court proceedings.

- Judges are not required to be lawyers in summary courts and many are not. Nearly 26% of observed defendants had their cases processed without interacting with a single lawyer: the case was prosecuted by a police officer, there was no defense counsel, and the judge was not a licensed attorney. This number rises significantly if Richland County, where over 95% of judges had law degrees, is removed. In the other counties combined, 89% of defendants were processed in courts without a single lawyer involved.

- More than one in ten defendants observed in this study were assigned to courtrooms in which no advisement of any rights was given at the beginning of the court session. Additionally, there was substantial variation among counties regarding which rights were covered. For example, in Orangeburg County, more than 40% of observed cases were in courtrooms where the opening advisement omitted the constitutional right to an attorney.

- Even when constitutional rights were comprehensively provided by video, as in Richland County, few judges confirmed with defendants that they watched or understood their rights before their cases proceeded.

- Only 8.1% of defendants were questioned by the judge regarding whether they had seen the video and understood it.

- In more than half of the cases observed, magistrate and municipal judges had interaction with defendants that gave them the opportunity to provide individualized advisement of rights. But during these interactions, judges routinely failed to address basic constitutional rights.

- More than half of defendants (50.9%) were not advised of their right to counsel when speaking to the judge.

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- In 4.0% of the cases, the trial judge dissuaded the defendant from exercising his or her constitutional rights. In explaining how the trial judge dissuaded defendants, observers noted that: (1) judges would advise incarcerated defendants that they would remain in jail waiting for an attorney, but if they entered a plea they might be released that day, (2) judges mentioned that individuals who entered not guilty pleas or requested attorneys had to return to court on another day, and (3) judges negotiated with defendants by reducing fines if they agreed to enter a guilty plea instead of not guilty.

- For bench trials, guilty was the most common verdict. Over 90% of defendants were found guilty; 96.3% of defendants tried in their absence were found guilty, compared to 73% when the defendant was present.

- Most defendants were sentenced to a fine or were given a choice between paying a fine and serving a jail sentence. Nearly three quarters of the time, judges failed to inform defendants of the consequences of non-payment of fines.

- Jail was imposed on 19.0% of defendants, and of these defendants 97.4% were not represented by counsel.

- Few defendants were advised of important post-sanction rights or the collateral consequences of their plea and sentence. No defendant who entered a guilty or no contest plea or who was found guilty after a bench trial was warned about the possibility of deportation or other immigration consequences during any plea colloquy or sentencing; less than 4% of defendants were notified of other potential collateral consequences. Only 1.2% of defendants were advised of their right to appeal or the right to an attorney for that appeal.

- Inadequate data collection coupled with the fact that some summary courts do not keep comprehensive records of their proceedings leads to a system that operates with little oversight to ensure constitutional rights are being upheld.

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Findings from this study and observations gathered in the research for *Summary Injustice* lead NACDL to suggest the following five recommendations for reform to ensure that South Carolina's courts operate in accordance with constitutional mandates and guarantee procedural justice for those whose lives will forever be altered as a result of a criminal adjudication:

1. Staff South Carolina's summary courts with prosecutors and public defenders and ensure that courts are presided over by judges who are licensed attorneys.

2. Reduce the caseload of magistrate and municipal courts by decriminalizing traffic offenses.

3. Reduce fines and fees, and consider alternative sanctions for those who cannot afford to pay.

4. Increase uniform reporting of criminal and traffic cases in summary courts to include data regarding whether defendants had counsel and whether and how defendants were informed of their rights.

5. Enact uniform procedures for magistrate and municipal courts regarding advisement of rights and plea colloquies. Ensure that all defendants understand their rights and the direct and collateral consequences of a guilty plea or verdict.

Introduction

Shortly before 9:00 am on a cool morning in February 2016, a clerk in a Richland County magistrate court looked out on a courtroom full of defendants there to address their misdemeanor criminal charges. In a county where roughly 47% of the population is African American, the individuals in the courtroom were overwhelmingly black. Court was scheduled to begin at 8:30, but nothing had happened yet. The clerk explained to the packed courtroom what the process would be: everyone needed to form a line and come to the front of the room to tell the clerk how they intended to handle their case today. They could plead guilty, which would subject them to a fine and/or jail; plead no contest, which had the same consequences as a guilty plea, but meant that the person was not admitting guilt; or they could plead not guilty. If they entered a plea of not guilty, they could have a bench trial immediately or request a jury trial. First time offenders had the additional option of entering a pretrial intervention program. The clerk's address to the crowd took less than two minutes.

No mention was made of the right to counsel. No explanation was given of what a bench trial meant. No advisement was made regarding the costs of diversion programs or how much the fines might be, nor what might happen if the fines were not paid.

Over the next hour or so, the defendants formed a line and the clerk worked through the day's business from the raised desk. This process, though technically in open court, was a secret to observers who were present — whatever conversations the clerk had with those facing charges were not on the record and were inaudible to those in the seating area. One by one, defendants approached the clerk, spoke briefly to her, and made decisions about how they would address the criminal charges against them without being informed of important legal rights. At least a dozen people left the courtroom after speaking with the clerk, their cases over with for today at least, if not resolved completely.

A few minutes past 10:00 am, after everyone had gone through the line and told her how they wanted to proceed, the clerk quietly rolled a television set to the front of the courtroom and pressed play on a video. No announcement was made to please remain quiet and seated to listen to the information presented on the screen. No effort was made to bring the room to order and alert those gathered that the ensuing video would provide important information for those there to answer criminal charges. In fact, officers continued conversations with inmates who were seated in the jury box behind the television as if nothing of consequence was happening. But something of consequence was happening. The ten minute video being played in the courtroom was informing the room full of defendants of their constitutional rights, the disadvantages of proceeding without counsel, the various options for dealing with the charges, and some of the very real effects that conviction could have for them — information that would have been very helpful to have before making a decision regarding what they should do that day. Those whose cases were previously dealt with in private conversations with the clerk presumably never received this vital information.

At 10:25, nearly two hours after the court session was scheduled to begin, the judge took the bench and went on the record for the day's session of criminal court. The clerk quickly read off approximately two dozen names of individuals and corresponding case numbers of matters that had been continued or otherwise handled before the judge's arrival, describing what had happened to each case — "jury … transferred … continued … paid … nolle pros."

Cases for defendants who were in custody were heard first. An African American man who was about 60 years old and charged with a breach of the peace, was brought before the judge, who began to pepper him with questions. "Do you understand the charge? Do you understand you have the right to an attorney? Do you wish to waive that right and move forward? Or if you can't afford an attorney, we can screen you for a public defender. Do you wish to waive that right and move forward?" After this

last question, the defendant shook his head no. "Alright, do you want to be screened for a public defender?" Wordlessly, the defendant nodded.

The judge asked the officer to bring the defendant up to the bench, where they had a conversation away from the microphone that was inaudible. After a few moments of this hushed conversation, the judge went back to the microphone and the defendant and officer backed away from the bench. The judge again asked the man if he wanted to waive his right to an attorney and move forward. This time, the answer was yes. The judge told the defendant that he had the right to a jury trial, and followed up with a question: "Do you want six people that you don't know to determine your fate, or do you want me to this morning?" The defendant chose the judge. When asked for his plea, he responded with a single word: "Guilty." The judge sentenced the man to a jail sentence of time served.

Avoiding appointing counsel, which would have caused a delay of the case, and giving a sentence of simply time served with no costs to pay may seem like a good outcome for this man. And perhaps it was. But without being given the opportunity to speak to an attorney with the knowledge and ability to analyze the case for flaws, and an understanding of the consequences of a finding of guilt, one cannot have confidence that this was a just outcome.

In a recent public defense report, *Summary Injustice: A Look at Constitutional Deficiencies in South Carolina's Summary Courts*, the National Association of Criminal Defense Lawyers (NACDL), the American Civil Liberties Union (ACLU), and the ACLU of South Carolina shared observations gathered from visits to South Carolina's lower courts.[1] The report provides a brief overview of the state's criminal legal system along with stories of individuals who were adversely impacted by the lack of due process in lower courts. The *Summary Injustice* report observed that there was a "denial of fundamental constitutional rights in South Carolina's summary courts" that "urgently call[ed] for comprehensive study and real solutions."[2]

Individuals charged with misdemeanor (or "low-level") offenses are entitled to due process of law and the right to counsel.[3] Misdemeanor defendants "have the right to receive the evidence against them and present evidence in their defense... to confront witnesses ... [and] to have their guilt proven beyond a reasonable doubt."[4] Misdemeanor criminal defendants who cannot afford to obtain private representation are entitled to have counsel appointed for them at their first appearance in magistrate court, regardless of whether a public prosecutor or an arresting officer initiates the charges.[5] However, recent reports by NACDL have documented the myriad problems that plague misdemeanor courts and undermine due process, including lack of counsel, quickness of proceedings, pressure to plead guilty, minimization of consequences, and incarceration of individuals on minor crimes.[6] Although seemingly minor, direct and collateral consequences flow from these offenses, including fees, fines, incarceration, and loss of employment, driver's licenses, and scholarships.[7]

In South Carolina, low-level offenses make up the vast majority of criminal cases filed each year. These offenses are generally punishable by up to 30 days in jail and/or $500 fines and are heard in municipal and magistrate courts, collectively referred to as summary courts.[8] In addition to fines, judges impose added costs, including assessments and public defender fees (for example, the fee to apply for a public defender is $40). State law regulates the imposition of assessments and the operations of municipal and magistrate courts.[9] However, even in minor misdemeanor cases, the sentencing judge often adds costs and fees that cause the total to exceed the statutory $500 punishment. (See discussion below at Table 42, discussing the exorbitant fees, fines and costs in minor shoplifting cases exceeding $2,000).

In South Carolina, low-level offenses make up the vast majority of criminal cases filed each year.

Caseloads in Summary Courts

The number of summary court charges filed in South Carolina yearly is staggering. In South Carolina, felony cases and more serious misdemeanors are heard in general sessions courts, while low-level misdemeanors, including traffic crimes, are heard in magistrate and municipal courts. South Carolina Court Administration publishes yearly data about general sessions caseloads on its website.[10] Additionally, Court Administration responded to a request from the authors to provide caseload data from magistrate and municipal courts by providing data for FY 2014-2015 (July 1, 2014 — June 30, 2015) and preliminary data for FY 2015-2016 (July 1, 2015 — June 30, 2016). During FY 2014-2015, there were 113,848 cases filed in general sessions courts statewide, and during FY 2015-2016, there were 120,678 general sessions cases filed statewide. For the same periods, charges filed in summary courts vastly outnumbered those in general sessions courts — over the two-year period, there were more than ten times as many summary court charges as general sessions charges, as shown below.

Magistrate FY 2014-2015

Case Type	Number filed
Criminal	111,836
DUI	17,639
Other Traffic	614,541
Domestic Violence	Not tracked
TOTAL	744,016

Municipal FY 2014-2015

Case Type	Number filed
Criminal	90,869
DUI	6,635
Other Traffic	372,875
Ordinance Cases	58,789
TOTAL	529,168

TOTAL ALL SUMMARY COURT OFFENSES FY 14-15	1,273,184
TOTAL ALL GENERAL SESSIONS OFFENSES FY 14-15	113,848
TOTAL ALL OFFENSES FY 14-15	1,387,032

Magistrate FY 2015-2016 (Preliminary)

Case Type	Number filed
Criminal	92,032
DUI	14,405
Other Traffic	500,970
Domestic Violence	4,234
TOTAL	611,641

Municipal FY 2015-2016

Case Type	Number filed
Criminal	81,344
DUI	6,695
Other Traffic	321,892
Ordinance Cases	17,342
TOTAL	427,273

TOTAL ALL SUMMARY COURT OFFENSES FY 15-16	1,038,914
TOTAL ALL GENERAL SESSIONS OFFENSES FY 15-16	120,678
TOTAL ALL OFFENSES FY 15-16	1,159,592

This study reports the findings from the systematic gathering of data from magistrate and municipal courts in five counties in South Carolina. Over three months in the winter and spring of 2016, observers — mostly law students and legal professionals — collected information on the criminal cases of 617 defendants during 49 court sessions.[11] Similar to the *Summary Injustice* report, observers in the five counties noted some disturbing treatment of unrepresented defendants that created disparity in the summary courts:

> An African American defendant was before a white judge on a first offense of driving under the influence. The judge talked about legal consequences of a second DUI with the defendant and told him that if they caught him driving drunk again, they would "take him to the woodshed with the hickory and give him a good whoopin'."

> A defendant had been charged with possession of tobacco while underage and given a substance abuse program. Shortly after the defendant left, the officers realized they had seen him before at a party they busted. They shared this information with the judge, who said he

regretted going easy on him. The officer replied, "Don't worry, I know what he drives, I'll get him on something, I'll find something."

