

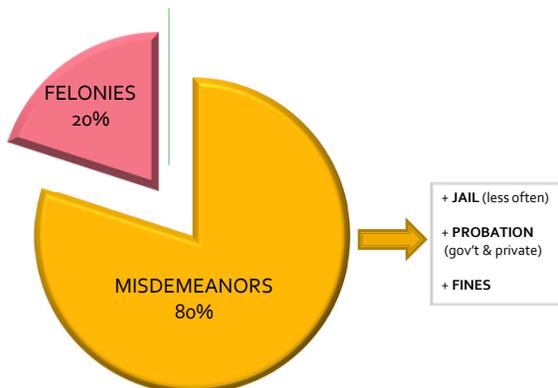
# Misdemeanors

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## The Scale of Misdemeanors

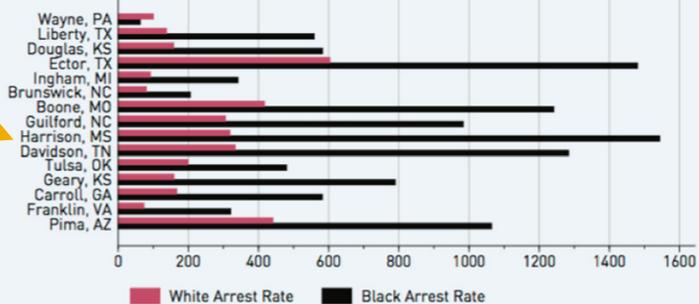
U.S. Cases Filed



## Policing Misdemeanors

**FIGURE 19**

Counties with Middle Median Household Incomes (\$45,930-\$45,521)



NOTE: Population Size > 30,000 and Black Population Percentage > 2%  
Counties listed in descending order by Median Household Income.  
Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

"In Harrison, MS (includes Gulfport and Biloxi), Blacks are almost five times more likely to be arrested [than Whites]." The War on Marijuana in Black and White, ACLU (2013)

## Loitering

- Baltimore City Code 25-1 :Prohibited loitering.
- It shall be unlawful for any person to loiter at, on, or in a public place or place open to the public in such manner...to interfere with, impede, or hinder the free passage of pedestrian or vehicular traffic.
- No person shall be charged with a violation of this section unless and until the arresting officer has first warned the person of the violation and the person has failed or refused to stop the violation.

**POLITICS**

[Matt Ferner](#)

National Reporter, The Huffington Post

**Las Vegas Judge Who Humiliated Defense Attorney Loses Election In A Landslide**

"This judge came off looking unjudicial, undisciplined and unprofessional," an attorney said.



A Las Vegas judge who last month ordered a public defender to be [placed in handcuffs in court](#), saying she needed to learn "a lesson" about courtroom etiquette, got a lesson of his own when he lost his seat in Tuesday's primary election in Nevada.

# The New York Times

*Poor Land in Jail as Companies Add Huge Fees for Probation*

*Pinched Courts Push to Collect Fees and Fines*

**Return of Debtors' Prisons**

*Driver's License Suspensions Create Cycle of Debt*

*Ferguson: A City Where Policing, Discrimination and Raising Revenue Went Hand in Hand*

# The Impact of Fines on the Poor

- Fines further impoverish defendants who are already economically disadvantaged
  - "Penal institutions are increasingly imposing a particularly burdensome and consequential form of debt on a significant and growing share of the poor." Alexes Harris et al., *Drawing Blood From Stones*, 115 American Journal of Sociology 1753 (2010)
  
- So do fees
  - "States charge defendants for everything from probation supervision, to jail stays, to the use of a public defender. . . . [Such] fees and other criminal justice debt are typically levied on a population uniquely unable to make payments." The Brennan Center at NYU, *Criminal Justice Debt: A Barrier to Reentry*



## Perverse Institutional Incentives

- Courts and municipalities are incentivized to punish and fine the poor in order to fund their own operations
  - Harpersville, AL (1,700 residents) received over \$300,000 in fines and fees from its Municipal Court
  - Village of New Rome, OH (population sixty) used its Mayor Court to generate an average of \$400,000 a year
  - **In Ferguson, MO, the municipal court collected \$2.46 million in fines and fees in 2013, representing over one-fifth of the city's entire revenue**
- See also Human Rights Watch, *Report: Profiting From Probation: America's "Offender Funded" Probation Industry* (2014)

## The Ferguson Phenomenon

"[M]any officers appear to see some residents, especially those who live in Ferguson's predominantly African-American neighborhoods, less as constituents to be protected than as potential offenders and sources of revenue."

- U.S. Dep't of Justice, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT (March 4, 2015)

## State gives judges, district attorneys first raise in ten years

Published 12:05 am Sunday, February 17, 2013



NATCHEZ — Since January, some of Adams County's top officials in the court system have been taking home a little extra. Last year, the Mississippi state legislature passed a pay raise for the state's judiciary, from the Supreme Court down to the county circuit and chancery judges, as well as full-time district attorneys and county judges. ....

Judge's salaries are set by the state in Mississippi, and the increase is being funded through two sources. Court filing fees were increased \$40 to pay for the judges' salaries, while \$10 was added to the fees for certain crimes — including speeding and littering tickets — to pay for the district attorneys and their assistants. (The Natchez Democrat)

## Misdemeanor Cases

- Fourth Amendment
- *Welsh v. Wisconsin* (1984), misdemeanor not enough for a warrantless home search
- *Atwater v. Lago Vista* (2000), nonjailable misdemeanor enough for full-fledged arrest
- *Florence v. New Jersey* (2012), nonjailable misdemeanor enough to support strip search prior to jailing
- *Utah v. Streiff* (2016), outstanding traffic warrant rendered admissible evidence found in an illegal stop; warrant attenuated the fruits of the illegal stop

## Misdemeanor Cases (cont.)

- Procedural Rights
- Blanton v. North Las Vegas (1989), no right to jury trial for petty offenses (presume 6 months is petty)
- Argersinger v. Hamlin (1972), right to counsel if actually incarcerated, even for petty offenses
- Alabama v. Shelton (2002), jailable probation and suspended sentence triggers RTC
- Scott v. Illinois (1979), no RTC if no actual incarceration
- Rothgery v. Gillespie Cty. (2008), Right to counsel “attaches” at bail hearing (may not be a critical stage)

## Misdemeanor Cases (cont.)

- Punishment & Incarceration
- Bearden v. Georgia (1983), violates Equal Protection to incarcerate a person for failure to pay if they cannot afford it and FTP was not willful
- BUT...
- Turner v. Rogers (2011), civil contempt and incarceration for failure to pay is permissible and does not necessarily trigger right to counsel

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**Please tell me your stories.**

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