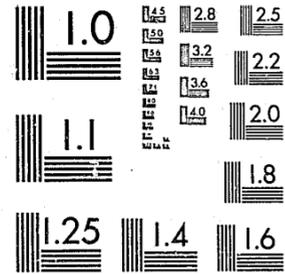


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OFFICIAL REACTIONS TO HISPANIC DEFENDANTS IN THE SOUTHWEST

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OFFICIAL REACTIONS TO HISPANIC DEFENDANTS

IN THE SOUTHWEST

Abstract

Despite a long-term interest in the treatment of minorities by the legal system, few criminologists have specifically considered the case of Hispanics. The purpose of this study was to determine whether and to what extent criminal justice outcomes and their determinants differ for Hispanics and nonHispanics in two southwestern jurisdictions. An analysis of 755 defendants whose most serious charge was robbery or burglary showed major differences between the two jurisdictions. There was no evidence of unfavorable Hispanic treatment in Tucson. Being Hispanic had no effect on the type of adjudication received, verdicts, or sentence severity. Tucson Hispanics received more favorable pretrial release decisions than whites. By contrast, Hispanic defendants in El Paso received less favorable pretrial release outcomes than white defendants, were more likely to be convicted in jury trials, and received more severe sentences when they were found guilty by trial. Interviews suggested that treatment differences in Tucson and El Paso may be due to different mechanisms for providing attorneys to indigent defendants, differences between established Hispanic citizens and less well established Mexican-American citizens and Mexican nationals, different methods for granting pretrial release, and disadvantages in court processing due to language difficulties. Future research should compare the criminal justice experiences of Hispanics and nonHispanics in other jurisdictions and for other crime types.

OFFICIAL REACTIONS TO HISPANIC DEFENDANTS IN THE SOUTHWEST

INTRODUCTION

A central question for politicians and criminologists for many years has been the extent to which the defendant's race or ethnicity affects processing decisions in criminal cases. Most U.S. examinations of this question have compared the treatment of black defendants and white defendants. By contrast, little research has been done on the treatment of Hispanics <1> by the legal system.<2> The neglect of Hispanics by American criminology is difficult to justify given that they constitute the nation's second largest minority, are one of the fastest growing minorities (Jaffe et al., 1980), and are now the largest single minority group in several states. The purpose of this study is to address this oversight by comparing official reactions to Hispanic, white, and black defendants in two southwestern jurisdictions.

Prior Research

Early research on Hispanics often assumed that they had higher crime rates than the general population, and then offered explanations. For example, researchers attempted to link Hispanic crime to culture (Handman, 1931; Tuck, 1946), family patterns (Warnhuis, 1931), intelligence (Young, 1922), illiteracy (Warnhuis, 1931), and unemployment (Bogardus, 1943). Besides methodological limitations (e.g., small sample sizes, non-random samples, no control variables, etc.), these early studies usually examined causes of Hispanic criminal

behavior, but ignored different treatment of Hispanic and nonHispanic defendants.

These patently biased studies of Hispanics began to give way to a different view of Hispanics in the legal system, evident as early as 1931 in the report of the National Commission on Law Observance and Enforcement (the Wickersham Report). According to this report, Hispanics face heavier police deployment, and compared to other citizens, are more likely to face illegal police practices, language barriers, overt racism, and discrimination in the administration of the law. Other recent sources (e.g., Acuna, 1972; Morales, 1972; Rivera, 1974) reach similar conclusions. Unfortunately, while these studies have been useful for drawing attention to potential problems faced by Hispanics in their dealings with the legal system, many of them have been based on little or no empirical research. For example, the 1970 Commission on Civil Rights collected data by interviewing law enforcement personnel and private citizens, and by holding hearings in several southwestern cities. Yet their published report is primarily a description of several individual cases of official misbehavior.<3>

Several recent studies that do explicitly examine official reactions to Hispanic defendants through empirical research are exceptions to the general trend and are thus particularly important. Unnever (1982) studied 313 convicted male drug offenders in Miami, Florida and found evidence of different treatment of Hispanics in sentencing: controlling for prior record, seriousness of offense, and number of counts, Hispanics receive longer sentences than whites (but shorter sentences than blacks). However, Unnever's study is limited to one

offense and one location and excludes pre-conviction processing decisions.

In a more comprehensive study, Petersilia (1983) examined data from official California criminal justice records and from a survey of 1,400 male prison inmates in California, Michigan, and Texas. She found processing differences by defendant's race for the decisions to release before a charge is filed and for sentencing. White suspects were less likely than blacks or Hispanics to be released after arrest. However, minority offenders convicted of felonies were more likely than whites to go to prison and received longer prison sentences than whites. Unfortunately, many of Petersilia's conclusions are based on descriptive statistics that do not control for variables like type of offense and prior criminal record.

Recent studies by Zatz (1984) and Holmes and Daudistel (1984) use multivariate analyses that control for many important case differences. Zatz examined 4,729 criminal sentences for whites, blacks, and Chicanos in California. Controlling for offense and disposition type, evidence, prior record, and defendants' attributes, Zatz found that Chicano, white, and black defendants did not receive significantly different sentences. However, the variables which affected sentence lengths operated differently for Chicanos and nonChicanos. In particular, Chicanos with prior criminal records received especially harsh sentences. Holmes and Daudistel compared sentence severity for white, black, and Hispanic defendants in two metropolitan jurisdictions in the American Southwest. Controlling for offense seriousness, prior felony convictions, use of a weapon, and several

previous processing outcomes, they found that Hispanics received harsher sentences in one of the two cities. Moreover, like Zatz, they found that the variables which affected sentence length operated differently for Hispanics and nonHispanics. Most notably, Hispanics convicted by jury trial in one of the two jurisdictions received particularly severe sentences. The major limitation of the Zatz and Holmes and Daudistel studies is that they only examine sentencing outcomes.