A defendant had been severely beaten and injured in the encounter with the officer that led to his charges, and raised the alleged unprompted aggression on the part of the officer at the hearing. After the police officer and defendant had both testified, when the judge asked the police officer if he had any response to defendant's testimony about the unprovoked brutality of the encounter, the officer replied by pointing at his badge and saying, "I think we'll let the testimony speak for itself."

Additionally, observers highlighted some specific instances of due process violations:

A defendant had been arrested and posted a bond on the charge for which he was in court. He pointed out a mistake in wording on the warrant, so the prosecutor dismissed the warrant and issued a new one with the correct wording on the same charge. The defendant was then taken into custody on the "new" charge and handcuffed. The defendant was visibly upset because the prosecutor was not allowing the bond to be transferred and the judge (who didn't seem to understand what the defendant was trying to say) told him he'd have to figure it out later and concluded his proceedings on this case for that day.

A defendant made a motion to re-open a case that had resulted in conviction after a trial in absentia. The defendant provided information that he was actually in custody at the time of his trial, and was simply not transported to court on the day of his trial. The motion was denied.

The officer contradicted his own testimony, which was the only evidence presented against the defendant. There was a dispute over the number of people present outside defendant's house during a party, and the officer himself changed the number from "20 to 30" to "15" within about a minute. When the defendant challenged the officer's statement about the number of party attendees as untrue, the judge replied — and this was before rendering a verdict — "you wouldn't be standing here if it wasn't true."

Others noted that constitutional law violations went unchallenged:

The prosecuting officer described an unconstitutional warrantless search and seizure. He stopped the defendant for a minor traffic violation and asked for consent to search. When consent was refused, he threatened the defendant with a K9 search and, without a warrant or even a K9 sniff, the officer pulled everyone out of the car and searched everyone.

In 2013, the Conference of State Court Administrators (COSCA) concluded that "[l]imited jurisdiction court structures that originated in the distant past are inadequate to deliver fair and impartial justice today."[12] COSCA identified four standards necessary to foster independent, fair, impartial, and just limited jurisdiction courts: (1) a qualified judge, (2) transparent and reviewable records, (3) independent judiciaries, and (4) standardized court procedures and consistent court structures. This study found that South Carolina fails on each.

In 2013, the COSCA concluded that "[l]imited jurisdiction court structures that originated in the distant past are inadequate to deliver fair and impartial justice today."

Methodology

To determine whether the anecdotal reports of due process violations were systemic, during the spring of 2016, law and undergraduate student observers were provided instruction on South Carolina's court system and the importance of their observations and systematic collection of data from magistrate and municipal court hearings. Using two separate survey instruments, students collected information on the general court proceedings as well as the processing of individual defendants' cases in those courts.

The general court observation instrument gathered information on (1) the availability of the docket, (2) the number of defendants whose cases were resolved without interaction with the judge, (3) the number of police officers present at the hearings, and (4) the amount of time that elapsed between the scheduled court time (i.e., the time that individuals were expected to appear in court) and the time that the trial judge took the bench.

One of the early and continuing difficulties for this study was the unavailability of court dockets for many of the 49 proceedings.

The individualized observation instrument gathered information on the courtroom workgroup (judge, prosecutor, defense counsel, and defendant), and the due process afforded individuals at summary court proceedings, including advisement of rights, the availability of counsel, the process of resolving the charges, and the case outcomes.

Students, when possible, conducted archival research to verify or add information from the clerks' offices' files, including demographic information, days served in jail, or the type of release (e.g., personal recognizance or cash bond) before hearing. The students then input the collected information to a secure website.[13]

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Docket Availability

One of the early and continuing difficulties for this study was the unavailability of court dockets for many of the 49 proceedings. (Table 1). Observers were instructed to call courts in advance to ask for docket information if they were unable to find it online. An additional difficulty arose when observers were told that there were large dockets (e.g., 80 cases scheduled), but when they arrived, only a few individuals appeared in court before the judges. In many courts, cases were resolved outside of court in hallways, offices, and in one county, outside on the hoods of police cars. Without access to dockets, observers could not determine how cases were resolved outside of court. South Carolina's inadequate data collection coupled with the fact that some summary courts do not keep comprehensive records of their proceedings leads to a system that operates with little oversight to ensure constitutional rights are being upheld.

In many courts, cases were resolved outside of court in hallways, offices, and in one county, outside on the hoods of police cars. Without access to dockets, observers could not determine how cases were resolved outside of court.

Access to data affected the empirical approach to the project, but more importantly, lack of data raises serious concerns about transparency and due process of law.

Overall, data gatherers were unable to obtain docket information for 51% of the observed court sessions. Court dockets were more likely to be made available to the students in the observed municipal court proceedings (57.9%) than in the observed magistrate court proceedings (18.2%). (Table 1).

Table 1. Docket Availability[14]

Variable	Coding	Percent
Docket Available One Day Before Session (N=49)	Yes	49.0
	No	51.0
Docket Availability (N=24)	Internet	83.3
	Clerk's Office-Day Early	4.2
	Clerk's Office-Same Day	12.5
Court Type	Magistrate	22.4
	Municipal	77.6

Dockets were not available in 51% (n=25) of the court sessions.

Similarly, and not surprisingly, court dockets were more likely to be made available in the larger counties than in the smaller counties. Observers were able to secure dockets for 100% of the observed sessions in Richland County and for 55% of the sessions in Charleston County. In the smaller counties of Spartanburg, Florence, and Orangeburg, no docket was made available for any of the observed court sessions. (Table 2).

Table 2. County by Docket Availability

County	Yes	No	Total
Charleston	11/(55.0)	9/(45.0)	20/(100)
Richland	13/(100.0)	0/(0.0)	13/(100)
Spartanburg	0/(0.0)	8/(100.0)	8/(100)
Florence	0/(0.0)	2/(100.0)	2/(100)
Orangeburg	0/(0.0)	6/(100.0)	6/(100)
TOTAL	**24/(49.0)**	**25/(51.0)**	**49/(100)**

Even when available, clerks and judges frequently refused to provide a copy to in-court observers, or would only provide the dockets the day before or the day of the proceedings. For the dockets that were available, almost 91% were available on the internet (in Richland, 100% of the dockets were available on the internet). (See Table 1). At least one court claimed to not have dockets at all, and kept only a calendar that listed the officers who were expected in court that day. The officers were then responsible for knowing who was supposed to be in court, flipping through their ticket books to see who had been told to come to court on the particular date. Without court dockets, it was impossible for observers to collect and confirm some information (e.g., demographics and number of days in jail). Access to data affected the empirical approach to the project, but more importantly, lack of data raises serious concerns about transparency and due process of law.[15]

A Note on Summary Court Dockets

While preparing this report, the authors sought to investigate the availability of summary court dockets statewide in South Carolina. The South Carolina Judicial Department website (**www.sccourts.org**) has links to search court rosters for circuit courts[16] as well as case records for both circuit courts and summary courts,[17] but a link to search summary court dockets is nowhere to be found on the webpage, even in the site map. Armed with an alphabetical listing of South Carolina's counties, the authors took to an online search engine, expecting to confirm that summary court dockets were not readily available.

Search terms of [County Name] SC Summary Court Dockets turned up empty for the first several counties searched, until a website for Dorchester County Magistrate Courts included a link labeled "Online Docket Search."[18] The link pointed to a public index database on sccourts.org of summary court dockets in Dorchester County, including three municipal courts and two magistrate courts.[19] By replacing the county name in the web address with other counties' names, the authors were able to find some summary court dockets for nearly every county in South Carolina, though all courts within a county (particularly municipal courts) are not always included.[20]

The question, then, is this: why was this so difficult to find? Why, when students called courts to ask about availability of dockets, did no one mention that they were published online, and instead refused to share the clearly public information? Why is it impossible to find this database through the South Carolina Judicial Department website? Considering the difficulty that trained attorneys had in finding this information, it seems unlikely that the general citizenry would have much luck.

Demographics

REPORT

Defendants' cases were observed in five counties: Richland (60.3%), Charleston (13.9%), Spartanburg (16.4%), Orangeburg (7.6%), and Florence (2.1%). (Table 3). The majority was observed in municipal courts (86.6%).

There was a mix of offenses, ranging from assault and marijuana possession to speeding and reckless driving.[21] The most common offense observed was shoplifting (18.2%) followed by simple possession of marijuana (12.8%) and speeding (10.1%). (Table 3). Nearly a third (31%) comprised a variety of other offenses, which ranged from minor traffic offenses to alcohol violations. Table 3 lists the counties, their population size, the percent of total cases in the sample, and the offense categories.

Most defendants (90.7%) were out of custody. Release information was available for a third of defendants (n=263), and for those, the majority was released on personal recognizance (70.3%). The remainder was released on a secured or surety bond (9.5%), a cash bond (7.7%), or some other form of release (12.5%). (Table 4). Where observers could capture the number of days spent in jail (n=47), almost 60% spent 15 or more days in jail. (Table 4).

Where observers could capture the number of days spent in jail (n=47), almost 60% spent 15 or more days in jail.

Table 3. County and Offense Information[22]

Variable	Coding	Percent
Type of Court Proceeding	Magistrate	13.4
	Municipal	86.6
County (Population)	Charleston (389,262)	13.9
	Florence (138,900)	2.1
	Orangeburg (89,900)	7.6
	Richland (407,057)	60.3
	Spartanburg (297,302)	16.4
Offense	Assault	3.9
	Shoplifting	18.2
	Trespass	4.3
	DUI	1.9
	Suspended License (1 or 2)	6.5
	Suspended License (3 or Sub)	0.7
	Reckless	2.6
	Simple Possession (Marijuana)	12.8
	Drug Paraphernalia	2.4
	Disorderly Conduct	5.6
	Speeding	10.1
	Other	31.0

N=617

Table 4. The Defendant and Pre-Trial Incarceration

Variable	Coding	Percent
Defendant in Custody (N=617)	Yes	9.3
	No	90.7
Number of Days in Jail (N=47)	1 or fewer	8.5
	2-3	10.6
	4-5	4.3
	6-10	8.5
	11-14	8.5
	15-30	36.2
	Over 30	23.4
Type of Release (N=263)	Personal recognizance	70.3
	Secured/surety bond	9.5
	Cash bond	7.7
	Other	12.5

N dropped to 263 due to inability of court watchers to ascertain information from court research or court proceedings.

In 89% of the cases observed, the charging officers were the prosecutors in the summary court proceedings. Most defendants (over 90%) did not have an attorney. And in nearly 30% of the cases, trial judges, which included magistrate judges appointed by the governor and municipal judges appointed by the municipal council, were non-lawyers.

Findings

Quick, Police-Dominated Justice

In 89% of the cases observed, the charging officers were the prosecutors in the summary court proceedings. Most defendants (over 90%) did not have an attorney. And in nearly 30% of the cases, trial judges, which included magistrate judges appointed by the governor and municipal judges appointed by the municipal council, were non-lawyers.[23] (Table 5).

Table 5. Courtroom Workgroup

Variable	Coding	Percent
Who prosecuted the case?	Solicitor	7.0
	Police Officer	89.0
	Other	0.3
	No One Present	3.7
Defense Counsel?	Yes	9.9
	No	90.1
Is Judge Licensed Attorney*	Yes	70.3
	No	29.7

N=617

* Observers were asked to look up the judge by name on the state bar website to determine if he or she was a licensed attorney.

REPORT

For defendants in summary courts, the charging officers were the primary arbiters of justice. (Table 5). Of the observed cases (n=520), 135 defendants (or nearly 26%) had their cases processed without interacting with a single lawyer. (Table 6).[24] This number rises significantly if Richland County, where over 95% of judges had law degrees, is removed. In the other counties combined, 89% of defendants were processed in courts without a single lawyer involved. In these cases, the judge was a non-lawyer, the prosecutor was a police officer, and the defendant was unrepresented by counsel.

In Richland, Florence, and Orangeburg, the police directly prosecuted over 90% of defendants. In Spartanburg, almost 87% of defendants were prosecuted by the charging officers, and in Charleston, charging officers were the prosecuting authority for 63% of defendants. (Table 7).

Table 6. Attorneys in Summary Courts: Non-Lawyer Judges and Prosecutors, and Absent Defense Attorneys

Defendant with Counsel	Judge	Solicitor/Other/None	Police	Total
Yes	Licensed	9/(22.0)	32/(78.0)	41/(100)
	Unlicensed	7/(50.0)	7/(50.0)	14/(100)
	TOTAL	**16/(29.1)**	**39/(70.9)**	**55/(100)**
No	Licensed	24/(6.6)	340/(93.4)	364/(100)
	Unlicensed	21/(13.5)	135/(86.5)	156/(100)
	TOTAL	**45/(100)**	**475/(100)**	**520/(100)**

[In nearly 26% of cases], the judge was a non-lawyer, the prosecutor was a police officer, and the defendant was unrepresented by counsel.

