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Sanctioning DUI offenders: The effect of extralegal factors on sentence severity

Beverly K. Rios

SANCTIONING DUI OFFENDERS:

THE EFFECT OF EXTRALEGAL FACTORS ON SENTENCE SEVERITY

A Thesis

Presented to the

Faculty of

California State University,

San Bernardino

In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

in

Criminal Justice

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Approved by:

[redacted]

Dr. Dale K. Sechrest, Chair, Criminal Justice 6-16-97 Date

[redacted]

Dr. Marilyn D. McShane, Criminal Justice

[redacted]

Dr. David Shichor, Criminal Justice

ABSTRACT

Extralegal factors such as gender, ethnic background, economic status, and education, have been the basis for criminal justice research for decades.

This study was conducted in Riverside, California, a medium sized urban city located in southern California, which previously consisted of farming communities.

The project tracked a 243 person random sample taken from the 698 individuals booked into Riverside County Jail during the three month period extending from April 1, 1992 through June 30, 1992, for DUI and/or a combination of DUI and other charges. The sample was followed from June 30, 1992 through June 30, 1993. These bookings contained persons booked for felony and/or misdemeanor charges for DUI of alcohol and/or drugs. The statistics reflect, however, that most of the sample of those persons booked for DUi were mainly for alcohol, as those persons booked for drugs were charged under Health and Safety Code drug

charges, not Vehicle Code charges of DUI.

Although this study was originally conducted with the hypothesis that race was a determining factor as to the individual degree of legal sophistication and that level's effect upon the level of sentence severity, it became evident that something more specific was affecting the sample's population. Upon further research, the sub-category of language was evaluated and more specific results were obtained. The study showed that in addition to race, language was a predominant factor in sentence severity. The degree of legal sophistication appeared to increase for persons who used English as their Primary Language (the EPL group). Research showed that white, English-speaking persons received a higher percentage of lesser sentences. As an example, this research showed that among individuals with the same blood alcohol level, white persons in the EPL group received the largest percentage of lesser sentences; black persons of the EPL group received the second largest percentage; and Hispanic and other persons with English as a secondary language (ESL) received

sentences at the highest degree of severity.

Greater legal sophistication became evident for EPL individuals, mostly white, who appeared to have an advantage in securing counsel and working through the system, thus to a greater degree obtaining less-severe sentences. The black members of the EPL group, although of minority status, had the next strongest advantage. Although they did not have the economic advantage, they did have the legal sophistication. Many had been in the system before and knew the rights and benefits allotted to them through the justice system by way of using court appointed counsel to obtain a less severe sentence. The ESL group, which contained non-English speaking persons (mainly Hispanic), had the smallest percentage of persons obtaining lesser sentences. These persons were of minority status. They did not have the economic means, most did not speak the language, and in most instances did not understand the benefits available to them through the criminal justice system, such as the right to court appointed counsel. The individuals in the ESL group may have been influenced by

their cultures and thus pled guilty at arraignment in larger percentages than EPL individuals. The final outcome reflected that extralegal factors did play a role in sentence severity for individuals booked and charged with DUI. However, the results were more reflective of ethnic background and language rather than the initial variable of race alone.

ACKNOWLEDGMENTS

At first, contemplating a study of such diversification and magnitude seemed beyond my grasp. Although I would have access to court records, there would be various other agencies with which to deal, and permission to obtain to view their records. For the help of many such agencies and personnel, I wish to give my sincere thanks. Specifically, I wish to thank Chief Deputy Charlotte Boytor of the Riverside County Sheriff Department, who allowed me to obtain a most crucial element of this thesis, the initial DUI booking records for persons arrested and booked into the Robert Presley Detention Center during the period of this research. My gratitude also goes to the administration of the Consolidated Superior & Municipal Courts of Riverside County, for their support and assistance in following these subjects through all court proceedings. In addition, Riverside County District Attorney's office was crucial in obtaining blood alcohol results for those subjects whose case files did not reflect alcohol levels. To these helpful employees, thank you.