Because there are so few studies of Hispanics in the criminology literature, generalizations are difficult. However, the research literature on official reactions to black defendants provides several insights that may generalize to Hispanics. First, for those recent studies of discrimination against blacks which conclude that race affects criminal processing outcomes (e.g., Hagan, 1975; Lizotte, 1977; Thomson and Zingraff, 1981), it is less important than other variables. Thus, recent literature suggests that differential treatment of blacks depends on specific circumstances, including the year in which the case was processed (Thomson and Zingraff, 1981), the sentencing judge (Gibson, 1978), the racial composition of the victim-defendant dyad (Farrell and Swigert, 1978; identifying reference), the type of offense (identifying reference; Unnever, 1982), and the region of the country in which data were collected (Hagan, 1974; Kleck, 1981). Assuming that Hispanics are treated no worse by the criminal justice system than blacks (which is generally consistent with prior research, e.g., Petersilia, 1983; Zatz, 1984), we might expect evidence of discrimination against Hispanics to be no more obvious than it has been in studies of black defendants.

Second, the criminal justice system operates like a "sieve" in which police process the largest number of suspects, the prosecution fewer, and the courts fewer still. Thus, by examining only one decision in isolation, we may reach misleading conclusions about the system as a whole. The implications of this are apparent in the Petersilia (1983) study. Petersilia reports no evidence of racial differences in the probability of arrest, the type of charge filed, or the probability of conviction. By contrast, she finds significant differences in the type and length of sentence imposed. These findings suggest that studies which examine only one or two processing outcomes may not accurately reflect the effect of processing as a whole. Thus, the greater the number of decisions examined, the more confident we can be about the conclusions reached.

Finally, as research on race discrimination in official reactions to crime has accumulated, several variables have repeatedly emerged as important predictors of criminal justice decisions, regardless of the defendant's race. For example, in reviews of sentence discrimination by race (e.g., Kleck, 1981; Garber et al., 1982; Petersilia, 1983:17), variables like seriousness of the offense, quality of the evidence, and defendant's prior criminal record are consistently found to affect sentencing outcomes. Hence, studies of the effect of race/ethnicity on official reactions to crime must control for relevant differences between cases to the fullest extent possible.

For the most part, U.S. criminologists have ignored the criminal justice experiences of the nation's second largest minority group. The present research aims to improve our understanding of the legal

system's treatment of Hispanics by comparing official processing decisions made for Hispanic, black, and white defendants. My specific purpose is to determine whether and to what extent official outcomes and their determinants vary by the race/ethnicity of the defendant.

DATA

Data for this study are from official records and interviews with legal agents in Pima County (Tucson), Arizona and El Paso County, Texas.<4> I examine case processing information for 755 male defendants whose most serious offense was robbery or burglary.<5> These data were originally collected by the Institute of Criminal Law and Procedure, Georgetown University Law Center, under a grant from the National Institute of Justice (see Miller, McDonald and Cramer, 1978; Miller, 1980), and include defendants prosecuted during 1976-1977. The researchers collected information on each defendant from prosecution and court records. These records provide data on the defendant's characteristics and prior criminal record, the characteristics of the offense with which he is charged, and the final disposition.

In addition to official processing data, we interviewed 60 police officers, deputy prosecutors, defense attorneys, public defenders, judges, and probation officers in Tucson and El Paso in December 1982 and January 1983. The interviews, which lasted from 45-to-90 minutes, were based on earlier instruments (especially identifying reference; Hagan et al., 1980; identifying reference). They provide data on (1) the social organization of both systems, including the social, political, and legal environment and how it changed in the last decade; (2)

individual decision-making processes, especially with regard to Hispanic defendants; (3) general perceptions of decision-making processes in the legal system; (4) perceptions of decision-making in other parts of the system (e.g., deputy prosecutor's perceptions of police decision-making, etc.); and (5) individual perceptions of change in the system, especially with regard to the processing of Hispanic defendants.

RESULTS

Table 1 shows the percentage of Hispanic, black, and white defendants in the criminal justice system for six criminal justice outcomes.<6> If the criminal justice system discriminates against Hispanics, we should find a higher proportion of Hispanics in the criminal justice system in later than earlier processing stages. In general, Table 1 does not support this interpretation. Hispanics constitute 62.9% of the El Paso sample, 61% of those who receive prison terms, and 60% of those offenders receiving sentences of more than five years. Hispanics comprised 26.2% of the Tucson sample; 26.7% of the offenders who receive prison sentences, and 23.3% of convicted offenders who receive sentences of more than five years.<7> In both El Paso and Tucson, Hispanics were more likely than nonHispanics to plead guilty. Among El Paso defendants who were tried, Hispanics were more likely than nonHispanics to be found guilty. By contrast, among Tucson defendants who were tried, Hispanics were less likely to be found guilty. The overall conviction rate for Hispanics is within one percentage point of their total percentage in the Tucson sample.

<Table 1 about here>

In sum, although there are differences between Hispanics and non-Hispanics in Table 1--most notably a greater chance of conviction by jury trial in El Paso and a lesser chance of conviction by jury trial in Tucson-- there is little evidence of systematically different outcomes for Hispanics and nonHispanics from these percentages. But, bivariate comparisons may be misleading. A valid test for differential treatment should control for the possibility that there are important case differences for defendants of different racial/ethnic groups.

Table 2 shows the variables and their coding for a multivariate analysis of differential treatment. Race is coded as two dummy variables with "whites" being the excluded category. The major question in this part of the analysis is whether Hispanic defendants received different processing outcomes than whites or blacks, controlling for case seriousness and other offense characteristics. I include four measures of the defendant's prior criminal record and behavior. The most important of these is criminal record, a weighted index of prior convictions. Record of drug or alcohol abuse was coded positively if either type of behavior was alleged in official records. Probation, parole or pretrial release was coded positively if the defendant was classified in any of these categories at the time of the offense.