Table 7. County by Prosecutor Type

County	Solicitor	Police	Other	None Present	Total
Charleston	25/(30.9)	51/(63.0)	0/(0.0)	5/(6.2)	81/(100)
Richland	2/(0.6)	340/(94.4)	2/(0.6)	16/(4.4)	360/(100)
Spartanburg	13/(13.1)	86/(86.9)	0/(0.0)	0/(0.0)	99/(100)
Florence	0/(0.0)	10/(90.9)	0/(0.0)	1/(9.1)	11/(100)
Orangeburg	2/(4.3)	45/(95.7)	0/(0)	0/(0)	47/(100)
TOTAL	**42/(7.0)**	**532/(89.0)**	**2/(0.3)**	**22/(3.7)**	**598/(100)**

Attorneys were rare in magistrate and municipal courts. Less than 10% of defendants had an attorney. (See Table 5). In Florence, only a single defendant had an attorney, and the attorney was privately retained. Two defendants in Orangeburg were represented by the public defender. In Spartanburg, seven defendants hired a private attorney and representation was not known for one defendant. In Charleston and Richland, the largest counties included in the study, representation was a mix of privately retained attorneys (n=11), public defenders (n=12), and many (n=25) who were represented, but whether that representation was provided by privately retained attorneys or public counsel was not known. (Table 8).

Table 8. County by Type of Counsel

County	Public Defender	Private Counsel	Unknown	Total
Charleston	3/(27.3)	6/(54.5)	2/(18.2)	11/(100)
Richland	9/(24.3)	5/(13.5)	23/(62.2)	37/(100)
Spartanburg	0/(0.0)	7/(87.5)	1/(12.5)	8/(100)
Florence	0/(0.0)	1/(100.0)	0/(0.0)	1/(100)
Orangeburg	2/(100.0)	0/(0.0)	0/(0.0)	2/(100)
TOTAL	**14/(23.7)**	**19/(32.2)**	**26/(44.1)**	**59/(100)**

Defendants were more likely to have their matters heard by non-lawyer judges in the smaller counties. In Orangeburg County, 95.7% of defendants had their cases heard by lay judges; in Spartanburg, 76.8%; and

Since the police acted as the prosecutors, they negotiated directly with the defendants who they accused of violating the law.

in Florence, 69.2%. Defendants were most likely to appear before a lawyer-judge in Richland County, where 93.3% of defendants had their cases heard by judges who were licensed attorneys, followed by Charleston County at 67.1%. (Table 9).

Table 9. Percentage of defendants whose cases were heard by judge who was a licensed attorney (by County)

County	Attorney	Not attorney	Total
Charleston	57/(67.1)	28/(32.9)	85/(100)
Richland	347/(93.3)	25/(6.7)	372/(100)
Spartanburg	23/(23.2)	76/(76.8)	99/(100)
Florence	4/(30.8)	9/(69.2)	13/(100)
Orangeburg	2/(4.3)	45/(95.7)	47/(100)
TOTAL	**433/(70.3)**	**183/(29.7)**	**616/(100)**

Justice Delayed

Seventeen percent of defendants resolved their matters without any interaction with the trial judge. The most common pre-interaction resolution was a continuance (56.4%), followed by pretrial intervention or treatment (25.8%). Only a few defendants had their cases dismissed (7.9%) or resolved by the payment of fines (8.9%). (Table 10).

REPORT

Table 10. No Interaction with Judge

Variable	Coding	Percent
Did the case conclude before judge took the bench?	Yes	17.0
	No	83.0
If yes, what was the resolution? (N=101)	Dismissal/Nolle Pros	7.9
	Transferred	1.0
	Continuance	56.4
	Pre-Trial Intervention	22.8
	Alcohol/Drug Treatment	3.0
	Fine	8.9

N=617

For those defendants who waited for the trial judge, the average wait time for the judge to take the bench was 27.43 minutes (or anywhere from 0 to 150 minutes). Two court sessions took over two hours to begin, which increased the average. The median delay in the trial judge taking the bench after the scheduled start time was 17 minutes.

Negotiating Charges with the Police

Police were understandably present at all court hearings, frequently acting as prosecutors as well as witnesses. There were always at least 1 or 2 uniformed officers present in court, but more commonly 3 or more, and sometimes more than 10, creating a courtroom atmosphere where officers were clearly dominant. Police officers were the majority of prosecutors in all counties, and nearly the sole prosecutor of defendants in Orangeburg (95.7%), Richland (94.4%), Florence (90.9%), and Spartanburg (86.9%). (See Table 7).

Defendants were almost three times more likely to enter a plea of guilty or no contest when confronted by a police officer-prosecutor than by a solicitor, other prosecuting person, or no one.

Since the police acted as the prosecutors, they negotiated directly with the defendants who they accused of violating the law. Court observers commented that some defendants entered courts with plea agreements that had been arranged at some unknown time before court. If an arrangement was not reached before the court date, arresting or ticketing officers called the defendants into the hall, an office, or (in one county) outside in the parking lot to discuss and resolve the charges.

Defendants were almost three times more likely to enter a plea of guilty or no contest when confronted by a police officer-prosecutor than by a solicitor, other prosecuting person, or no one. (See Table 38).

Two-Minute Justice

Hearings overall were as short as 0 minutes (those that were resolved before the judge took the bench) to as long as 52 minutes. For those individuals (468) who did interact with the trial judge, and similar to Florida cases as reported in *Three-Minute Justice*, the average hearing time was 3.29 minutes. This average, however, was inflated due to a few outlier hearings that lasted more than 20 minutes (i.e., the bench trial hearings).[25] Once those few hearings were removed from the analysis, the average court proceeding was two minutes.[26] Hearing defendants' cases in two minutes or less was most common in Richland (73.1%) and Charleston counties (51.3%). (Table 11).

The average hearing time was 3.29 minutes.

Of the cases where defendants interacted with the trial judge, just over 41% (192) entered a plea of guilty or no contest. (Table 12). In Florence (70%), Orangeburg (70.5%), Charleston (57.9%) and Spartanburg (42.4%), the most common resolution of a case was by guilty or no contest plea. In Richland, the most common resolution was a bench trial in the defendant's absence (34.6%). (Table 13).

Table 11. County by Hearing Time (Minutes)

County	0-2	3-4	5-10	11 and Over	Total
Charleston	41/(51.3)	14/(17.5)	22/(27.5)	3/(3.8)	80/(100)
Richland	272/(73.1)	64/(17.2)	35/(9.4)	1/(0.3)	372/(100)
Spartanburg	44/(44.0)	21/(21.0)	28/(28.0)	7/(7.0)	100/(100)
Florence	6/(46.2)	2/(15.4)	5/(38.5)	0/(0.0)	13/(100)
Orangeburg	23/(48.9)	9/(19.1)	9/(19.1)	6/(12.8)	47/(100)
TOTAL	**386/(63.1)**	**110/(18.0)**	**99/(16.2)**	**17/(2.8)**	**612/(100)**

Table 12. Defendant/Judge Interactions (How the Case Proceeded)

Defendant/Judge Interaction	Percent
If defendant interacted with the trial judge, how did the case proceed?	
Guilty Plea	39.1
No Contest	2.1
Not Guilty Plea and Reset	0.6
Not Guilty Plea with Bench Trial	8.8
Bench Trial in Absentia	23.5
Not Guilty Plea, Requested Jury Trial	4.7
Case Continued	8.3
Conditional Discharge	1.9
Pre-Trial Intervention	3.6
Nolle Pros/Case Dismissal	6.4
Transferred	0.9

N=468

Table 13. County by How Individuals' Cases Proceeded

Case	Charleston	Richland	Spartanburg	Florence	Orangeburg	Total
Guilty Plea	35/(50.7)	74/(28.5)	36/(42.4)	7/(70.0)	31/(70.5)	183/(39.1)
No Contest Plea	5/(7.2)	5/(1.9)	0/(0.0)	0/(0.0)	0/(0.0)	10/(2.1)
Not Guilty Plea, Reset	0/(0.0)	2/(0.8)	0/(0.0)	0/(0.0)	1/(2.3)	3/(0.6)
Not Guilty Plea, Bench Trial	9/(13.0)	17/(6.5)	7/(8.2)	0/(0.0)	8/(18.2)	41/(8.8)
Bench Trial in Absentia	3/(4.3)	90/(34.6)	16/(18.8)	1/(10.0)	0/(0.0)	110/(23.5)
Not Guilty Plea, Jury Trial	2/(2.9)	15/(5.8)	5/(5.9)	0/(0.0)	0/(0.0)	22/(4.7)
Case Continued	7/(10.1)	18/(6.9)	11/(12.9)	1/(10.0)	2/(4.5)	39/(8.3)
Conditional Discharge	2/(2.9)	6/(2.3)	1/(1.2)	0/(0.0)	0/(0.0)	9/(1.9)
Pre-Trial Intervention	3/(4.3)	11/(4.2)	3/(3.5)	0/(0.0)	0/(0.0)	17/(3.6)
Nolle Pros/Case Dismissed	3/(4.3)	18/(6.9)	6/(7.1)	1/(10.0)	2/(4.5)	30/(6.4)
Transferred	0/(0.0)	4/(1.5)	0/(0.0)	0/(0.0)	0/(0.0)	4/(0.9)
TOTAL	**69/(100)**	**260/(100)**	**85/(100)**	**10/(100)**	**44/(100)**	**468/(100)**

Most (76%) defendants' cases were resolved in four or fewer minutes. (Table 14). Bench trials accounted for 32.3% (n=151) of the cases. (See Table 12). For defendants who were present, most (58.6%) of their cases took five or more minutes to be tried. Trials for defendants who were absent were completed most often in two minutes or less (72.7%) and the majority (86.4%) in less than four minutes. (Table 14).

The rest of the cases (26.5%) were continued, the charges were dismissed, defendants entered pre-trial programs, the cases were set for jury trial, or their cases were transferred to another court. (Table 12). Cases were transferred for several reasons. Court observers noted that entry of a not guilty plea and the request for an attorney were among the reasons for transfer. In some areas of South Carolina, these cases are transferred to effectuate access to a courtroom to accommodate a jury trial and defense counsel.[27]

While defendants were most often non-white, their cases were heard most often by white trial judges and prosecuted by white officers.

Table 14. Case Proceeded by Hearing Time

Case Proceeded	0-2	3-4	5-10	11 and Over	Total
Guilty Plea	80/(44.2)	54/(29.8)	40/(22.1)	7/(3.9)	181/(100)
No Contest	4/(40.0)	4/(40.0)	2/(20.0)	0/(0.0)	10/(100)
Bench Trial D Present	5/(12.2)	12/(29.3)	17/(41.5)	7/(17.1)	41/(100)
Bench Trial in Absentia	85/(72.7)	16/(13.7)	8/(6.8)	8/(6.8)	117/(100)
TOTAL	174/(49.9)	86/(24.6)	67/(19.2)	22/(6.3)	349/(100)

Gender/Race and (In)Justice

Almost 5 million people live in South Carolina.[28] Fifty-one percent of the population is female. Most (68.3%) individuals in South Carolina report being white and 63.9% report being non-Hispanic.[29] Almost 28% report being African American, only 1.5% report being Asian, and 1.7% report being multi-racial.[30] Five percent report Hispanic as their ethnicity.[31]

Even though this study is only a snapshot of cases heard in five counties over 49 court hearings in the spring of 2016, for these defendants there was a disparity between their gender and race as compared to that of the courtroom workgroup. The race and gender of the charging officers (who, most often, acted as prosecutors), the trial judges, and defense attorneys did not reflect the racial and gender composition of the state, or of the defendants who appeared in the magistrate and municipal courts. While defendants were most often non-white (52.7%), their cases were heard most often by white trial judges (77.8% of defendants observed) and prosecuted by white officers (74.1% of defendants observed). Additionally, the few defense attorneys who were present in the courtrooms were more commonly white (69.6%). Men were over-represented as defendants and defense attorneys in these courtrooms as compared to state demographics. Almost 65% of defendants and 80% of defense attorneys were male. Defendants' cases were commonly heard by male trial judges (71% of observed defendants) and prosecuted by male officers or prosecutors (84.9% of observed defendants). (Table 15)[32]

Table 15. Judge, Prosecutor, Defendant, and Defense Counsel Race and Gender[33]

	Coding	Percent
Judge Gender	Male	71.0
	Female	29.0
Judge Race	White	77.8
	Non-White	22.2
Prosecutor Gender	Male	84.9
	Female	10.8
	N/A	4.3
Prosecutor Race	White	74.1
	Non-White	14.2
	N/A	11.7
Counsel Gender (N=56)	Male	80.0
	Female	20.0
Counsel Race (N=56)	White	69.6
	Non-White	7.2
	Don't Know	23.2
Defendant Gender	Male	64.4
	Female	33.4
	Don't Know	2.2
Defendant Race	White	37.8
	Non-White	52.7
	Don't Know	9.5

N=617

*Hispanics accounted for less than three percent in all demographic categories.

