Judges' Ethnicity and Minority Sentencing: Evidence Concerning Hispanics *

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Only a few studies examining sentencing disparities for minority defendants have considered the influence of sentencing judges' ethnic identities. None has compared the dispositions of Anglo and Hispanic judges. This study examines the sentencing of felony defendants by Anglo and Hispanic judges in El Paso County, Texas. The analysis shows Hispanic judges are not influenced by defendant ethnicity. However, Anglo judges in this jurisdiction sentence non-Hispanic defendants less severely than Hispanics, who receive sentences similar to those meted out by Hispanic judges.

The relationship of ethnicity and sentencing has been studied extensively (see Blumstein et al., 1983; Farrell and Holmes, 1991; Hawkins, 1987; Kleck, 1981; Tittle and Curran, 1988). Findings have varied widely. Some studies have shown that minority defendants receive harsher sentences, others have revealed no differences, and some have even demonstrated that minority defendants are sentenced less severely. Traditionally researchers have conceptualized such investigations as tests of conflict/labeling versus consensus theories of law (Farrell and Holmes, 1991). The former perspective maintains that minority offenders are treated more harshly to protect the interests of dominant group members, the latter that minorities are

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sentenced more severely because they commit more serious offenses and have more extensive criminal histories.

A major disadvantage of such investigations has been their nearly exclusive emphasis on defendants' characteristics. Relatively unstudied have been the traits of legal decision makers. One consideration is characteristics of judges that may influence their sentencing decisions (Myers, 1988). In cases of minority defendants, an especially significant factor influencing dispositions may be the ethnic identity of the presiding judge. Presumably, minority judges are more sensitive to discrimination (Goldman, 1979), with their presence on the bench potentially resulting in more equitable dispositions (Welch, Combs, and Gruhl, 1988).

Yet little empirical research has examined whether judges' ethnic identities affect their sentencing practices. Moreover, the few existing studies have focused on black and white judges. Contrary to expectations, studies of state judges have generally shown little, if any, difference in the sentences handed down by black and white judges (cf. Spohn, 1990a, 1990b; Uhlman, 1978; Welch, Combs, and Gruhl, 1988). Several explanations of these findings have been offered. Judicial recruitment processes may screen out unconventional candidates, with those minorities who are selected being members of the traditional legal establishment (Spohn, 1990b; Uhlman, 1978). Further, socialization into the courtroom work group mandates conformity to informal norms, including the practice of sentencing within a range of "normal penalties" (Spohn, 1990b; Welch, Combs, and Gruhl, 1988). Finally, minority judges are also members of the larger community, and their concerns may focus more on minority victims than on minority defendants, who may actually be sentenced more severely by both black and white judges (Spohn, 1990b). Indeed, the idea that minority judges are particularly sensitive to minority defendants ignores the possibility that they are more attuned to the concerns of the larger minority community, a community that certainly represents a more salient reference group than the population of alleged criminals.

The present study extends our knowledge in this area by examining the sentencing decisions of Anglo (non-Hispanic white) and Hispanic judges in a Texas jurisdiction that has a large Hispanic population with significant representation in the judiciary. As is the case in studies of black defendants, previous research on the sentencing of Hispanics has revealed inconsistent effects for defendant ethnicity. Several of these studies did not adequately control relevant characteristics of the defendant or offense (Garza, 1973; Lemert and Rosberg, 1948; Sissons, 1977), but even better executed studies have provided mixed findings (cf. Baab and Ferguson, 1967; Holmes and Daudistel, 1984; Holmes, Daudistel, and Farrell, 1987; LaFree, 1985b; Meeker, Jeslow, and Aranda, 1992; Petersilia, 1983; Welch, Gruhl, and Spohn, 1984; Zatz, 1984). None of these investigations considered legal decision makers' ethnic identities.
Research Setting and Data

This study examines the disposition of noncapital felony cases in the Texas district courts located in El Paso County, a metropolitan area located on the U.S.-Mexico border. In 1990 its population was 591,610, of whom 70 percent were Hispanic and 26 percent were Anglo (U.S. Bureau of the Census, 1990). Twelve state district courts responsible for adjudicating felony cases were located in El Paso during the time period under consideration.¹ Fifteen district court judges were included in the analysis, 5 of whom were Hispanic. Noncapital felony cases were calendared in the various courts using a computerized random assignment procedure.