<Table 2 about here>

The analysis includes four measures of offense seriousness. Statutory seriousness is a measure of the mean number of years prescribed by law in each state for the most serious charge against the defendant

at the arraignment. Number of counts measures all charges against the defendant at the arraignment. Because the importance of each additional charge is probably less than the importance of the charge that preceded it, I used a log transformation of the number of counts in the analysis. "Type of crime" is a dummy variable, coded positively if the case involved robbery. "Weapon" is coded positively if any mention of a weapon was made in the case file.<8>

Economic status has frequently been examined as a determinant of criminal justice outcomes (e.g., Chiricos and Waldo, 1975; Frazier et al., 1980; Unnever, 1982). But, as is often the case with official records, these data did not include reliable measures of education or job status. However, for Tucson, data were available on whether the defendant was employed. Unnever et al. (1980:201) argue that for low socioeconomic groups, employment may be the clearest indication of membership in the "stable" working class. Following this logic, I distinguish between defendants who were employed at the time of their arrest and all others.

The last four variables in Table 2 are the dependent variables. Adjudication type measures whether the defendant went to trial or pled guilty. Pretrial release status is a three-point scale with "2" being the least favorable and "0" the most favorable release status (see Bernstein, Kelly and Doyle, 1977:749). For those defendants who were tried, "verdict" measures the outcome. The coding of the sentence severity measure derives from the efforts of Tiffany et al. (1975), and Hagan et al. (1980) to devise an approximate interval scale of the severity of sentencing options.<9>

Pretrial Release

Whether the defendant secures release and if so, the type of release secured, has both immediate and longer-term implications for the defendant. An immediate implication of not making bail is the punishment of jail. In the longer-term, failure to make bail may reduce the power of the defendant to defend himself by eliminating the income he would ordinarily receive during the period of detention if he were free (Wald, 1964), by reducing his ability to aid his attorney in his own defense (Foote, 1958; Wald, 1964), and by predisposing legal agents to recommend more serious sentences (e.g., Rankin, 1964; Skolnick, 1967). My specific aim here is to determine whether compared to other defendants, Hispanics received unfavorable pretrial release outcomes.

Table 3 shows the results of regressing pretrial release status on the independent variables. Contrary to the expectation of discrimination against Hispanics, Hispanic defendants in Tucson received more favorable pretrial release than other defendants (although the effect is relatively small). Being black had no effect on pretrial release outcomes in Tucson. In contrast, both Hispanic and black defendants received less favorable pretrial release outcomes in El Paso. Moreover, the effect of race on pretrial release was stronger in El Paso than Tucson. The standardized regression coefficients in Table 3 show that being Hispanic was the single best predictor of an unfavorable pretrial release decision in El Paso--more important than prior criminal record or seriousness of the offense.

<Table 3 about here>

Tucson defendants who were on probation, parole, or pretrial release at the time of the offense, who had more serious charges against them, who had prior criminal records, and who were older, received less favorable pretrial release outcomes. Consistent with prior literature (e.g., McIntyre, 1967), employed defendants received more favorable pretrial release dispositions. Also, Tucson defendants with alleged alcohol abuse problems received more favorable pretrial release outcomes.

In El Paso, only one variable besides defendant's race/ethnicity significantly affected pretrial release status: defendants who were on probation, parole or pretrial release at the time of the offense received less favorable outcomes.

Adjudication Type

Unnever (1982) and others (e.g., Alschuler, 1975) have argued that differential access to plea agreements may constitute a form of "structural discrimination." For example, if minority defendants are less likely to have access to favorable plea agreements, different treatment of Hispanics may be mediated by type of adjudication. This is the conclusion reached by Petersilia (1983:26), who found that only 7 percent of white defendants were tried by bench or jury, compared to 12 percent of blacks, and 11 percent of Hispanics.

In El Paso, 32 percent of blacks, 21 percent of Hispanics and 10 percent of whites were tried by judge or jury. By comparison, in Tucson, 12.5 percent of blacks, 8.3 percent of whites, and 4.4 percent of

Hispanic defendants were tried. The larger proportion of defendants tried in El Paso is explained by the El Paso County District Attorney's recently-enacted policy which prohibited his assistants from plea bargaining once his office had filed felony charges (Miller, 1980). Consistent with Petersilia's findings, both blacks and Hispanics in El Paso were more likely than whites to go to trial. By contrast, Tucson Hispanics were less likely than nonHispanics to go to trial. Instead, blacks were most likely to go to trial, Hispanics were least likely to go to trial, and whites were midway between the two in terms of trial likelihood.

To determine whether Hispanic, black, and white defendants differed significantly with respect to adjudication type controlling for the other independent variables, I performed a multiple discriminant analysis of the adjudication outcome (Cooley and Lohnes, 1971; Hair et al., 1979).

Table 4 (Panels 1 and 2) shows the discriminant analysis results for defendants who pled guilty or were tried in Tucson or El Paso. The standardized discriminant function coefficients measure the relative contribution of each variable to each function.<10> Independent variables with large discriminatory power generally have large weights and those with little discriminatory power have small weights. The direction of the relationship is shown by the group centroids. For example, according to Table 4, black defendants in Tucson had a coefficient of .513. This means that black defendants were more likely to go to trial than plead guilty. To assess the relative importance of each variable for classifying cases as adjudicated by trial or guilty

plea, I included Rao's V (1952:257), a generalized distance measure of dispersion.<11>

<Table 4 about here>

Table 4 shows that controlling for other variables, Hispanic defendants were no more likely than other defendants to go to trial in either Tucson or El Paso. In contrast, black defendants were more likely to go to trial in both jurisdictions. In Tucson, black defendants, defendants with more serious criminal records, defendants with alcohol problems, and defendants who allegedly used a weapon were more likely to go to trial. Cases involving more charges were less likely to go to trial. In El Paso, black defendants, defendants with more serious criminal records, defendants alleged to be drug abusers, defendants who used a weapon to commit the offense, and defendants who had less favorable pretrial release decisions were more likely to go to trial. As in Tucson, cases involving more charges were less likely to be tried.

The results provide no direct evidence of discrimination against Hispanic defendants in terms of adjudication type. However, the results do show an indirect effect of Hispanic ethnicity through pretrial release status. Hispanics in El Paso received less favorable pretrial release than other defendants (Table 3) and Table 4 shows that unfavorable pretrial release means a greater likelihood of trial in El Paso. The results for adjudication type also shows that blacks in both jurisdictions were more likely to be tried. In fact, being black is the single best predictor of adjudication type in both juris-

dictions. To the extent that adjudication by guilty plea results in less severe sanctions than adjudication by trial, this may indicate discrimination against blacks.