REPORT

Counties

There was a similar disparity at the county level. In this study, non-whites were over-represented as defendants, and females were under-represented. Based on United States Census information for 2014[34] (the most recent available), the racial and gender populations of the specific counties are:

Charleston is 67.7% white (and 63.4% are non-Hispanic whites), 28.6% black or African American, 1.6% Asian and 1.5% multi-racial (31.7% non-white), with 5.1% reporting that they are Hispanic, and 51.6% female.

Richland is 47.8% white (and 44.1% are non-Hispanic whites), 46.9% Black/African American, 2.7% Asian, and 2.1% multi-racial (51.7% non-white) with 5.1% reporting that they are Hispanic, and 51.5% female.

Spartanburg is 74.5% white (and 69% reporting that they are non-Hispanic whites), 21% Black/African American, 2.3% Asian, and 1.7% multi-racial (25% non-white), with 6.5% reporting that they are Hispanic, and 51.5% female.

Florence is 54.7% white (and 52.9% are non-Hispanic whites), 42.2% Black/African American, 1.5% Asian, and 1.2% multi-racial (44.9% non-white) with 2.4% reporting that they are Hispanic, and 53.2% female.

Orangeburg is 34.9% white (and 33.6% are non-Hispanic whites), 62.2% Black/African American, 1.0% Asian, and 1.3% multi-racial (64.5% non-white) with 2.1% reporting that they are Hispanic, and 53.1% female.[35]

Compared to the county populations, non-white defendants were over-represented in Charleston (48%), Richland (62.9%), Spartanburg (41.1%), and Florence Counties (50%), with Spartanburg having the largest disparity. Non-white individuals account for 25% of Spartanburg County's population, but 41.1% of the defendants observed in its courts were non-white. (Table 16). Defendant racial demographics among Orangeburg's courts (30.4% white and 69.6% non-white) were relatively proportional to its overall racial makeup.

Table 16. County by Defendants' Race

County	White	Non-White	Total
Charleston	39/(52.0)	37/(48.0)	76/(100)
Richland	127/(37.1)	215/(62.9)	342/(100)
Spartanburg	43/(58.9)	30/(41.1)	73/(100)
Florence	5/(50.0)	5/(50.0)	10/(100)
Orangeburg	14/(30.4)	32/(69.6)	46/(100)
TOTAL	228/(41.8)	319/(58.2)	546/(100)

Consistent with other national data,[36] female defendants remained under-represented compared to their proportion of the population in every county: Charleston (30.1%), Richland (32.2%), Spartanburg (45.8%), Florence (27.3%), and Orangeburg (34%). (Table 17).

Table 17. County by Defendants' Gender

County	Male	Female	Total
Charleston	58/(69.9)	25/(30.1)	83/(100)
Richland	242/(67.8)	115/(32.2)	357/(100)
Spartanburg	52/(54.2)	44/(45.8)	96/(100)
Florence	8/(72.7)	3/(27.3)	11/(100)
Orangeburg	31/(66.0)	16/(34.0)	47/(100)
TOTAL	391/(65.8)	203/(34.2)	594/(100)

Courts

For the proceedings observed in this study, the racial and gender disparity between offenders and the courtroom workgroup was even greater. Few defendants were adjudicated by non-white judges (22.2%), confronted by non-white prosecutors (police officers) (25.9%), or defended by non-white defense lawyers (30.4%), compared to the 52.7% defendants who were not white. (See Table 15).

Within each county, the same disproportion was evident, except in Florence. In Florence, 46.2% of defendants were adjudicated by non-white judges and 77.8% were confronted by non-white prosecutors

More than one in ten (11.3%) defendants observed in this study were assigned to courtrooms in which no advisement of any rights was given at the beginning of the court session.

In some courts advisement of rights were given before inmates were brought into the court room. . . . Therefore, many were not present when the initial advisement was given.

(police officers). (Tables 19 and 20). In the other counties, few defendants' cases were heard by non-white judges: Charleston (21.2%), Richland (26.3%), Spartanburg (11%), and Orangeburg (8.5%). (Table 18). Similarly, few defendants were prosecuted by non-white persons in Charleston (5.3%), Richland (15.3%), Spartanburg (8.1%), and Orangeburg (21.3%). (Table 19).

Table 18. Defendants Heard in Each County by Judge Race

County	White	Non-White	Total
Charleston	67/(78.8)	18/(21.2)	85/(100)
Richland	274/(73.7)	98/(26.3)	372/(100)
Spartanburg	89/(89.0)	11/(11.0)	100/(100)
Florence	7/(53.8)	6/(46.2)	13/(100)
Orangeburg	43/(91.5)	4/(8.5)	47/(100)
TOTAL	**480/(77.8)**	**137/(22.2)**	**617/(100)**

Table 19. Defendants Prosecuted in Each County by Prosecutor Race

County	White	Non-White	N/A-No Prosecutor	Total
Charleston	70/(92.1)	4/(5.3)	2/(2.6)	76/(100)
Richland	224/(65.7)	51/(15.0)	66/(19.4)	341/(100)
Spartanburg	90/(91.8)	6/(6.1)	2/(2.0)	98/(100)
Florence	2/(22.2)	7/(77.8)	0/(0.0)	9/(100)
Orangeburg	37/(78.7)	10/(21.3)	0/(0.0)	47/(100)
TOTAL	**423/(74.1)**	**78/(13.7)**	**70/(12.2)**	**571/(100)**

The video or court personnel reviewed these rights in the absence of in-custody defendants, who were held outside the courtroom while the rights were being reviewed, and at the very beginning of the court session, so out-of-custody defendants who arrived late to court — either by design or by mistake — missed the advisements. For several court proceedings, observers noted that 50% of the defendants were not present during video or oral presentations.

Even though females comprise more than 50% of each county's population, few defendants were adjudicated by female judges or confronted female police-prosecutors. Defendants were adjudicated by female judges in less than 30% of cases, and confronted by female police-prosecutors in less than 11% of cases. Only 20% of defendants were represented by female defense attorneys. (Table 15). This disparity held in all counties except Florence, in which 69.2% of defendants were adjudicated by female judges. In Charleston County, 22.4% of defendants were adjudicated by female judges; in Richland, 30.6%; in Spartanburg, 36%; and in Orangeburg, 2.1%. This is well below the proportion of females in each county. (Table 20).

Table 20. Defendants Heard in Each County by Judge Gender

County	Male	Female	Total
Charleston	66/(77.6)	19/(22.4)	85/(100)
Richland	258/(69.4)	114/(30.6)	372/(100)
Spartanburg	64/(64.0)	36/(36.0)	100/(100)
Florence	4/(30.8)	9/(69.2)	13/(100)
Orangeburg	46/(97.9)	1/(2.1)	47/(100)
TOTAL	**438/(71.0)**	**179/(29.0)**	**617/(100)**

Defendants were also unlikely to confront a female police-prosecutor in every county — Charleston (25%), Richland (6.8%), Spartanburg (18.4%), Florence (11.1%), and Orangeburg (2.1%). (Table 21).

Table 21. Defendants Prosecuted in Each County by Prosecutor Gender

County	Male	Female	N/A-No Prosecutor	Total
Charleston	56/(73.7)	19/(25.0)	1/(1.3)	76/(100)
Richland	304/(86.6)	24/(6.8)	23/(6.6)	351/(100)
Spartanburg	80/(81.6)	18/(18.4)	0/(0.0)	98/(100)
Florence	7/(77.8)	1/(11.1)	1/(11.1)	9/(100)
Orangeburg	46/(97.9)	1/(2.1)	0/(0.0)	47/(100)
TOTAL	**493/(84.9)**	**63/(10.8)**	**25/(4.3)**	**581/(100)**

Advisement of Rights

Group Advisement

More than one in ten (11.3%) defendants observed in this study were assigned to courtrooms in which no advisement of any rights was given at the beginning of the court session. (Table 22). For those defendants (88.7%) who were assigned to court sessions that opened with some type of advisement of rights, either the judge (39.1%), but more likely court personnel (60.8%) played a video (52.4%), provided a verbal advisement (34.4%), or both (13%), advising those present at the very beginning of court on some constitutional rights. (Table 22). The content of this advisement, however, varied greatly (see discussion below). Additionally, for this study, observers were not able to determine whether individual defendants were present in court at the time of the advisement. Observers could not individually identify who was in court and who was not at the time of the advisement. It was clear to observers, however, that there were instances in which defendants did not pay attention to the general advisement or were not present at all. For example, in some courts advisement of rights were given before inmates were brought into the court room. In other courts, the session may start on the hour, but defendants are given staggered times to arrive, such as on the quarter hour. Therefore, many were not present when the initial advisement was given. Additionally, in at least one observed

session, discussed above in the introduction, the video was not played until after defendants had approached the clerk to sign up for deferral programs or make plea arrangements, making the information of little value.

Table 22. Advisement of Defendant Rights

Variable	Coding	Percent
Did judge/court open with advisement of rights to all present? (N=617)	Yes	88.7
	No	11.3
Who did the advisement? (N=539)	Judge	39.1
	Court Personnel	60.8
How was the advisement given? (N=539)	Video	52.4
	Orally	34.4
	Video/Orally	13.0
	Written	0.2
Advisement in English only? (N=539)	Yes	99.3
	No	0.7

Defendants in Richland (99.2%), Charleston (96.4%) and Orangeburg (93.6%) were most likely to have their cases set in courts that opened with some type of advisement. (Table 23).

Table 23. County by Advisement

County	Yes	No	Total
Charleston	81/(96.4)	3/(3.6)	84/(100)
Richland	362/(99.2)	3/(0.8)	365/(100)
Spartanburg	43/(43.0)	57/(57.0)	100/(100)
Florence	9/(75.0)	3/(25.0)	12/(100)
Orangeburg	44/(93.6)	3/(6.4)	47/(100)
TOTAL	539/(88.7)	69/(11.3)	608/(100)

Only Richland County routinely opened court sessions with video advisements of constitutional rights, and in some instances the court sessions opened with the video and some additional oral advisement of rights. (Table 24). One court session in Charleston opened with a video and oral presentation of rights. (Table 24).

Table 24. County by Manner of Advisement

County	Video	Oral	V/O	Written	Total
Charleston	0/(0.0)	79/(97.5)	1/(1.2)	1/(1.2)	81/(100)
Richland	282/(77.9)	11/(3.0)	69/(19.1)	0/(0.0)	362/(100)
Spartanburg	0/(0.0)	43/(100.0)	0/(0.0)	0/(0.0)	43/(100)
Florence	0/(0.0)	9/(100.0)	0/(0.0)	0/(0.0)	9/(100)
Orangeburg	0/(0.0)	43/(100.0)	0/(0.0)	0/(0.0)	43/(100)
TOTAL	282/(52.4)	185/(34.4)	70/(13.0)	1/(0.2)	538/(100)

One judge included a recommendation that defendants (n=11) enter a plea of guilty in exchange for the $85 (municipal court) fine "because the officer already cut [them] a break."

As briefly noted, the problem, as observed by several of the data collectors, was that the video or court personnel reviewed these rights in the absence of in-custody defendants, who were held outside the courtroom while the rights were being reviewed, and at the very beginning of the court session, so out-of-custody defendants who arrived late to court — either by design or by mistake — missed the advisements. For several court proceedings, observers noted that 50% of the defendants were not present during video or oral presentations. Even for those who were present, there was no individual interaction during this group advisement that would allow advisees the opportunity to seek further clarification or explanation. As discussed below, more than 90% of defendants were not asked whether they heard or understood the group advisement of their rights.

Data collectors also observed that some defendants did not listen to the advisements. As discussed below, this weakness in the opening advisement was exacerbated by the rarity of individual advisements of rights by trial judges, and lack of confirmation by trial judges that defendants heard or understood the opening advisements before proceeding with their cases.