Data were collected from archival records maintained by the district attorney's and district clerk's offices. Noncapital felony indictments adjudicated during 1987–89 comprise the population of cases from which the data set was selected (competency hearings, dismissals, and probation/parole revocations were not included). This study includes guilty plea, nolo contendere plea, and bench trial guilty verdicts (n = 245, after excluding missing data cases). These nonjury trial cases were chosen through a systematic random sample (interval = 15). Cases involving jury trials were excluded from consideration because juries sentence in Texas. Reliance on nonjury trial verdicts could be problematic because such dispositions often involve plea negotiations, which effectively eliminate judges' role in sentencing; however, in El Paso County plea bargaining in felony cases was banned in 1975 (see Holmes, Daudistel, and Taggart, 1992), a policy that remained in effect throughout the time period incorporated in the present study.²

The dependent variable is sentence severity. Sentencing disparities may involve either the decision to incarcerate or the period of incarceration imposed. Examining just one is clearly problematic; reliance on the former measure ignores length of sentence, and the latter excludes probated sentences. One solution is to analyze both sentencing decisions separately (e.g., Myers, 1988; Spohn, 1990b), but the sample size available for this study recommends against a separate analysis of sentence length. Such an analysis would necessarily exclude the much more common deferred adjudications and probation dispositions, resulting in too few cases. The sentence severity measure used here therefore incorporates both decisions. It is derived, with slight modifications to conform to Texas law, from recent efforts to develop an interval measure of sentencing (Hagan, Nagel, and Albonetti, 1980; LaFree, 1985a, 1985b). The measure is presented in Table 1.

¹Three of the courts also adjudicated cases from Culberson and Hudspeth Counties, which have a combined population of 6,322 (U.S. Bureau of the Census, 1990). Their population is 69 percent Hispanic and 30 percent Anglo.
²Data were also collected in Bexar County, Texas, but these were not employed in this study because the sample of nonjury trial adjudications was too small to obtain reliable estimates of the effects of judges' and defendants' ethnicities on sentence severity. Moreover, plea bargaining was commonplace in this jurisdiction, greatly reducing judges' role in sentencing.
TABLE 1
Sentence Severity Measure with Descriptive Statistics

<table>
<thead>
<tr>
<th>Variable Categories and Values</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred adjudication = 0</td>
<td>70</td>
<td>28.6</td>
</tr>
<tr>
<td>Probation 1 year = 1</td>
<td>4</td>
<td>1.6</td>
</tr>
<tr>
<td>Probation 2 years = 2</td>
<td>1</td>
<td>0.4</td>
</tr>
<tr>
<td>Probation 3 years = 3</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Probation 4 years or more or incarceration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>in jail 6 months or less</td>
<td>58</td>
<td>23.7</td>
</tr>
<tr>
<td>Incarceration in prison 6 months or less and probation for unspecific period (shock probation) = 5</td>
<td>38</td>
<td>15.5</td>
</tr>
<tr>
<td>Incarceration in jail 7–12 months = 6</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Incarceration in prison 2 years = 8</td>
<td>4</td>
<td>1.6</td>
</tr>
<tr>
<td>Incarceration in prison 3 years = 10</td>
<td>3</td>
<td>1.2</td>
</tr>
<tr>
<td>Incarceration in prison 4 years = 11</td>
<td>3</td>
<td>1.2</td>
</tr>
<tr>
<td>Incarceration in prison 5 years = 12</td>
<td>11</td>
<td>4.5</td>
</tr>
<tr>
<td>Incarceration in prison 6–7 years = 14</td>
<td>9</td>
<td>3.7</td>
</tr>
<tr>
<td>Incarceration in prison 8–10 years = 17</td>
<td>24</td>
<td>9.8</td>
</tr>
<tr>
<td>Incarceration in prison 11–14 years = 21</td>
<td>2</td>
<td>0.8</td>
</tr>
<tr>
<td>Incarceration in prison 15 or more years = 30</td>
<td>18</td>
<td>7.3</td>
</tr>
<tr>
<td></td>
<td>245</td>
<td>99.9</td>
</tr>
</tbody>
</table>