Jury Trials

Of the 755 cases filed as felonies in these data, 118 (15.6 percent) were adjudicated by jury or bench trial. Because verdicts are categorical outcomes (i.e., guilty/not guilty), I again use discriminant analysis. The variables included are the same as those used in the analysis of adjudication type. Judges adjudicated 13 (20 percent) of the 65 Tucson trials and 9 (17 percent) of the 53 El Paso trials. Because different variables may influence jury and bench trials, I limited the analysis of verdicts to jury trials. <12> The results are shown in Table 4 (Panels 3 and 4).

Being Hispanic or black had no effect on verdicts in Tucson. By contrast, being Hispanic was a significant predictor of guilty verdicts in El Paso.<13> The difference between the two cities was unexpected. Officially, Hispanics comprise over 61% of the citizenry of El Paso, and because of the close proximity to the Mexican border, unofficial estimates place the actual figure much higher. Thus, in El Paso, Hispanics are not a numeric minority. By contrast, Hispanics officially comprise only about 21% of the population of Tucson. Interviews with criminal justice officials in both cities suggested several possible explanations for why Hispanics might face a greater chance of conviction by jury in El Paso than Tucson. First, the Hispanic community of El Paso may be more stratified than the Tucson Hispanic community. As defined by official records, Hispanics in El Paso

include everyone from prominent Hispanic families who may go back many generations in the Southwest, to recently migrated, unemployed or underemployed Mexican nationals. One possibility is that El Paso jurors (which include more upper and middle-class Hispanics), are harsher than Tucson jurors on lower-class Hispanic defendants. This interpretation was generally supported by our interviews with legal agents in El Paso. For example, one assistant District Attorney in El Paso told us, "The older Mexican Americans tend to be pretty conservative, they will nail you (i.e., defendants)." An El Paso defense attorney offered a similar opinion: "I've had middle class Mexican-Americans on my jury, and boy they just rammed it at the defendant." We heard no similar comments from Tucson officials.

A second difference between the two jurisdictions that might help explain the results relates to the type of defense provided indigent defendants in the two cities. Tucson defendants unable to provide for their own defense are assigned a public defender. Tucson is one of two cities in the state of Arizona with a public defender's office (the other is Phoenix). Our interviews with Tucson legal agents indicated that the Public Defender's Office generally pursued an aggressive, adversarial stance toward the prosecution. For example, in response to a question about how the Tucson and Phoenix Offices differed a Tucson public defender told us:

It's my impression that our defender's office here is more adversarial--has a more adversarial relationship with the prosecutors. I think that the public defenders in Phoenix are much more prone to quickly plead a case out than we are. I think that's the basic difference.

Another Tucson public defender said simply, "It's more of a combat mentality here."

By contrast, Texas does not have a public defender system. Instead, judges maintain lists of private attorneys who handle criminal cases. Attorneys are randomly assigned to defendants who cannot afford their own counsel from these lists. Thus, the type of defense indigent defendants receive in El Paso is likely to be more variable with regard to trial experience and overall quality than is the case in Tucson.

Finally, another possible explanation for the higher conviction rate by jury trial for El Paso Hispanics may be language impediments. Language difficulties were cited by the 1970 Commission on Civil Rights (pp.66-74) as a major block to equal legal treatment for southwestern Hispanics. Criminal justice agents in both El Paso and Tucson stressed that the legal system makes serious efforts to provide defendants who cannot speak English with translators. But in our interviews, legal agents more frequently cited language as a problem for minority defendants in El Paso than Tucson.

Given the small number of jury trials examined, conclusions about the determinants of verdicts must be made with caution. Nonetheless, there is evidence from these data that Hispanic defendants in El Paso were more likely to be convicted by jury trial, controlling for case characteristics.

Determinants of verdicts in Tucson were record of alcohol abuse and defendant's employment and pretrial release status. Defendants with

alleged alcohol abuse problems, unemployed defendants <14> and defendants who received less favorable pretrial release outcomes were more likely to be found guilty.

The only significant determinant of verdicts in El Paso other than defendant's race/ethnicity was the seriousness of the offense. Statutorily serious cases were less likely to result in conviction. This counterintuitive finding may reflect hesitancy on the part of jurors to convict in cases where the probable severity of sanctions for defendants is greater.

Sentence Severity

In the analysis of final sentence, I was concerned with two types of differential processing by race/ethnicity. Direct evidence, that is, do Hispanic and black defendants receive different sentences than white defendants, controlling for the other independent variables? And indirect evidence, that is, does the defendant's race/ethnicity affect final sentence indirectly through statistical interaction with other independent variables?

The analysis of sentencing included the same variables as described above with the exception that three earlier decisions, pretrial release status, adjudication type (i.e., guilty plea or trial), and type of trial (i.e., bench or jury) are also included. To determine whether the effect of the independent variables was different for Hispanic defendants, I included product terms (independent variables by race of offender; Hispanics equal "1", others equal "0"). I analyzed all independent variables and their corresponding product terms for

both Tucson and El Paso defendants. None of the race by independent variable product terms were significant ($p < 0.10$) in Tucson. Thus, there was no evidence that being Hispanic affected the sentence variable indirectly in Tucson through statistical interaction with other variables.

Table 5 shows that Hispanics and blacks in Tucson did not receive more severe sentences than whites. The best predictor of sentence severity in Tucson was statutory seriousness--more serious charges resulted in more serious sanctions. Defendants with a more extensive criminal record, who had more charges against them, who had records of drug abuse, or who were on probation, parole or pretrial release at the time of the offense received more severe sentences. Defendants with alleged alcohol abuse problems received less severe sentences. Consistent with prior research (e.g., Landes, 1974; Unnever, 1982; Garber et al., 1982), defendants who received less favorable pretrial release outcomes also received more severe sentences.