The Rights Included in the Opening Advisements

Video presentations in Richland County were the most comprehensive advisement seen, providing an overview of many rights. Defendants' cases were most likely to be heard in courtrooms where the opening advisements included the right to a jury trial (98%), the right to counsel (94.2%), and the right to appointed counsel (84.2%). However, many advisements omitted information about other important constitutional rights and potential consequences. Quite a few defendants were in courtrooms where opening advisements failed to include the right to present a defense (21.5%), the right to confront and cross-examine witnesses (29.4%), the possibility of deportation upon conviction (34.8%) and the general right to trial (43.2%). Only 6.5% of defendants observed were assigned to courtrooms where advisements included that a $40 application fee would be imposed for submitting an application to determine qualification for the appointment of counsel. (Table 25).

Even when constitutional rights were comprehensively provided by video in Richland, few judges confirmed with defendants that they watched or understood their rights before their cases proceeded. Across all counties, only 8.1% of defendants were questioned by the judge regarding whether they had seen the video and understood it.

Table 25. Opening Advisement of Rights in Court

Variable	Coding	Percent
Right to counsel	Yes	94.2
	No	5.8
Right to appointed counsel, if unable to afford counsel	Yes	84.2
	No	13.9
	Don't Know	1.9
Fee for use of public defender (appointed counsel)	Yes	6.5
	No	88.9
	Don't Know	4.6
Right to trial	Yes	55.3
	No	43.2
	Don't Know	1.5
Right to jury trial	Yes	98.0
	No	1.7
	Don't Know	0.4
Right to confront and cross-examine witnesses	Yes	70.2
	No	29.4
	Don't Know	0.4
Right to present a defense	Yes	78.3
	No	21.5
	Don't Know	0.2
Possibility of deportation if found guilty	Yes	64.6
	No	34.8
	Don't Know	0.6

N=539

REPORT

Observers noted that a variety of other information was sometimes included in the opening advisements, including the option of pretrial intervention or alcohol and traffic education programs, the plea options, and the difference between bench and jury trial. One judge included a recommendation that defendants (n=11) enter a plea of guilty in exchange for the $85 (municipal court) fine "because the officer already cut [them] a break."[37]

Inconsistency across Counties in the Specific Rights Included in the Opening of Court Sessions

There was some variation among counties in the rights that were included in the opening of court sessions. In some counties, a disturbingly high percentage of cases observed were in courtrooms where personnel failed to advise defendants of the right to an attorney (Table 26) or the right to a jury trial (Table 27). For example, in Orangeburg County, more than 40% of defendants observed were assigned to court sessions in which opening advisements made no mention of the right to an attorney.

Many courts excluded important advisements such as the (1) right to appointed counsel, (2) right to confront witnesses, (3) right to present a defense, (4) possibility of deportation, and (5) application fee for appointed counsel.

Table 26. County by Advisement of Right to Attorney

County	Yes	No	Total
Charleston	81/(100.0)	0/(0.0)	81/(100)
Richland	351/(97.0)	11/(3.0)	362/(100)
Spartanburg	42/(97.7)	1/(2.3)	43/(100)
Florence	8/(88.9)	1/(11.1)	9/(100)
Orangeburg	26/(59.1)	18/(40.9)	44/(100)
TOTAL	508/(94.2)	31/(5.8)	539/(100)

In some counties even the constitutional right to a jury trial was sometimes excluded. This right was most likely to be omitted in Charleston County and Florence County, where 8.6% and 11.1% of defendants, respectively, were assigned to courtrooms where the opening advisement lacked notice of the right to a jury trial.[38] In only two counties, Orangeburg and Richland, did observers document 100 percent inclusion of a statement advising of that most fundamental of rights. (Table 27).

Table 27. County by Advisement of Right to Jury Trial

County	Yes	No	DK	TOTAL
Charleston	74/(91.4)	7/(8.6)	0/(0.0)	81/(100)
Richland	362/(100.0)	0/(0.0)	0/(0.0)	362/(100)
Spartanburg	42/(97.7)	1/(2.3)	0/(0.0)	43/(100)
Florence	6/(66.7)	1/(11.1)	2/(22.2)	9/(100)
Orangeburg	44/(100.0)	0/(0.0)	0/(0.0)	44/(100)
TOTAL	528/(98.0)	9/(1.7)	2/(0.4)	539/(100)

While there were disturbingly high rates of defendants not being informed of their rights to a lawyer or a jury trial, the failure to advise of other fundamental rights was even more common. Many courts excluded important advisements such as the (1) right to appointed counsel, (2) right to confront witnesses, (3) right to present a defense, (4) possibility of deportation, and (5) application fee for appointed counsel. The advisements again varied by county. In Orangeburg County, 93.2% of defendants were assigned to courtrooms in which opening advisements failed to include the right to appointed counsel. Even in Richland County, which had the highest rate of advisement for nearly every right, 3% of defendants observed were in courts that omitted that right. (Table 28).

Table 28. County by Advisement of Right to Appointed Counsel

County	Yes	No	DK	Total
Charleston	57/(70.4)	16/(19.8)	8/(9.9)	81/(100)
Richland	351/(97.0)	11/(3.0)	0/(0.0)	362/(100
Spartanburg	37/(86.0)	6/(14.0)	0/(0.0)	43/(100)
Florence	6/(66.7)	1/(11.1)	2/(22.2)	9/(100)
Orangeburg	3/(6.8)	41/(93.2)	0/(0.0)	44/(100)
TOTAL	454/(84.2)	75/(13.9)	10/(1.9)	539/(100)

Not a single defendant in Orangeburg or Florence Counties was advised of the right to confront and cross-examine witnesses. In Charleston (45%) and Spartanburg (58.1%), defendants were also unlikely to hear about

this right. Richland County remained the outlier in including advisement of rights that were frequently excluded by other counties, but compliance was still not perfect: 12.4% of Richland County defendants were assigned to courts where the right to confront and cross-examine witnesses was not addressed. (Table 29).

Table 29. County by Advisement of Right to Confront/Cross-Examine Witnesses

County	Yes	No	DK	Total
Charleston	44/(55.0)	36/(45.0)	0/(0.0)	80/(100)
Richland	316/(87.3)	45/(12.4)	1/(0.3)	362/(100
Spartanburg	18/(41.9)	25/(58.1)	0/(0.0)	43/(100)
Florence	0/(0.0)	8/(88.9)	1/(11.1)	9/(100)
Orangeburg	0/(0.0)	44/(100.0)	0/(0.0)	44/(100
TOTAL	378/(70.2)	158/(29.4)	2/(0.4)	538/(100

Some defendants had their cases set in courtrooms that failed to even advise generally on the right to present a defense. The right to present a defense was not included in Orangeburg at all. The right was excluded frequently in Charleston (56.8% of defendants' cases were in courtrooms that did not advise on this right) and Florence (66.7% of observed defendants).The general right to present a defense was excluded in Spartanburg courtrooms for 14% of defendants observed and in Richland courtrooms for 3.9% of defendants observed. (Table 30).

Table 30. County by Advisement of Right to Present Defense

County	Yes	No	DK	Total
Charleston	35/(43.2)	46/(56.8)	0/(0.0)	81/(100)
Richland	347/(95.9)	14/(3.9)	1/(0.2)	362/(100)
Spartanburg	37/(86.0)	6/(14.0)	0/(0.0)	43/(100)
Florence	3/(33.3)	6/(66.7)	0/(0.0)	9/(100)
Orangeburg	0/(0.0)	44/(100.0)	0/(0.0)	44/(100)
TOTAL	422/(78.3)	116/(21.5)	1/(0.2)	539/(100)

The fee to apply for appointed counsel was infrequently mentioned, with 88.9% of defendants observed across all counties left without this information. Spartanburg courts were most likely to inform defendants of this fee, but even there, 51.2% of defendants were set in courtrooms that made no mention of the fee. Compliance was even lower in the other counties. In Charleston, more than 80% of defendants were not told of the fee, and more than 94% in Richland. The fee to apply for appointed counsel was not included in any session in Florence or Orangeburg. (Table 31).

While group advisements, video or otherwise, may be helpful to provide defendants with some basic information, this practice does not substitute for discussion with individual defendants to ensure that they understand their rights.

Table 31. County by Advisement of Fee for Public Defender

County	Yes	No	DK	Total
Charleston	13/(16.0)	65/(80.2)	3/(3.7)	81/(100)
Richland	1/(0.3)	341/(94.2)	20/(5.5)	362/(100)
Spartanburg	21/(48.8)	22/(51.2)	0/(0.0)	43/(100)
Florence	0/(0.0)	7/(77.8)	2/(22.2)	9/(100)
Orangeburg	0/(0.0)	44/(100.0)	0/(0.0)	44/(100)
TOTAL	**35/(6.5)**	**479/(88.9)**	**25/(4.6)**	**539/(100)**

Spartanburg, Florence, and Orangeburg courts never included information about possible deportation in opening advisements. In Charleston, such advisement was rare — more than 80% of defendants were in courts that did not address deportation. Only Richland County usually included this information, but even there, nearly 8% were not advised. (Table 32). It is worth noting that since the Supreme Court decided the case of *Padilla v. Kentucky* in 2010, if an attorney were to fail to address these issues, it would be a per se constitutional violation of the right to effective assistance of counsel.[39]

Table 32. County by Advisement of Possible Deportation

County	Yes	No	DK	Total
Charleston	14/(17.3)	65/(80.2)	2/(2.5)	81/(100)
Richland	333/(92.2)	28/(7.8)	0/(0.0)	361/(100)
Spartanburg	0/(0.0)	43/(100.0)	0/(0.0)	43/(100)
Florence	0/(0.0)	8/(88.9)	1/(11.1)	9/(100)
Orangeburg	0/(0.0)	43/(100.0)	0/(0.0)	43/(100)
TOTAL	**347/(64.6)**	**187/(34.8)**	**3/(0.6)**	**537/(100)**

Even when constitutional rights were comprehensively provided by video in Richland, few judges confirmed with defendants that they watched or understood their rights before their cases proceeded. Across all counties, only 8.1% of defendants were questioned by the judge regarding whether they had seen the video and understood it. (Table 33).

Table 33. Trial Judge Confirmed Defendant Heard and Understood Video

Variable	Coding	Percent
If court opened with video advisement, did judge confirm defendant understood or watched video (N=125).	Yes	8.1
	No	91.1
	Don't Know	0.8

Individual Advisement by Interacting with the Trial Judge

While group advisements, video or otherwise, may be helpful to provide defendants with some basic information, this practice does not substitute for discussion with individual defendants to ensure that they understand their rights. Observers provided data about 333 cases in which magistrate and municipal judges had interaction with defendants that gave them the opportunity to provide individualized advisement of constitutional rights. (Table 34). Even during these interactions, judges routinely failed to address basic constitutional rights. More than half of defendants (50.9%) were not advised of their right to counsel and more than two thirds (67.7%) were not asked if they desired counsel. Defendants were also unlikely to be asked any questions about whether they wanted to hire counsel, could afford counsel, or wanted to apply for appointed counsel. Fewer than 1 in 5 (18.1%) were

asked if they wanted to hire counsel and even fewer (13.2%) were asked if they wanted to apply for appointed counsel. A mere 9% were asked whether they could afford counsel. Only 7.2% of defendants were advised of the importance of counsel, 6% were advised of the benefits of counsel, and 5.4% were advised of the disadvantages of proceeding without counsel. Judges made little effort to proactively determine whether someone might be financially eligible for appointed counsel. Less than 4% of defendants were asked about their income and less than 1% were asked about their assets and car ownership.

Table 34. Defendant/Judge Interactions

Variable	Coding	Percent
Defendant advised of right to counsel?	Yes	40.7
	No	50.9
	Don't Know	2.4
	N/A	6.0
Defendant asked if counsel desired?	Yes	24.6
	No	67.7
	Don't Know	1.8
	N/A	6.0
Defendant asked if s/he wanted to hire counsel?	Yes	18.1
	No	72.3
	Don't Know	3.6
	N/A	6.0
Defendant asked if s/he could afford counsel?	Yes	9.0
	No	79.6
	Don't Know	5.4
	N/A	6.0
Defendant asked s/he wanted to apply for appointed counsel?	Yes	13.2
	No	76.6
	Don't Know	4.2
	N/A	6.0
Defendant asked about income?	Yes	3.6
	No	87.3
	Don't Know	3.0
	N/A	6.0
Defendant asked about assets?	Yes	0.6
	No	90.4
	Don't Know	3.0
	N/A	6.0
Defendant asked about home ownership?	Yes	0.0
	No	91.6
	Don't Know	2.4
	N/A	6.0
Defendant asked about car ownership?	Yes	0.6
	No	91.0
	Don't Know	2.4
	N/A	6.0
Defendant advised of importance of counsel?	Yes	7.2
	No	85.5
	Don't Know	1.2
	N/A	6.0
Defendant advised of benefits of counsel?	Yes	6.0
	No	86.1
	Don't Know	1.8
	N/A	6.0
Defendant advised of disadvantages of no counsel?	Yes	5.4
	No	86.7
	Don't Know	1.8
	N/A	6.0

N=333

Outcomes

Pretrial Intervention

Just about 26% of defendants entered a form of pretrial intervention (PTI), conditional discharge, or treatment program in lieu of adjudication. (See Table 10). Some of these individuals entered that agreement without interacting with the trial judge. Of those who did interact with the trial judge (n=26), 64% were not advised of the costs associated with entering that program and 69.6% were not advised regarding the steps to expunge the charge upon completion of the program. (Table 35). More than 30% were not advised that there were consequences (e.g., the reinstatement of charges) for failing to complete the program. (Table 35).