\( \bar{X} = 7.23 \)

\( SD = 8.44 \)

The independent variables fall into three categories, the first of which includes factors legally relevant to sentencing. Conviction charge severity (1 = misdemeanor; 2 = third-degree felony; 3 = second-degree felony; 4 = first-degree felony), number of conviction charges (1 to 5+), number of prior felony convictions (0 to 5+), degree of physical injury to victim (1 = none; 2 = bodily injury; 3 = serious bodily injury; 4 = death), and use of a firearm (0 = no; 1 = yes) constitute the legally relevant variables employed in the analysis.

The second category of independent variables comprises legal resources, which refer to factors reflecting the defendant’s financial situation and conveying an advantage in the adjudicatory process. Retention of a private attorney (0 = no; 1 = yes) and pretrial release (0 = no; 1 = yes) generally contribute to more favorable legal outcomes (e.g., Holmes, Daudistel, and Farrell, 1987; Swigert and Farrell, 1977), and these variables are therefore included here.33

33The private attorney variable distinguishes between attorneys retained and paid by defendants and those appointed and remunerated by the courts in cases of indigent defendants. With respect to the latter, El Paso County uses both public defenders and court-appointed private practice attorneys.
Several variables indicating ascribed social statuses are employed. These include defendant's age and sex (0 = male; 1 = female). A set of dummy variables capturing the ethnic identity of both the judge and the defendant are included in the regression model presented below. The Anglo judge—Anglo defendant combination (comprising 11 percent of the cases included in the analysis) is the category necessarily omitted from the equation and serves as the baseline for interpreting coefficients for the included dummy variables, which are Anglo judge—Hispanic defendant (60 percent of the cases), Hispanic judge—Anglo defendant (6 percent), and Hispanic judge—Hispanic defendant (23 percent).4

Analysis and Findings

Sentence severity was analyzed using ordinary least squares multiple regression. The results, presented in Table 2, show that conviction charge severity, number of prior felony convictions, and use of a firearm are positively and strongly associated with sentence severity, as to be expected in light of their legal relevance to dispositions. The effect of physical injury to the victim is of the expected direction and achieves statistical significance in a one-tailed test ($p < .05$). Number of conviction charges is unrelated to sentence severity, probably because the judges typically imposed concurrent sentences.

With respect to legal resources, the effect of pretrial release is strong and statistically significant. As predicted, those released pending adjudication received more lenient sentences. Acquisition of a private attorney had no effect on the severity of dispositions. Regarding age and sex, the only variable to achieve statistical significance is the former, with older defendants receiving more severe dispositions; possibly older defendants were awarded harsher sentences because their criminality is seen as more deeply rooted in their personality or social circumstances than is that of younger defendants. The sentences of females differ little from those received by their male counterparts.

Of course the key question in the present investigation is whether Anglo and Hispanic judges differ in their sentencing of minority defendants. The coefficient for Anglo judge—Hispanic defendants shows Anglo judges sentence Hispanics more harshly than Anglos, who are represented by the deleted comparison category. Hispanic judges sentence both Anglo and Hispanic defendants more severely than the Anglo defendants sentenced by

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4The ethnic identities of the judges were determined through observations by the researchers during the course of data collection. Defendants' ethnic identities were obtained from the official records maintained by the district attorney's and district clerk's offices. Too few African Americans and members of other races are present in the data used here to permit their analysis, so these cases were treated as missing data. For a brief description of the dummy variable coding procedure used for the judge-defendant ethnicity combinations, see Blalock (1979: 537–38).