<Table 9 about here>

For El Paso, I found significant race by adjudication type and race by defendant's criminal record interactions. Table 5 shows a regression of sentence severity on the significant independent variables and their corresponding product terms for El Paso. To allow an interpretation of the product terms I have retained the nonsignificant variables whose product terms were significant.<15> The product term for adjudication type indicates that for Hispanics only, guilty verdicts result in more severe sentences than guilty pleas ($-.14 + (.36) =$

.22). The product term for criminal record shows that defendants with serious criminal records received more severe sentences, regardless of race/ethnicity, but this effect was less important for Hispanics than other defendants ($.92 + (-.56) = .36$).<16>

El Paso sentences were also more severe when charges were more serious, there were multiple counts, the case involved a weapon, and the defendant had an unfavorable pretrial release status. Sentences were less severe for bench than jury trials.

DISCUSSION AND CONCLUSIONS

The results were generally consistent with recent research on discrimination against black defendants in the application of the law: I found evidence of differential treatment, but it was limited to particular processing decisions and one of two jurisdictions. In Tucson, Hispanics received more favorable pretrial release outcomes than other defendants, and being Hispanic had no effect on adjudication type, verdict, or sentence severity. The only evidence of differential treatment by race/ethnicity in Tucson was for black defendants, who were more likely to go to trial than plead guilty.

By contrast, in El Paso, Hispanics received less favorable pretrial release outcomes than other defendants, were more likely to be convicted in jury trials, and received more severe sentences when they were found guilty by trial. Moreover, being Hispanic had an indirect effect on adjudication type and sentence severity through its effect on pretrial release status. El Paso defendants with less favorable pretrial release outcomes were more likely to go to trial and received

more severe sentences when they were tried. Probably the most important evidence of discrimination was found in the analysis of jury verdicts for El Paso, which showed that being Hispanic was the single best predictor of guilty verdicts.

Conclusions about discrimination by the legal system against Hispanics must be tempered by noting that this study was limited in several respects. First, although the data allowed an analysis of several major processing decisions, other outcomes, most notably those occurring before cases were filed as felonies, and those occurring after a defendant was sentenced, were unavailable. The study also excludes data on the actual amount of time served by defendants after sentencing.

Second, although I had extensive information on defendants from case records, I had no data on the economic background of defendants in El Paso and limited economic data on Tucson defendants. This is a variable that should be closely attended to in future research on legal processing of Hispanics. Differential economic status might help explain why compared to whites, El Paso Hispanics received less favorable pretrial release outcomes.

Third, also missing from these data was a precise measure of Hispanic origin. My measure of race/ethnicity combined all persons who were identified by officials as Hispanic, including persons of Spanish ancestry, Mexican-Americans, Mexican nationals and combinations of these groups. I had no means of assessing the accuracy of the official racial/ethnic designation, nor of breaking down the classification by type of Hispanic background. Clearly, being a Mexican

national has different implications in the American Southwest than being from a Spanish-heritage family with a long history in the region. This difference may explain in part the greater likelihood of Hispanics than nonHispanics to be found guilty in El Paso jury trials. Future research should attend more closely to these distinctions.

Fourth, the two cities included in the sample may not be typical of cities with Hispanic populations in the rest of the country. Indeed, observed differences in determinants of processing outcomes between the cities support the utility of research in a wider variety of jurisdictions. The fact that El Paso is a "border" town also makes it unique. An El Paso assistant district attorney explained:

We're sitting here on a border. Across the river from us, which is nothing more than an oversized mud puddle, is the city of Juarez, with over a million and a quarter residents....Our police force is geared to the size of this city and what it can afford. El Paso does not have a large economic base to support the city itself. In other words, we perceive El Paso as the city north of the Rio Grande, but bullshit, we're talking about another million and a quarter people that go back and forth like a tide.

Finally, a more general problem with studies of differential treatment of defendants by legal systems is that the choice of research sites is often dictated more by practical than theoretical concerns. For example, my original research plan was to include San Antonio, Texas in this study. But officials in San Antonio refused to cooperate. Thus, it is possible that the two jurisdictions studied here, which offered me their complete cooperation, had less to be concerned

about than other jurisdictions with regard to the treatment of minorities. In short, Hispanics may fare better in Tucson or El Paso than in other jurisdictions.

Much of the recent literature on the legal treatment of Hispanics, written by journalists, lawyers and political activists, has assumed different treatment of Hispanics without collecting and analyzing empirical evidence. Although this approach is useful (probably necessary) for drawing attention to the problems faced by Hispanics in the criminal justice system, it offers few specific remedies for effective social policy. Paradoxically, by blaming everyone, we hold no one responsible. These results suggest major differences between and within two legal systems studied with regard to the treatment of Hispanics. Armed with specific information about where, how, why, and because of whom discrimination occurs, we can propose specific reforms. Without such information, it is more difficult to defend reform efforts.

Footnotes

1. The term "Hispanic" applies to a large and diverse group. The 1970 U.S. Census permitted people to classify themselves in one of five "Spanish heritage" categories: Mexican, Puerto Rican, Cuban, Central and South American, and Hispano. The complexity of the issues surrounding attempts to separate Spanish-heritage persons into identifiable ethnic groups should not be minimized (see Jaffe et al., 1980:9-20). But at the same time, recent claims by criminologists, jurists, and political activists underscore the importance of the Hispanic distinction as an analytic category. This research focuses on Hispanics in the American Southwest. The majority of persons of Spanish heritage in this region identify themselves as Mexican-American (or Chicano), or Hispano.
2. A recent review by Savitz (1973) reports over 500 research articles on the treatment of blacks by the legal system (see also, Hagan, 1974; Kleck, 1981). In contrast, a comprehensive review by Trujillo (1974) reports only eighteen studies dealing with Hispanics and crime, and Carter (1983:226) reports only seven articles on the experiences of Hispanics in the criminal justice system.
3. Except for an appendix on the percentage of grand jurors with Spanish surnames in selected California counties, the Report includes only six data tables: two show the distribution of Spanish surname citizens in five states; one compares the median levels of education

for Spanish surname and other persons; and three compare ethnicity of criminal justice agents in several jurisdictions.