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Introduction

States are mandated to protect citizens' legal and constitutional rights. These rights include, among other things, the right to trial by a jury of one's peers, the right to legal representation, and the right to remain silent. In the last forty years, methods by which states protect individuals' constitutional rights have been improved to more adequately inform citizens of their legal choices and responsibilities. Specifically, the legal battle of Miranda vs. Arizona, 384,U.S. 436,86 S.Ct.1602(1966), precipitated the "Miranda Warning" in 1966 requiring authorities to inform individuals of their legal rights prior to any specific questioning as to their involvement in a specifically alleged crime. In addition, the Miranda Warning responded to the need for citizens to understand their rights to legal counsel, their right to remain silent during questioning, and finally, the

consequences of waiving their Fifth Amendment rights and talking with authorities.

Inherent in the execution of the Miranda Warning is the recognition of the need for all U.S. citizens, regardless of race, ethnicity, legal sophistication, or socio-economic status to understand their legal and constitutional rights. Yet, conflicts may arise, because the judicial system strives to uphold citizens' constitutionally protected rights while at the same time striving to expedite the legal process by timely adjudication of the cases. To fulfill both the demand for justice and judicial expediency, many states have established and implemented the process of "plea bargaining", or "charge reduction". States such as Alaska have evaluated the elimination of plea bargaining with emphasis on the theory that without plea bargaining the courts would be overwhelmed with active cases, all of which would go to trial, and the expediency of the judicial system would be at a standstill (Rubinstein and White, 1979). Rubinstein and White's evaluation (1979) determined that this was not the case. The Alaska study did, however, determine that first-time offenders did seem to be affected the most by

the elimination of the plea bargaining process; however, safeguards were considered during the formulation of sentencing measures (Rubinstein and White, 1979).

Other concepts such as plea bargaining to a lesser included offense have been evaluated in states such as Kansas (Nitcher, 1984). Kansas evaluated the concept that "reckless driving" was a "lesser included offense" to "driving under the influence". After extensive research, Kansas courts determined that plea bargaining of driving under the influence cases to reckless driving was not legally possible, because the elements of reckless driving were not contained in driving under the influence cases. That is, reckless driving was not seen as a "lesser included offense". This is not the case in California.

California courts and prosecutors continue to use the practice of plea bargaining. This process allows for individuals being charged with the violation of DUI (driving under the influence) to receive a less severe sentence by a plea to a lesser charge. California has been in the forefront of enactment of alcohol-related offense vehicle code sections. This ultimately has allowed individuals to plead guilty to a less severe charge for a

violation of driving under the influence, and eliminated the debate over whether or not "alcohol related reckless" was a lesser included offense. However, this process would only be available to those persons who had some degree of legal sophistication, legal representation, or knowledge of the codes. This research evaluated the effects of extralegal factors on persons charged with DUI and their final adjudicated charge and subsequent sentence severity. Did these extralegal factors affect the final outcome?

Background Analysis

The initial purpose of this study was to evaluate the possibility that minority status of the defendant would affect final sentence severity upon adjudication, precipitated by lack of legal sophistication and/or awareness of legal choices. Subsequently, data were evaluated to determine if extralegal factors, in conjunction with ethnicity, would affect sentence severity upon final adjudication. Conclusions obtained from the data were subsequently inventoried as to ethnicity as well as race. Did the individuals' lack of legal sophistication lead to a decreased awareness of their legal choices?

Studies show that persons who are charged with the offense of driving under the influence of alcohol and/or drugs (DUI) may receive an alternatively less severe punishment (sentence) upon a plea of guilty or nolo contendere (no contest) or conviction to an alcohol-related offense. The severity of punishment is a result of the final adjudicated charge, and may be somewhat indicative of the discretion of the judiciary in advising individuals of their choices at arraignment, in conjunction with the level of legal sophistication. An individual's prior court record could be a result of the individual's level of legal sophistication. In addition, the individual's ability to retain private counsel, in essence a reflection of degree of socio-economic status, would also allow for a higher degree of legal sophistication, though the individual has obtained it through an outside source.