Table 35. Program Costs

Variable	Coding	Percent
If defendant accepted a conditional discharge, PTI, or other alternative program, was the defendant advised of the following? (N=26)		
Cost associated with the program	Yes	36.0
	No	64.0
Steps to have the charge expunged	Yes	30.4
	No	69.6
Consequences of failing to complete the program	Yes	69.6
	No	30.4

Waivers of Rights

Nearly 66% of defendants who interacted with judges waived their right to counsel and represented themselves. Few (3.6%) opted to hire counsel, and less than 2% were appointed counsel. In 4.0% of the cases, the trial judge dissuaded the defendant from exercising his or her rights. (Table 36). In explaining how the trial judge dissuaded defendants, observers noted that: (1) judges would advise incarcerated defendants that they would remain in jail waiting for an attorney, but if they entered a plea they might be released that day, (2) judges mentioned that individuals who entered not guilty pleas or requested attorneys had to return to court on another day, and (3) judges negotiated with defendants by reducing fines if they agreed to enter a guilty plea instead of not guilty.

Defendants were almost three times more likely to enter a plea of guilty or no contest when the prosecutor was a police officer [and] two times more likely to enter a plea of guilty or no contest when the trial judge advised defendants of fewer rights regarding the entry of the plea.

Table 36. Open Court, the Defendant, and Counsel[40]

Variable	Coding	Percent
Did defendant waive right to counsel and represent self? (N=276)	Yes	65.9
	No	23.9
	Don't Know	4.0
	N/A	6.2
Did defendant opt to hire counsel? (N=276)	Yes	3.6
	No	87.0
	Don't Know	3.3
	N/A	6.1
Was defendant appointed counsel? (N=275)	Yes	1.8
	No	89.8
	Don't Know	2.2
	N/A	6.2
Was defendant denied opportunity to continue case for counsel? (N=272)	Yes	0.7
	No	92.3
	Don't Know	0.7
	N/A	6.3
Did trial judge tell defendant s/he won't receive jail time and proceed without counsel? (N=274)	Yes	0.0
	No	93.0
	Don't Know	1.5
	N/A	5.5
Did defendant sign a rights waiver/plea form? (N=276)	Yes	7.2
	No	58.0
	Don't Know	30.1
	N/A	4.7
Did defendant appear mentally ill? (N=280)	Yes	4.6
	No	91.4
	Don't Know	3.9
Did judge dissuade defendant from exercising his/her rights? (N=272)	Yes	4.0
	No	96.0

Self-represented (or "pro se") defendants and defendants with representation entered guilty pleas at approximately the same rates — 76.3% of the time for pro se defendants, and 75.7% of the time for represented defendants. Pro se defendants entered no contest pleas at nearly twice the rate of represented defendants (5.2% versus 2.7%). Pro se defendants pled not guilty and had an immediate bench trial in 18.5% of cases, as opposed to 21.6% of represented defendants. (Table 37).[41]

Table 37. Case Proceeded via Self-Representation[42]

Case Proceeded	Pro Se	Represented	Don't Know	Total
Guilty Plea	132/(76.3)	28/(75.7)	7 /(100)	167/(77.0)
No Contest	9/(5.2)	1/(2.7)	0/(0.0)	10/(4.6)
Not Guilty plea, Bench Trial	32/(18.5)	8/(21.6)	0/(0.0)	40/(18.4)
TOTAL	**173/(100)**	**37/(100)**	**7/(100)**	**217/(100)**

Guilty/No Contest Pleas

Logistic regression was used to identify the factors that significantly influence defendants' decisions to enter a plea of guilty or no contest. (Table 38). Controlling for other factors, defendants were almost three times more likely to enter a plea of guilty or no contest when the prosecutor was a police officer rather than a solicitor, no one, or other personnel. Defendants were two times more likely to enter a plea of guilty or no contest when the trial judge advised defendants of fewer rights regarding the entry of the plea. Defendants charged with traffic offenses were almost three and a half times more likely to enter a plea of guilty or no contest than defendants charged with other crimes. Finally, in-custody defendants were slightly more likely to enter a plea of guilty or no contest than defendants who were not incarcerated at the time of their hearings.

Table 38. Logit Regression for Guilty Plea/No Contest (=1)[43]

Variables	b	Odds
Prosecutor Type (Police-1)	0.988*	2.686
[a]Due Process 1 — Counsel	-0.134	0.875
[b]Due Process 2 — Colloquy	0.775*	2.170
Trial Concluded before Judge Arrived (No=1)	0.726	2.067
Judge Licensed Attorney (Unlicensed=1)	-0.168	0.846
Counsel (No Counsel=1)	-1.202	0.361
Defendant in Custody (Out=1)	-0.808*	0.446
Traffic Offense (Traffic=1)	1.223*	3.398
Constant	0.075	1.078
-2 Log Likelihood	465.127	
X^2	123.665	
Nagelkerke R^2	0.335*	

N=617; *p<0.05

[a]Measured due process 1 regarding the advisement of counsel, including whether the judge advised defendants of the right to counsel, whether they wanted a lawyer, wanted to hire counsel, understood the importance and benefits of counsel, and understood the disadvantages of not having counsel. The lower the score; the greater the due process.

[b]Measured due process 2 regarding rights advised during the plea colloquy, including whether the trial judge referred to a written plea waiver, asked if the defendant voluntarily entered the plea, understood the forfeiting of counsel, and the right to trial, including that the state prove the charges, cross examination and presenting a defense. The lower the score; the greater the due process.

Bench Trials

Almost 33% (n=146) of observed cases that were not resolved prior to the judge taking the bench resulted in bench trials. (See Table 12).[44] Approximately 75% of defendants were not present for their trials, and less than 1% of bench trials were conducted with defense lawyers present. (Table 39). During most (88.3%) trials, a state witness (usually the police officer) testified, but in 97.1% of cases defendants did not cross-examine

For bench trials, guilty was the most common verdict. Over 90% of defendants were found guilty, with 96.3% found guilty in their absence compared to 73% when the defendant was present.

the state witness. More than half the time (56.9%), defendants testified in their own defense — indeed, approximately 85% of defendants were not told that they had the right not to testify — and the defendant was cross-examined just under 5% of the time. In less than 50% of the cases, trial judges questioned the state witness (42.2%) and defendant (44.1%) before rendering a decision.

Table 39. Bench Trials

Variable	Coding	Percent
If judge held bench trial, was the defendant present? (N=146)	Yes	25.3
	No	74.7
Did defendant have counsel at the bench trial? (N=108)	Yes	0.9
	No	97.2
	Don't Know	1.9
Did state witnesses testify? (N=103)	Yes	88.3
	No	11.7
Did defendant cross-examine state witnesses? (N=102)	Yes	2.9
	No	97.1
Did defendant testify? (N=102)	Yes	56.9
	No	43.1
Defendant advised of his/her right not to testify? (N=104)	Yes	15.4
	No	84.6
State witness cross-examined defendant? (N=102)	Yes	4.9
	No	95.1
Judge questioned state witness? (N=102)	Yes	42.2
	No	57.8
Judge questioned defendant? (N=102)	Yes	44.1
	No	55.9

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For bench trials, guilty was the most common verdict. Over 90% of defendants were found guilty, with 96.3% found guilty in their absence compared to 73% when the defendant was present. (Table 40).

Table 40. Trial Determination of Guilt by Defendant Presence at Trial

Defendant at Trial?	Guilty	Not Guilty	Mixed	Total
Trial w/ Defendant Present	27/(73.0)	6/(16.2)	4/(10.8)	37/(100)
Trial in Absentia	105/(96.3)	1/(0.9)	3/(2.8)	109/(100
TOTAL	132/(90.4)	7/(4.8)	7/(4.8)	146/(100)

Jail was imposed on 19.2% of defendants, and of these defendants 97.4% were not represented by counsel. (See Table 41).

Sanctions

Fines

In some cases multiple sanctions were imposed.[45] In total, defendants were subjected to 433 sanctions. (Table 41). The most common sanction imposed by judges (after plea or bench trial finding of guilt) was a fine (35.5%). Additionally, 41.3% of defendants were given the choice of jail or fine.

Table 41. Sanctions

Sanction	Percent
Fines	35.50
Probation	0.01
Court Costs	0.01
Restitution	2.10
Jail	19.20
Defendant Option (Fine or Jail)	41.30
Unknown	1.90

N=433

The choice made by the defendants between a fine and jail was not known for 15.3% of the defendants. (Table 42). Almost 15% paid the fine immediately, 21.1% opted for a payment-plan option, and 6.2% chose to pay the fine at a later date. For 42% of defendants, they were either not present, given time served, or ordered to complete community service (see the "other" category). (Table 42).

Table 42. Sanction Information Provided at the End of Sentencing

Variable	Coding	Percent
If sanction was a fine or alternative to jail, defendant (N=209)	Paid immediately	14.8
	Will pay at later date	6.7
	Chose a payment option	21.1
	Did not choose in court/Unknown	15.3
	Other	42.1
Was defendant informed of payment plan? (N=255)	Yes	29.4
	No	35.7
	Don't Know	34.9
Court costs/fines (N=233)*	≤ $100	14.2
	$101-1000	57.1
	$1001-2000	11.6
	> $2000	17.2
Was defendant given an itemized account of fines? (N=245)*	Yes	6.9
	No	48.2
	Don't Know	44.9
Did trial judge inform the defendant of the consequences for failure to pay? (N=182)	Yes	26.4
	No	73.6

* The term "fines" is used for brevity; the dollar figures include the full monetary obligation, including fines, court costs, state assessments, fees, restitution, and any other financial obligations.

Fines and Fees in South Carolina

South Carolina summary courts have jurisdiction over misdemeanor matters that carry sentences of up to 30 days in jail, a $500 fine, or both. Some charges that carry higher penalties, such as shoplifting (which carries a fine up to $1000) and second or third charges of driving with a suspended license (which carry jail sentences longer than 30 days) are within the jurisdiction of summary courts by statute, notwithstanding the general limits. Additionally, criminal offenses in South Carolina courts are subject to state assessments based on the fine amount. SC assessments are currently 107.5%, meaning that if the fine is $100, the state assessments are $107.50 added on top of that. Those assessments are allocated 88.84% to the state and 11.16% to the local government, and fund probation, law enforcement training, victim assistance, and public defense, among other things.[46] Pursuant to statute, this assessment "must not be waived, reduced, or suspended."[47] In addition, courts impose other surcharges, such as a $5 Law Enforcement Training surcharge, a $25 Law Enforcement Funding surcharge, and a $25 Victim Conviction Surcharge. If an individual asks to be put on a payment plan, a 3% collection fee is tacked on top.

In February 2016 in Columbia Municipal Court, a group of observers was present for a criminal court session that consisted mostly of shoplifting cases. A handful of defendants accepted offers of pre-trial intervention, two requested attorneys, and three requested jury trials. The rest of the cases were resolved with bench trials (some in absentia, some with the defendant present) and guilty pleas. Most of the items that had been concealed were minor — a shirt, socks and body wash, sandwiches and soda, fishing bait — yet the sentence was always the same: fines, costs, and fees totaling $2,130, or jail sentences of anywhere from 5 to 30 days. Only one case out of the nine that were handled that day involved any actual loss of property — in all others, the property had been recovered. It was clear that the majority of the defendants were poor and many were unemployed, yet the court sentenced each of the defendants to the $2,130 without any inquiry into their ability to pay.

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In one particularly memorable case, a 66-year old white man, a disabled veteran who arrived to court in a wheelchair, came before the judge accused of having stolen a DVD. He had no prior record and pled guilty as charged. He expressed his regret and embarrassment, telling the court he had never done anything like this before. He was given a choice of sentence: pay fines and fees totaling $2,130, or spend 5 days in jail. The man elected to pay the fine, but requested a payment plan, explaining that he gets social security income. The payment plan was allowed, but with the additional 3% collection fee the total was $2,193.90.