4. For convenience, I refer to "Tucson" and "El Paso" although both jurisdictions actually include the entire county in which each city is located. Jaffe et al. (1980:123) report that in 1970, five southwestern states (Arizona, California, Colorado, New Mexico, and Texas) contained 90 percent of all Mexican-Americans. While California and Texas have the highest absolute number of Hispanics, Arizona, New Mexico, and Texas have the highest proportion (U.S. Department of Commerce, 1977). And within these states, Tucson, Albuquerque, and El Paso are the three cities with populations over 250,000 that have the highest proportion of Hispanics. The legal system of Albuquerque is currently being examined in a related project (Tyler, 1983).

5. Robbery and burglary are general terms representing behaviors defined differently in the two states. Regardless of definition, only felonies are included here. In both Tucson and El Paso, robbery refers to the illegal taking of property from the person of another by using force or threat of force. Arizona distinguishes "simple robbery" from "armed robbery", "attempted robbery", and "kidnapping for robbery". Texas distinguishes "simple robbery" from "aggravated robbery" (if defendant "causes serious bodily injury to another; or uses or exhibits a deadly weapon"). Burglaries refer to breaking and entering the house of another person with the intention of committing theft. Arizona distinguishes "burglary committed in the nighttime" (first degree felony) from "burglary committed in the daytime" (second degree felony), and simple burglary from "burglary while armed with a

deadly weapon." In Texas, burglary is considered to be "aggravated" if it involves a habitation, an armed offender, or injury to the victim. In Arizona, "grand theft" cases, defined as "theft of money, labor or property of the value of more than one hundred dollars" are included. In Texas, "burglary of vehicles" is included, defined as "breaking into or entering a vehicle or any part of a vehicle with intent to commit any felony or theft."

6. The data included ten Native American defendants. Because this number was insufficient to allow meaningful comparisons, these cases were excluded from the analysis.

7. I note in passing that the proportion of Hispanics in the sample of felonies was relatively close to their official proportion in both cities. Hispanics officially constitute 61.9% of the total El Paso population (U.S. Department of Commerce, 1982), compared to 62.9% of the felony cases in the sample. By contrast, blacks are greatly over-represented in both samples of felony cases. Officially, blacks constitute 3.8% of the El Paso population but make up 8.2% of the felony cases in the sample. Blacks constitute only 2.8% of the Tucson population but 18.4% of the felony cases in the sample.

8. The criminal code for each state was used to determine legally what constituted a weapon.

9. For offenders who received indeterminate sentences, I assigned the mean of the maximum and minimum sentence received before converting the sentence to the severity measure. I experimented with other measures of sentence severity before choosing this one. The most common

alternative to the type of measure used here is simply final sentence if convicted (e.g., Eisenstein and Jacob, 1977; Nardulli, 1978; identifying reference). The major disadvantage of using length of final sentence as a measure of sentence severity is that it disregards defendants who receive only probation, or prison, or jail and probation.

10. The interpretation of the standardized discriminant function coefficient is analogous to the interpretation of "beta weights" in multiple regression.

11. Rao's V evaluates each variable in terms of whether it increases discriminatory power. A variable which contains a large amount of information already included in previously selected variables may reduce discriminatory power by bringing the groups closer together. The change in V has a chi-square distribution with one degree of freedom.

12. However, a separate analysis which included bench trials showed similar results with regard to the effect of defendants' race/ethnicity on verdicts.

13. Rao's V estimates are done in a stepwise fashion so that the best single variable in terms of discriminating between two or more groups is selected first, the best two-variable combination is selected next, and so on. An analysis using Rao's V showed that being Hispanic was the single best determinant of a guilty verdict in El Paso.

14. Because of the often close association between employment status and race, I considered the possibility that the effect of race on ver-

dicts in Tucson was being suppressed by the effect of employment status. But the effect of being Hispanic on verdicts in Tucson was not changed by excluding the employment variable from the analysis. Thus, it appears that Hispanics were no more likely to be convicted than whites in Tucson and that this fact is not explained by different employment statuses.

15. The two product terms included in Table 5 were both highly correlated with their corresponding independent variables (for criminal record and its product term $r = .92$; for adjudication type and its product term $r = .81$). The collinearity between these variables probably accounts for the positive zero-order correlation and the negative standardized regression coefficient for defendant's criminal record. Examination of other coefficients in Table 5 suggested no other collinearity problems.

16. In order to determine whether these effects were artifacts of collinearity between the independent variables, I also estimated separate models of sentence severity for Hispanics and whites. These models included the same independent variables, but no product terms. The results (available upon request) confirmed the interpretations from the model with product terms. The standardized coefficients for adjudication type showed that Hispanic defendants found guilty at trial received more severe sentences ($B = .20$) than Hispanic defendants who pled guilty. Standardized regression coefficients for defendant's criminal record estimated separately for Hispanics and whites also supported the interpretation that criminal record had a greater effect on sentence severity for whites than Hispanics (for

whites, $B = .54$; for Hispanics, $B = .28$).

Table 1. Percentages of Hispanic, Black and White Defendants in El Paso and Tucson for Six Processing Outcomes

	Filed as Felonies	Guilty Pleas	Guilty Verdicts ^a	Total Convictions	Prison Sentences	Five-Plus Sentences
<u>El Paso</u>						
Hispanics	62.9	63.1	70.4	64.6	61.0	60.0
Blacks	8.2	6.1	13.6	7.6	14.0	12.0
Whites	28.9	30.7	15.9	27.8	25.0	28.0
N	232	179	44	223	100	75
<u>Tucson</u>						
Hispanics	26.2	27.9	14.3	26.8	26.7	23.3
Blacks	18.4	16.6	28.6	17.6	20.4	22.2
Whites	55.4	55.4	57.1	55.6	52.9	54.4
N	523	458	42	500	329	90
<u>Sample Total</u>						
Hispanics	37.5	38.0	43.0	38.4	34.7	40.0
Blacks	15.2	13.7	20.9	14.5	18.9	17.6
Whites	47.3	48.5	36.0	47.0	46.4	42.4
N	755	637	86	723	429	165

^aIncludes both bench and jury trials.

Table 2 Variables, Coding and Frequencies.