<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Unstandardized Coefficients</th>
<th>Standard Errors</th>
<th>Standardized Coefficients</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conviction charge severity</td>
<td>1.67***</td>
<td>0.45</td>
<td>.17</td>
</tr>
<tr>
<td>Number of conviction charges</td>
<td>0.11</td>
<td>0.90</td>
<td>.01</td>
</tr>
<tr>
<td>Number of prior felony convictions</td>
<td>4.03***</td>
<td>0.38</td>
<td>.54</td>
</tr>
<tr>
<td>Degree of physical injury to victim</td>
<td>1.40</td>
<td>0.83</td>
<td>.08</td>
</tr>
<tr>
<td>Use of a firearm</td>
<td>5.24*</td>
<td>2.06</td>
<td>.12</td>
</tr>
<tr>
<td>Pretrial release</td>
<td>-3.06***</td>
<td>0.91</td>
<td>-.18</td>
</tr>
<tr>
<td>Private attorney</td>
<td>-0.01</td>
<td>0.94</td>
<td>.00</td>
</tr>
<tr>
<td>Age of defendant</td>
<td>0.12**</td>
<td>0.04</td>
<td>.13</td>
</tr>
<tr>
<td>Female defendant</td>
<td>-0.60</td>
<td>1.55</td>
<td>-.02</td>
</tr>
<tr>
<td>Anglo judge—Anglo defendant⁴</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anglo judge—Hispanic defendant</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hispanic judge—Anglo defendant</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hispanic judge—Hispanic defendant</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>-7.14</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\[ R^2 = .52 \]

⁴Category excluded from this set of dummy variables, which serves as the baseline for interpreting coefficients for included categories.

* \( p < .05 \).

** \( p < .01 \).

*** \( p < .001 \).

Anglo judges. Comparing these effects shows clearly that Hispanic judges sentence Anglo and Hispanic defendants similarly, and that Anglo judges give Hispanic defendants sentences the same as those awarded by Hispanic judges. This is evidenced by the fact that the unstandardized coefficients for the included categories are of similar magnitude, representing approximately one-half to two-thirds of a standard deviation in the dependent variable.⁵ The small differences between them do not approach statistical

⁵Dummy-coded binary variables obviously do not change in continuous standard deviation units; therefore interpreting the standardized coefficients for such variables would be misleading. A more appropriate interpretation focuses on the proportion of a standard deviation in the dependent variable represented by the metric coefficient. This procedure is possible because the metric coefficient indicates the mean difference in the dependent variable between a dummy variable and its deleted comparison category.
significance. What is different is that Anglo judges sentence Anglo defendants much less severely, perhaps suggesting that Anglo judges are not so much discriminating against Hispanic defendants as they are favoring members of their ethnic group.

Summary and Conclusion

The purpose of this research was to determine whether Anglo and Hispanic judges' ethnic identities affect their dispositions of minority defendants, net of the effects of variables traditionally employed in sentencing studies. Consistent with the idea that the recruitment of minority judges may provide more equitable justice, Hispanic judges were observed to sentence similar defendants similarly, regardless of their ethnic heritage. The same cannot be said about Anglo judges in El Paso County—they sentenced Anglo defendants less severely than their Hispanic counterparts, who received dispositions similar to those given by Hispanic judges.

Although the presence of Hispanic judges in El Paso County apparently reduces ethnically based sentencing disparities, it is noteworthy that their dispositions are not more lenient than those of Anglo judges. The latter observation is inconsistent with the idea that minority judges are more empathetic toward minority offenders. However, this view does not consider that judges and defendants are different in many respects, regardless of their shared ethnic identity. Judicial recruitment processes may screen out unconventional candidates, with minorities who are selected being among those supportive of the system. Further, minority judges are part of a larger community, and their concerns may focus more on minority victims than minority defendants. Thus Hispanic judges’ sentencing decisions may well reflect their identification with conventional values, visibly reminding their colleagues in the judiciary and citizens in the community that their commitment is not to alleged criminals, but to their victims. This possibility seems especially likely in states like Texas, where district court judges are elected officials.