Costs

Description	Cost Code	Amount
State Assessment	STAASM	$955.00
Victim Services Asm 38.0013% / 5.7831%	ASMVIC	$120.00
SC Criminal Justice Academy Training	SCCJAT	$5.00
Fine to General Fund	AFNEGF	$1,000.00
Collection Fee 3%	CFEE3%	$63.90
Victim Conviction Surcharge $100 / $25	CVSRCH	$25.00
Law Enforcement Funding Surcharge $25	LEFSUR	$25.00

Screen shot reformatted for this report from South Carolina's public records index that details the costs in a shoplifting case from February 2016.

The option to make the payment in installments was given to less than 30% of defendants. (Table 42). The range in the amount of fines and costs imposed was wide, from $25 to $6,390.[48] The average imposed monetary obligation among 233 defendants for whom data was able to be collected was $726.89. More than half (57.4%) of fines were within the $101-$1,000 range, 14.2% were $100 or less, 11.6% were within the $1001 to $2,000 range, and the rest (17.2%) were over $2,000. (Table 42).

Nearly three quarters of defendants (73.6%) were not informed of the consequences for failing to pay the fine. Less than 7% of defendants were provided, in open court, an itemized accounting of court costs and fines. (Table 42).

Although few obtained itemized accountings, variations in the amount of imposed fines and assessments among the courts was evident. Richland (42.1%) and Florence (57.1%) courts were most likely to impose court costs and fines of more than $1000. Charleston imposed no fines higher than $1000, and in Orangeburg only 6.1% of imposed fines were over $1000. In Spartanburg, 17% of fines were over $1000. Defendants in Richland County were the most likely to receive the highest fines, with 31% of observed defendants for whom data was able to be collected receiving a bill totaling more than $2000. (Table 43).

Table 43. County by Fine (Ordinal)

County	≤ $100	$101-1000	$1001-$2000	Over $2,000	Total
Charleston	7/(31.8)	15/(68.2)	0/(0.0)	0/(0.0)	22/(100)
Richland	4/(3.2)	69/(54.8)	14/(11.1)	39/(31)	126/(100)
Spartanburg	16/(34.0)	23/(48.9)	7/(14.9)	1/(2.1)	47/(100)
Florence	0/(0.0)	3/(42.9)	4/(57.1)	0/(0.0)	7/(100)
Orangeburg	6/(18.2)	25/(75.8)	2/(6.1)	0/(0.0)	33/(100)
TOTAL	33/(14.0)	135/(57.4)	27/(11.5)	40/(17)	235/(100)

Jail

Jail was imposed on 19.2% of defendants, and of these defendants 97.4% were not represented by counsel. (See Table 41).[49] Some were given credit for time served (n=30), and a few were given suspended sentences. Defendants who entered a plea received a jail sentence more often (21.8%) than those who went to trial (15.4%). (Table 44).

Table 44. Jail Sanction (Rows) by Trial/Plea

Jail	Trial	Plea	Total
No	121/(84.6)	151/(78.2)	272/(81)
Yes	22/(15.4)	42/(21.8)	64/(19)
TOTAL	143/(100)	193/(100)	336/(100)

Logistic regression was used to identify the significant factors for the sanction of jail (rather than a non-jail sanction, including probation, fines, and court costs).[50] (Table 45). Defendants sentenced by a judge who was a licensed attorney were slightly more likely to be given a jail term. In-custody defendants were more likely to be sentenced to jail. Finally, defendants charged with non-traffic offenses were more likely to receive a jail sentence than those charged with traffic offenses.

Table 45. Logit Regression for Jail Sanction (=1)[51]

Variables	b	Odds
Plea (Plea=1)	0.205	1.227
Judge Licensed Attorney (Unlicensed=1)	-1.887*	0.151
Prosecutor Type (Police-1)	-0.213	0.808
Due Process 1—Counsel	-0.165	0.848
Due Process 2—Colloquy	0.170	1.186
Counsel (No Counsel=1)	0.186	1.205
Defendant in Custody (Out=1)	-2.837*	0.059
Traffic Offense (Traffic=1)	-0.904*	0.405
Trial Concluded before Judge Arrived (No=1)	19.914	-
Constant	-33.919	0.000
-2 Log Likelihood	230.87	
X^2	83.936	
Nagelkerke R^2	0.371*	

N=352; *p<0.05

Post-Sanction Rights and Consequences Advisements

Few defendants were advised of important post-sanction rights or the collateral consequences of their plea and sentence. (Table 46). No defendant who entered a guilty or no contest plea or who was found guilty after a bench trial was warned about the possibility of deportation or other immigration consequences during any plea colloquy or sentencing.[52] Only 1.2% of defendants were advised of their right to appeal or the right to an attorney for that appeal. Less than 4% of defendants were notified of other potential collateral consequences of their convictions.

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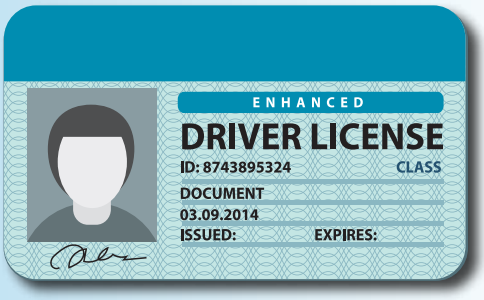
Table 46. Post Sanction Rights and Consequences Advisement

Variable	Coding	Percent
Was defendant notified of deportation or other immigration implications? (N=248)	Yes	0.0
	No	98.8
	Don't Know	1.2
Was defendant notified of right to appeal? (N=253)	Yes	1.2
	No	96.8
	Don't Know	2.0
Was defendant notified of right to an attorney on appeal? (N=259)	Yes	1.2
	No	88.0
	Don't Know	0.8
	N/A	10.0
Was defendant notified of any other potential collateral consequences of conviction? (N=253)	Yes	3.6
	No	93.3
	Don't Know	3.1

Some of the potential consequences mentioned to those few (3.6%) defendants were the suspension of drivers' licenses, points on their driving records, federal firearms laws, and bans from stores (in the cases of shoplifting).

Collateral Damage: Loss of Driving Privileges



A person's license to drive in South Carolina may be suspended for a number of reasons, including failing to pay a traffic ticket, driving without insurance, accumulating too many points from violations, failing to pay child support, driving under the influence, or driving with a suspended license.[53] Many of the criminal offenses that give rise to driver license suspensions are within the jurisdiction of magistrate and municipal courts, but this consequence was rarely discussed.

In February 2016, an African American man in his late thirties was in the Columbia Magistrate Court on three charges, one of which was a charge of driving on a suspended license. The man had traveled approximately 120 miles to be there for his court date and wanted a trial. Rather than have to return to court on another day, the man waived his rights to an attorney and a jury trial and proceeded to represent himself in a bench trial. The man was ill-equipped to defend himself against the accusations of the arresting officer who was prosecuting him — which attorney observers reported included multiple legal and constitutional issues regarding the stop, search, and elements of the offenses — and was found guilty of all three charges.

Testimony during the trial, which lasted less than 5 minutes, revealed that the man's license to drive had been suspended for a child support arrearage, and the suspension had been cleared — the man held a valid license at the time of court. Additionally, he had been approached by the officer while parked in a parking lot, and had never been seen driving on a public street. He and his passenger were ordered out of his car and ultimately the car was searched. Regardless, he was convicted of the driving under suspension charge as well as two other charges. Between the three charges, he was sentenced to fines and costs totaling nearly $1000, or the option to spend 40 days in jail (30 days on the DUS charge and 5 days on each of the other two).

Because his license had been suspended for an indefinite period at the time of the offense, South Carolina law requires that his license be suspended again for a three month period, at the end of which he would be required to pay a $100 reinstatement fee. When pronouncing his sentence, the judge did not inform the man of this consequence.

Recommendations

1. **South Carolina's summary courts should be staffed with prosecutors and public defenders and presided over by judges who are licensed attorneys.** That any criminal case can proceed through a system without a single lawyer ever looking at the case is problematic. Comment 1 to Rule 3.8 of the South Carolina Rules of Professional Conduct, Special Responsibilities of a Prosecutor, says, "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate." Although police officers who act as prosecutors are not held to the same ethical rules as licensed attorneys, it is important to remember that the role of the prosecutor is to seek justice. That role is difficult, if not impossible, to fulfill when the person prosecuting is also the chief witness against the defendant. For the same reasons that a lawyer is prohibited from being an advocate in a case in which he is needed as a witness (see Rule 3.7), it is inappropriate for a police officer to act as both prosecutor of the case and, frequently, the sole provider of testimony.

   Additionally, public defenders should be made readily available to defendants in summary courts before the case comes before the court for disposition. Early representation can eliminate unnecessary court appearances and facilitate just outcomes. Defendants should be given information about applying for public defenders prior to making an appearance in court during which they are expected to make a decision about how to resolve the case.

   Judges without formal legal training undermine trust in the justice system. Although the United States Supreme Court ruled in *North v. Russell*, 427 U.S. 328 (1976), that non-lawyer judges were permissible in criminal cases in which the accused has a right to a de novo appeal, the prevailing view among legal scholars is that judges, even in limited jurisdiction courts, should have law degrees.[54] Best practices for judges in limited jurisdiction courts, according to the Conference of State Court Administrators (COSCA), should include a requirement that judges be lawyers: "The complexity of misdemeanor criminal … cases in the twenty-first century presents sophisticated legal issues. With the presence of self represented parties in such cases and the possibility that 'minor' crimes may be prosecuted by law enforcement officers, the justice system benefits when the judge has the benefit of a legal education."[55]

2. **Decriminalize traffic offenses.** To alleviate the burden on summary courts, most traffic offenses should be decriminalized and treated as civil infractions. Reducing the caseloads in summary courts would reduce the pressure to quickly move cases and allow for more individualized discussions with defendants or their attorneys, leading to more just outcomes.

3. **Reduce fines and fees and consider alternatives for those who cannot afford to pay.** The Department of Justice, Civil Rights Division, on March 14, 2016, sent a "Dear Colleague" letter warning state and local courts about serious constitutional concerns regarding imposing exorbitant fees, fines and costs on poor defendants without any inquiry into their ability to pay.[56] "Typically, courts do not sentence defendants to incarceration in these cases; monetary fines are the norm," the letter said. "Yet the harm caused by unlawful practices in these jurisdictions can be profound. Individuals may confront escalating debt; face repeated, unnecessary incarceration for nonpayment despite posing no danger to the community; lose their jobs; and become trapped in cycles of poverty that can be nearly impossible to escape." The letter outlines basic constitutional principles regarding fee and fine enforcement including:

a. Courts shouldn't incarcerate a person for nonpayment without first determining whether the person is indigent and whether the failure to pay is willful.

b. Courts must consider alternatives to incarceration for indigent defendants unable to pay. Alternatives could include requiring community service or classes, reducing the debt or extending the time for payment.

c. Courts must not condition access to a judicial hearing on the prepayment of fees and fines.

d. Courts shouldn't use bail or bond practices that keep indigent defendants incarcerated because they can't afford to pay for their release.

4. Increase uniform reporting of criminal and traffic cases in summary courts to include data regarding whether defendants had counsel and whether and how defendants were informed of their rights. South Carolina collects limited data about summary court proceedings. Magistrates are required to keep records regarding disposed and pending traffic and criminal cases.[57] Whether these recordkeeping provisions apply to municipal courts is unclear.[58] South Carolina should institute reporting requirements that apply to all summary courts that track whether defendants have counsel and whether that counsel is appointed or retained. Additionally, courts should track whether a defendant was advised of his rights, what rights he was advised of, and how that advisement was accomplished. This change would be of little or no cost to the state and is essential to measure the quality of justice.

5. Enact uniform procedures for magistrate and municipal courts regarding advisement of rights and plea colloquies. Ensure that all defendants understand their rights and the direct and collateral consequences of a guilty plea or verdict. Courts should strive for consistency in advising defendants of their rights before court, during the proceedings and after sentencing. Even if a video is produced, trial judges must individually advise defendants of their rights and confirm that the defendants understand those rights. The video and oral presentation of rights at the beginning of the court session is wholly insufficient. Defendants are not always in the courtroom, there is no effort to bring the courtroom to order and alert defendants that the presentation will explain important rights, and rarely is any effort made to ensure that the accused understand the rights. Courts should not encourage or accept waivers of important constitutional rights without a thorough inquiry into the individual's understanding of those rights, and clear evidence that an individual is knowingly and intelligently waiving their rights.

Endnotes

1. Diane DePietropaolo Price, Colette Tvedt, Emma Andersson & Tanya Greene, Nat'l Ass'n of Crim. Def. Lawyers, Summary Injustice: A Look at Constitutional Deficiencies in South Carolina's Summary Courts (2016), *available at* **http://www.nacdl.org/summaryinjustice** [hereinafter Summary Injustice]. Summary Injustice provides an overview of the criminal legal system in South Carolina and describes problems identified by the authors. Familiarity with that report may be beneficial to readers of this report.