Variable	Coding	Distribution ^a	
		N	%
Race/Ethnicity ^b	Hispanic	283	37.5
	Black	115	15.2
	White	357	47.3
Defendant age	Interval Scale (18-65)	Mean = 26.16	
Weighted index of prior convictions ^c	0-40	Mean = 4.50	
Record of drug abuse	0 No	572	75.9
	1 Yes	182	24.1
Record of alcohol abuse	0 No	663	87.8
	1 Yes	92	12.2
Probation, parole or pretrial release at time of offense	0 No	555	73.5
	1 Yes	200	26.5
Statutory Seriousness (in years)	Interval (0-40)	Mean = 13.59	
Number of counts	Log transformation (0-3.55)	Mean = 1.03	
Type of crime	0 Burglary	288	38.2
	1 Robbery	466	61.8
Weapon	0 Not mentioned	539	71.4
	1 Mentioned	216	28.6
Employment status (Tucson only)	0 Unemployed or other	355	74.7
	1 Employed	120	25.3
Pretrial release status	0 Released on own recognizance or conditional release	230	31.9
	1 Cash bond and released	128	17.8
	2 Bail denied, or cash bond but not released	363	50.3
Adjudication type	0 Guilty plea	637	84.4
	1 Trial	118	15.6
Verdict (jury or bench trials)	0 Not Guilty	32	27.1
	1 Guilty	86	72.9

Table 2. (continued)

Variable	Coding	Distribution		
		N	%	
Sentence severity	0 Suspended Sentence	51	6.8	
	1 Probation 1-12 months	44	5.9	
	2 Probation 13-24 months	42	5.6	
	3 Probation 25-36 months	102	13.6	
	4 Incarcerated in jail or prison 1-6 months <u>or</u> probation 37 months or more	115	15.3	
	5 Incarcerated in jail or prison 1-6 months <u>and</u> probation for unspecified period	159	21.2	
	6 Incarcerated in jail or prison 7-12 months	9	1.2	
	7 Incarcerated in jail or prison 7-12 months <u>and</u> probation for unspecified period	1	0.1	
	8 Incarcerated in jail or prison 13-24 months	26	3.5	
	9 Incarcerated in jail or prison 13-24 months <u>and</u> probation for unspecified period	1	0.1	
	10 Incarcerated in jail or prison 25-36 months	45	6.0	
	11 Incarcerated in jail or prison 37-48 months	26	3.5	
	12 Incarcerated in jail or prison 49-60 months	15	2.0	
	14 Incarcerated in jail or prison 61-84 months	37	4.9	
	17 Incarcerated in jail or prison 85-120 months	39	5.2	
	21 Incarcerated in jail or prison 121-168 months	19	2.5	
	30 Incarcerated in jail or prison 169 months or more	19	2.5	
		Mean = 6.71		

^a Variation in total number of cases is due to missing data.

^b Dummy-coded as two vectors with "white" being the excluded category.

^c Prior felony convictions were assigned three points, misdemeanor convictions two points, after Bernstein, Kelly and Doyle (1977).

Table 3. Regression of Pre-Trial Release Status on Independent Variables for Tucson and El Paso Defendants

	Tucson (N=497)				El Paso (N=224)			
	r	b	B	S	r	b	B	S
Hispanic	-.09	-.18	-.08	.074	.13	.26	.23	.002
Black	.03	-.09	-.04	NS	.09	.26	.14	.056
Age	.11	.01	.10	.037	.22	.01	.12	NS
Prior convictions	.13	.01	.08	.096	.22	.01	.11	NS
Drug abuse	.11	.13	.06	NS	.00	-.05	-.05	NS
Alcohol abuse	-.03	-.24	-.08	.092	-.04	-.09	-.07	NS
Probation, par., pretrial release	.17	.34	.17	.000	.20	.30	.17	.013
Statutory seriousness	.25	.02	.23	.001	.15	.01	.10	NS
Number of counts	.15	.12	.06	NS	.09	.21	.08	NS
Type of crime	.12	.08	.04	NS	.11	.05	.05	NS
Weapon	.23	.08	.04	NS	.10	.11	.10	NS
Employment status	-.17	-.37	-.17	.000				
Intercept		.125				.745		
R ²		.173				.167		

Table 4. Discriminant Function Coefficients, Group Centroids, and Canonical Correlations for Type of Adjudication and Verdicts for Tucson and El Paso Defendants

Variable	Adjudication Type		Verdict	
	Tucson (N=444)	El Paso (N=209)	Tucson (N=45)	El Paso (N=40)
Hispanic	-.231	.222	-.260	.353*
Black	.513*	.423*	-.033	-.044
Age	.030	.033	-.461	.430
Prior convictions	.398*	.354*	.294	-.234
Drug abuse	-.043	.373*	-.390	-.010
Alcohol abuse	.384*	.140	.544*	.187
Probation, parole, pretrial release	-.142	.036	-.469	.676
Statutory seriousness	-.213	.257	-.386	-.567*
Number of counts	-.375*	-.342*	.455	.236
Type of crime-robbery	.224	.207	.514	-.589
Weapon	.456*	.279*	.159	-.093
Employed	-.045	---	-.263*	---
Unfavorable pretrial release	.024	.372*	.896*	-.436
Group centroids:				
Guilty pleas/Not Guilty verdicts	-.087	-.231	-1.187	-1.430
Trials/Guilty verdicts	.591	.776	.432	.358
Canonical correlation	.222	.392	.591	.592

*Rao's V \leq .10.

NOTE: Variation in number of cases due to missing data.