The findings reported here are revealing with respect to the debate concerning consensus theories versus conflict theories of law. They reinforce the point that most previous investigations are overly simplistic, comparing only legal and status characteristics of the offender and offense (Farrell and Holmes, 1991). Neither perspective examines adequately the social context in which criminal sanctions are imposed, disregarding important considerations such as legal decision makers’ characteristics. The consensus approach entirely ignores such subtleties. The conflict perspective focuses too narrowly on intergroup cleavages without adequate consideration of intragroup differences, such as those between minority judges and defendants.

Previous research on judges’ sentencing practices further emphasizes the possibility of complex interactions between defendants' and decision-
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makers’ social statuses. A study of black and white judges (Welch, Combs, and Gruhl, 1988) showed black judges were equally likely to imprison black and white defendants, but white judges appeared less likely to incarcerate whites than blacks. On the other hand, an analysis of sentence severity using a scale similar to the one employed here revealed nonsignificant differences in white judges’ dispositions of black and white defendants, but black judges were shown to sentence blacks less severely than whites. In contrast to our results, these findings suggested both dominant and minority group judges may differentiate racially, rather than only dominant group judges doing so. Spohn (1990b) also found both black and white judges differentiating, but found they were alike in sentencing blacks more harshly than whites. A similar study comparing male and female judges suggested overall there were no meaningful differences in their determinations of guilt and assignments of punishments (Gruhl, Spohn, and Welch, 1981). When defendant’s sex was considered, female judges appeared more consistent than male judges, who were much less likely to incarcerate females than they were males. The researchers interpreted this as evidence of paternalism on the part of male judges, much as our findings suggest ethnic bias underlying the sentences of Anglo judges. Taken together, the available evidence reveals the need not only for more refined theories of sentencing, but also more sophisticated empirical studies better capturing the interplay of defendants’ and legal decision makers’ social characteristics.

Our findings are also of interest in light of the controversy surrounding plea bargaining. Critics of the practice have maintained that defendants are deprived of due process because plea negotiations occur outside the bounds of formal criminal legal procedure (e.g., Alschuler, 1981; Blumberg, 1967), which could possibly open the way for discriminatory treatment (Holmes, Daudistel, and Farrell, 1987). A counterargument has suggested that institutionalized plea bargaining allows for a concern with due process rights (Farr, 1984), with the existence of “going rates” for various offenses routinizing and equalizing sentences (Nardulli, Eisenstein, and Fleming, 1988). As noted above, plea bargaining in felony cases was banned in El Paso County in the mid-1970s (Holmes, Daudistel, and Taggert, 1992), a policy that remained in effect throughout the period incorporated in this study. Some judges employed a point system to guide sentencing after the plea bargaining ban in El Paso County, but others developed their own approaches, resulting in a diversity of sentencing practices. Thus the absence of plea bargaining in the state district courts in El Paso County apparently enhanced judicial discretion, and hence created an organizational context conducive to ethnically based sentencing disparities. Although the data employed here do not address the existence of sentencing disparities in plea bargained cases, it is obviously the case that regardless of any problems associated with its practice, eliminating plea bargaining is hardly an assurance of equitable treatment. Further, the available research has suggested that negotiated
dispositions do not significantly disadvantage ethnic minorities (see Holmes, Daudistel, and Farrell, 1987).

In concluding, we emphasize the need for further research. Insofar as we are aware, this is the first study that examines the sentencing practices of Anglo and Hispanic judges. The lack of other evidence and the availability of data for a single jurisdiction in this study caution against overgeneralization. Future research needs to examine dispositions in other jurisdictions with large Hispanic populations, particularly those where judges sentence in jury trial adjudications. A related issue is how percent minority in communities influences judges’ dispositions (see Hawkins, 1987). Another consideration is that states with determinate sentencing laws or sentencing guidelines may differ from those granting greater judicial discretion at sentencing (see, e.g., Zatz, 1984). Moreover, judges may respond differently to minority defendants across various types of offenses (e.g., Peterson and Hagan, 1984). Such issues also need to be addressed in comparisons of black and white judges. In short, considerable research is still necessary to determine the circumstances under which judges’ ethnic identities affect their legal decisions. SSQ

REFERENCES