2. *Id.* at 7.

3. *District of Columbia v. Clawans*, 300 U.S. 617 (1937); *Smith v. Illinois*, 380 U.S. 129 (1968); *Rothgery v. Gillespie County, Texas*, 554 U.S. 191, 213 (2008) ("[A] criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.").

4. Robert C. Boruchowitz, Malia N. Brink & Maureen Dimino, Nat'l Ass'n Crim. Def. Lawyers, Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts (2009), at 11 (available at **http://www.nacdl.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=20808**) [hereinafter Minor Crimes, Massive Waste].

5. *Rothgery*, 300 U.S. 191 (2008); *see also* Douglas L. Colbert, *Prosecution Without Representation*. 59 Buff. L. Rev. 333 (2011)(analyzing the *Rothgery* decision).

6. *See* Minor Crimes, Massive Waste, *supra* note 4; Alisa Smith & Sean Maddan, Nat'l Ass'n Crim. Def. Lawyers, Three-Minute Justice: Haste and Waste in Florida's Misdemeanor Courts (2011) *available at* **http://www.nacdl.org/WorkArea/DownloadAsset.aspx?id=20794**.

7. Sarah B. Berson, *Beyond the Sentence – Understanding Collateral Consequences*, 272 NIJ Journal 25 (2013) *available at* **https://www.ncjrs.gov/pdffiles1/nij/241927.pdf**; Minor Crimes, Massive Waste *supra* note 4. The American Bar Association's National Inventory of Collateral Consequences identifies 714 collateral consequences in South Carolina, including 82 triggered by conviction of any misdemeanor offense and 81 triggered by motor vehicle offenses. ABA, National Inventory of Collateral Consequences of Conviction, **www.abacollateralconsequences.org** (last visited Oct. 3, 2016).

8. Summary Injustice, *supra* note 1, at 8. *See generally* Court Statistics Project South Carolina Court Structure, **http://www.courtstatistics.org/Other-Pages/State_Court_Structure_Charts/South-Carolina.aspx** (last visited Sept. 14, 2016).

9. *See State of South Carolina Municipal Court Handbook* (2011) *available at* **https://www.masc.sc/SiteCollectionDocuments/Municipal%20Court/municipal_court_handbook_11.pdf**; *Summary Court Judges Bench Book, available at* **http://www.judicial.state.sc.us/summaryCourtBenchBook/** (last visited Sept. 14, 2016).

10. S.C. Criminal/General Sessions Cases Trends, **http://www.sccourts.org/trends/General%20Sessions/GST_fdp.pdf**.

11. Throughout this report, data is rounded to one decimal point, resulting in some data sets not adding up to exactly 100 percent. Additionally, there are variations in some tables due to missing data – data collection is imperfect, so some cases drop out if individuals did not collect the data for that question. In all tables, the notation N= indicates the sample size. Surveys collected from in-court observation are on file with Dr. Alisa Smith.

12. Arthur Pepin, Conference of State Court Administrators, *Four Essential Elements Required to Deliver Justice in Limited Jurisdiction Courts in the 21st Century* (2014) *available at* **http://cosca.ncsc.org/~/media/Microsites/Files/COSCA/Policy%20Papers/2013-2014-Policy-Paper-Limited-Jurisdiction-Courts-in-the-21st-Century.ashx**.

13. The authors used Survey Monkey for this purpose.

14. *See supra* note 11 for an explanation of data collection and rounding issues that apply to all tables.

15. Even with dockets on the internet, the researchers found that cases that were dismissed were removed nearly immediately, which meant that demographic and other information on those cases was unable to be collected after the court session. This may appear to be a positive result for arrested individuals, but it, again, raises concerns about transparency and due process. Understanding who is being arrested and the rate of dismissals is important to assessing whether individuals are being harassed and/or falsely accused regularly in some jurisdictions.

16. S.C. Judicial Department Court Rosters, *available at* **http://www.sccourts.org/clerks/roster_map.cfm** (last visited Sept. 14, 2016).

17. S.C. Judicial Department Case Records, *available at* **http://www.sccourts.org/caseSearch/** (last visited Sept. 14, 2016).

18. Dorchester County - South Carolina Magistrate Courts, *available at* **https://www.dorchestercounty.net/index.aspx?page=79** (last visited Sept. 14, 2016).

19. Dorchester County - First Judicial Circuit Summary Court Dockets, *available at* **http://publicindex.sccourts.org/dorchester/summarycourtdockets/** (last visited Sept. 14, 2016).

20. There are a few counties that either use different web addresses or do not have summary court dockets available online. Richland and Lexington counties use the same format as the sccourts.org public index, but house those databases on their county government websites. Greenville County has a list of summary court dockets on the solicitor's webpage. Summary court dockets for Charleston County do not seem to be online, with the exception of Charleston Municipal Court, which publishes a listing of all of the cases scheduled to be heard in the coming month, organized by defendant name rather than by court date.

21. In South Carolina, most traffic offenses are criminalized as misdemeanor law violations. *See, e.g.,* speeding, codified at S.C. Code 56-5-1520. Subsection G states, "A person violating the speed limits established by this section is *guilty of a misdemeanor* and, upon conviction for a first offense, must be fined or imprisoned as follows:

(1) in excess of the above posted limit but not in excess of ten miles an hour by a fine of not less than fifteen dollars nor more than twenty-five dollars;

(2) in excess of ten miles an hour but less than fifteen miles an hour above the posted limit by a fine of not less than twenty-five dollars nor more than fifty dollars;

(3) in excess of fifteen miles an hour but less than twenty-five miles an hour above the posted limit by a fine of not less than fifty dollars nor more than seventy-five dollars; and

(4) in excess of twenty-five miles an hour above the posted limit by a fine of not less than seventy-five dollars nor more than two hundred dollars or imprisoned for not more than thirty days." (emphasis added)

22. In this table and others, percentages may not add up to exactly 100 percent due to rounding.

23. S.C. Judicial Department, How Judges are Elected in South Carolina, *available at* **http://www.judicial.state.sc.us/judges/howjudgeselected.cfm** (last visited Sept. 14, 2016).

24. In reality, this number could be higher. The researchers erred on the side of caution by collapsing the responses for solicitor, other, and none as compared to police officers because it was impossible to determine whether a lawyer was involved in the other/none cases. For some portion of the 21 cases in which the prosecutor was listed as solicitor/other/none, the judge was not a licensed attorney, and no defense attorney was present, the case would have been processed without any lawyers. However, since some of those 21 cases might have been prosecuted by a state solicitor or other licensed attorney, they have not been included as cases that were processed without lawyers.

25. In Florida, trial judges did not hold bench trials at these appearances. Defendants who opted for a trial were reset for another court date. In South Carolina, defendants who failed to appear for court or appeared and entered pleas of not guilty (and did not request a jury trial) were subjected to an immediate trial. Unsurprisingly, few had witnesses available, and most were found guilty.

26. The median time for proceedings was 2 minutes, and the mode was 30 seconds.

27. For example, Richland County public defenders do not staff all of Richland County's magistrate and municipal courts. Instead, those who request counsel have their cases transferred to one of the three courts that the office does staff. *See* SUMMARY INJUSTICE, *supra* note 1, at 12.

28. United States Census Bureau, Quickfacts South Carolina, **http://www.census.gov/quickfacts/table/PST045215/45,00** (last visited Sept. 14, 2016).

29. *Id.* (2014).

30. *Id.* (2014).

31. *Id.* (2014).

32. Five percent of South Carolinians reported being Hispanic. *Id.* In this study, Hispanics accounted for less than 3 percent of defendants, prosecutors, and defense lawyers.

33. Defendants' average age was 33.18; average age for judge, prosecutors, and defense counsel was unable to be calculated.

34. United States Census Bureau, Quickfacts Richland County South Carolina, **www.census.gov/quickfacts/table/PST045215/45079** (last visited Sept. 14, 2016).

35. *Id.* (2014).

36. *See, e.g.,* Joanne Belknap, *The Invisible Woman: Gender, Crime, and Justice* (4th ed. 2015) (chapter4); Jennifer Schwartz, Darrell J. Steffensmeier & Ben Feldmeyer, *Assessing Trends in Women's Violence via Data Triangulation: Arrests, Convictions, Incarcerations & Victim Reports.* 56(3) So. Probl. 494-525 (2009). **http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4290787/**.

37. This observation was consistent with a conversation with an arresting officer in one of the Spartanburg municipal courts, who noted that they would write speeding tickets as ordinance violations, rather than state statute violations, to provide defendants with a lower fine and no points on their licenses. He called this practice a "roadside reduction."

38. The sample sizes in some counties, particularly Florence, were admittedly small, so it is hard to say that this finding is generalizable.

39. *Padilla v. Kentucky*, 559 U.S. 356 (2010).

40. N varies throughout Table 36 due to missing data, as not all observers collected information for all categories.

41. This difference was not statistically significant.

42. A small number (about 5 percent) of self-represented individuals entered a not guilty plea and requested a jury trial, which resulted in a continuance of the case.

43. Multiple regression analyses include a variety of multivariate analytic techniques that explore relationships between a single dependent variable and from 2 to 10+ independent variables (contingent on the total N of the sample/population). These analyses attempt to show how changes in independent variables impact dependent variables, while controlling for other variables. These findings are not measurable or identifiable directly by univariate or bivariate statistical analyses.

As noted above, there are several types of multiple regression. The measurement of dependent variables determines the type of regression analyses employed. Logistic regressions (often referred to as simply logit regressions) are utilized when dependent variables are binary or dichotomous (e.g., yes/no or guilty/not guilty). Independent variables, in logistic regression analysis, may include non-binary measures (e.g., continuous or ranked measures) as long as the assumptions associated with regression analysis are not violated (this discussion goes beyond the scope of this brief explanation). Regression analyses, including logit regression, allow for an understanding of the variance or change in the dependent variable given the included independent variables.

44. Defendants who requested a jury had their cases continued.

45. For instance, fines were often associated with probation and court costs.

46. For a detailed accounting of where the money goes, see the Court Fines section of the S.C. Treasurer website, **http://treasurer.sc.gov/government/court-fines/** (last visited Sept. 14, 2016). In FY 2014-2015, court revenue totaled more than $96 million.

47. S.C. Code Ann. 14-1-207.

48. As in the previous table, in paragraphs referring to amounts of fines, the word "fine" is used for brevity, but the dollar figures include the full monetary obligation, including fines, court costs, state assessments, fees, restitution, and any other financial obligations.

49. Although disturbing, this finding was not statistically significant because few defendants had an attorney, whether they went to jail, or not.

50. Observers noted a few other sanctions that included community service hours, mandatory drug testing, and drivers' license points, which are required by statute.

51. *See supra* note 43 for an explanation of logistic regression analysis.

52. As noted previously, some defendants were in courtrooms where immigration consequences were included in the opening advisement, particularly in Richland County.

53. *See* South Carolina Division of Motor Vehicles, Driver License Restoration Requirements, for a list of common suspensions and restoration requirements for them, *available at* **http://www.scdmvonline.com/DMVNew/general/DL%20Reinstatement%20Requirements.pdf** (last visited Sept. 14, 2016). Note that multiple instances of driving with a suspended license lead to harsher penalties, including longer possible jail sentences and longer suspensions. Any conviction of driving with a suspended license will cause a person's license to be suspended for an additional amount of time, either by extending the current suspension or by re-suspending a license that has already been reinstated in the interim (as in this case).

54. Pepin, *supra* note 12, at 5.

55. *Id.* at 7.

56. U.S. Department of Justice Civil Rights Division, Dear Colleague Letter Regarding Law Enforcement Fees and Fines (Mar. 14, 2016), *available at* **https://www.justice.gov/crt/file/832461/download**.

57. *Summary Court Judges Bench Book*, General Section, Subsection E: Uniform Recordkeeping and Information System, *available at* **http://www.judicial.state.sc.us/summaryCourtBenchBook/displaychapter.cfm?chapter=GeneralE** (last visited Dec. 22, 2016).

58. *See Summary Court Judges Bench Book,* General Section, Subsection B: The South Carolina Magistrate and Municipal Judge, at 11, *available at* **http://www.judicial.state.sc.us/summaryCourtBenchBook/displaychapter.cfm?chapter=GeneralB** ("While the Order of the Chief Justice did not specifically include municipal courts … the accounting provisions contained therein are sound and would comply with S.C. Code Ann. § 22-1-80, which may be applicable to municipal courts by implication (See S.C. Code Ann. § 14-25-45). Regardless of the docket design chosen, all judges should use a system which reflects the defendant's name, charge(s), charging paper number, disposition of case, sentence (a breakdown of court costs is helpful), and bond information."). ■

Notes

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