Table 5. Regression of Sentence Severity on Independent Variables for Convicted Tucson and El Paso Defendants ($p < .10$)

Variables	Sentences-Tucson (N=475)				Sentences-El Paso (N=223)			
	r	b	SE	B	r	b	SE	B
Hispanic					(-.07	-.30	.716	-.02)
Prior convictions	.19	.15	.034	.17	.47	.94	.153	.92
Drug abuse	.22	2.55	.619	.16				
Alcohol abuse	-.08	-2.20	.833	-.10				
Probation, parole, pretrial release	.18	1.73	.558	.13				
Statutory seriousness	.39	.29	.031	.37	.21	.09	.045	.10
Number of counts	.26	1.82	.599	.12	.27	4.17	1.394	.16
Weapon					.30	2.90	.698	.23
Unfavorable pretrial release	.31	.93	.280	.13	.34	2.01	.561	.19
Adjudication by trial					(.27	-1.96	1.393	-.14)
Bench trial					.02	-3.58	1.673	-.12
<u>Product terms (Independent variables by defendant race-Hispanic)</u>								
Prior convictions					.36	-.59	.164	-.56
Adjudication by trial					.26	5.79	1.658	.36
Intercept		-1.35				-2.63		
R ²		.324				.490		

NOTE: Parentheses indicate effects that are statistically insignificant. Attrition in sample size due to missing data.

References

- Acuna, Rodolfo
 1972 Occupied America: The Chicano's Struggle Toward Liberation. Caulfield Press.
- Alschuler, Albert
 1975 "The defense attorney's role in plea bargaining." Yale Law Journal 84:1179-1313.
- Bernstein, Ilene N., William R. Kelly and Patricia A. Doyle
 1977 "Societal reaction to deviants: the case of criminal defendants." American Sociological Review 42:743-755.
- Bogardus, Emory
 1943 "Gangs of Mexican-American youth." Sociology and Social Research, September.
 (forthcoming).
- Carter, David L.
 1983 "Hispanic interaction with the criminal justice system in Texas: Experiences, attitudes, and perceptions." Journal of Criminal Justice 2:213-227.
- Chiricos, Theodore and Gordon Waldo
 1975 "Socioeconomic status and criminal sentencing: an empirical assessment of a conflict proposition." American Sociological Review 40:753-772.
- Cooley, William W. and P.R. Lohnes
 1971 Multivariate Data Analysis. New York: Wiley.
- Eisenstein, James and Herbert Jacob
 1977 Felony Justice: An Organizational Analysis of Criminal Courts. Boston: Little, Brown.

Farrell, Ronald A. and Victoria Lynn Swigert

- 1978 "Prior offense as a self-fulfilling prophecy." *Law and Society Review* 12:437-453.

Foote, Caleb

- 1958 "A study of the administration of bail in New York City." *University of Pennsylvania Law Review* 106: 685-730.

Frazier, Charles E., E.W. Bock, and J.C. Henretta

- 1980 "Pretrial release and bail decisions." *Criminology* 18: 162-181.

Garber, Steven, Steven Klepper and Daniel Nagin

- 1982 *The Role of Extralegal Factors in Determining Criminal Case Dispositions: Toward More Reliable Statistical Inference.* Pittsburg: Carnegie-Mellon University Press.

Gibson, James L.

- 1978 "Race as a determinant of criminal sentences: A methodological critique and a case study." *Law and Society Review* 12:455-78.

Hagan, John

- 1974 "Extra-legal attributes and criminal sentencing." *Law and Society Review* 8:357-384.
- 1975 "The social and legal construction of criminal justice: a study of the presentencing process." *Social Problems* 22:720-637.

Hagan, John, Illene B. Nagel (Bernstein), and Celesta Albonetti

- 1980 "The differential sentencing of white-collar offenders

in ten federal district courts." *American Sociological Review* 45:802-820.

Hair, J.F., P.E. Anderson, R.L. Tatham, and B.J. Grablowky

- 1979 *Multivariate Data Analysis.* Tulsa: Petroleum Publishing.

Handman, Max

- 1931 "Preliminary report on nationality and delinquency: the Mexican in Texas. Special report on Crime and the Foreign Born, Vol. II, National Commission on Law Observance and Enforcement.

Holmes, Malcolm D. and Howard C. Daudistel

- 1984 "Race and justice in the Southwest: The sentencing of Anglo, Black and Hispanic defendants." *Social Science Quarterly* (forthcoming).

Jaffe, A.J., Ruth M. Cullen, and Thomas D. Boswell

- 1980 *The Changing Demography of Spanish Americans.* New York: Academic.

Kleck, Gary

- 1981 "Racial discrimination in criminal sentencing." *American Sociological Review* 46:783-804.

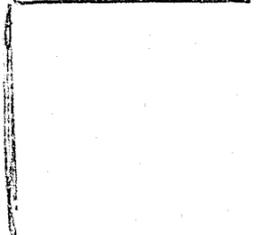
Landes, William M.

- 1974 "Legality and reality: Some evidence of criminal procedure." *Journal of Legal Studies* 3:287-337.

Lizotte, Alan

- 1978 "Extra-legal factors in Chicago's criminal courts: Testing the conflict model of criminal justice." *Social Problems* 25:564-580.

McIntyre, Donald M.



0 0 0

0 0 0

0 0 0

0 0 0

Zatz, Marjorie S.

- 1984 "Race, ethnicity, and determinate sentencing: A new dimension to an old controversy." *Criminology* (forthcoming).

Unnever, James D., Charles Frazier, and John C. Henretta

- 1980 "Race differences in criminal sentencing." *Sociological Quarterly* 21:197-207.

Unnever, James D.

- 1982 "Direct and organizational discrimination in the sentencing of drug offenders." *Social Problems* 30:212-25.

U.S. Commission on Civil Rights

- 1970 *Mexican-Americans and the Administration of Justice in the Southwest*. Washington, D.C.: U.S. Government Printing Office.

U.S. Department of Commerce, Bureau of the Census

- 1977 *County and City Data Book*. Washington, D.C.: Government Printing Office.
- 1982 *General Population Characteristics: 1980*. Washington, D.C.: Government Printing Office.

Wald, Patricia

- 1964 "Pretrial detention and ultimate freedom: A statistical study." *New York University Law Review* 39: 631-640.

Warnhuis, Paul

- 1931 "Crime and criminal justice among Mexicans in Illinois." Special report on Crime and the Foreign Born. Volume II. National Commission on Law Observance and Enforcement.

Young, Kimbel

- 1922 "Mental differences in certain immigrant groups." *University of Oregon Publications*. Volume 1(11).

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