Legal sophistication may be evidenced in the methods by which the individual defendant exercises his legal and constitutional rights. Persons pleading guilty as charged at arraignment traditionally receive the most severe punishments. Entering a guilty plea precludes the receipt of a lesser punishment as provided by law for the violation

to which he has admitted guilt. Even after the initial not guilty plea, the punishment may not be reduced unless the final punishment is an outcome of a reduction of the original charge.

In some states such as Kansas and Alaska, the process by which DUI cases are adjudicated is somewhat different because either the plea bargaining process is not available for those who wish to adjudicate their cases at first arraignment or the states do not believe that alcohol related reckless driving (hereafter ARR) is an incidentally related offense to DUI. California allows for the plea bargain process but, like Kansas, does not believe that ARR violations are incidentally related (hereafter IRO) to reckless driving. To allow for a plea bargain to the lesser charge of ARR, California enacted specific code sections of the vehicle code (VC 23103 series) with lesser sentencing penalties allowed under VC23103.5. This process thus allows for a plea or conviction to a lesser charge. All defendants are guaranteed the same constitutional rights. However, defendants need to understand fully these rights and their ability, at least in California, to receive a lesser sentence by the possibility of the plea bargain

process to ARR (VC23103/VC23103.5) initiated by a not guilty plea at arraignment(Caiafa and Farnsworth, 1982). In addition, the defendant must understand that the prosecution must prove the defendant's guilt "beyond a reasonable doubt" (Caiafa & Farnsworth, 1982). According to California Jury Instructions Criminal (1988), the reasonable doubt burden is as follows:

> A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether [his] [her] guilt is satisfactorily shown, [he] [she] is entitled to a verdict of not guilty. This presumption places upon the People the burden of proving [him] [her] guilty beyond a reasonable doubt.

Reasonable doubt is defined as follows:

> It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

Thus, "weak spots" in the complaint as well as in future testimony may allow for a legal alternative which may create an opportunity to plead to a lesser charge (Rubinstein & White,1979 and Sudnow,1964). This post

arraignment procedure would never be accomplished if the defendant pleads guilty at arraignment.

For persons charged with a violation of driving under the influence, the variable of "representation" is another factor commingled within the adjudication process. Representation usually directs itself to court appointed counsel, but may also be directed to privately retained counsel. If the defendant appears before the court "in propria persona" (Words and Phrases, 1992) he is considered as acting as his own counsel. By definition, this term simply states:

> Statute providing that plaintiffs shall have liberty of prosecuting and that defendants shall have liberty of defending 'in their proper persons', patently is derived from Latin 'in propria persona' and means in their own persons.

In addition, this means that he is aware of all constitutional rights available to him and the measures by which he can receive the best outcome that he can for himself. Contingent on the individual's degree of legal sophistication this assumption may be incorrect. Subsequently defendants who may not understand fully their right to professional legal counsel, right to a jury, right to cross-examine all parties who would testify against them,

and their Fifth Amendment right against self incrimination, can possibly sacrifice their ability to obtain a lesser sentence through self representation.

According to Caiafa and Farnsworth (1982), "the presumption of innocence, although not articulated in the Constitution, has been deemed a basic component of fair trial under our criminal justice system". Many states process their misdemeanor and felony offenses by different measures. Different states, because of the differences in codified laws, allow for a sliding scale from harsh to lenient punishments (sentences). In addition, some states such as California, still maintain some form of plea bargaining, and may allow for lesser sentences by the mere fact that the defendant may plead to a lesser charge. Other researchers such as Kingsnorth et al.(1989), have recently conducted research in the analysis of the effects of extralegal factors and their subsequent impact on sentence severity. Although Kingsnorth et al.(1989), conducted numerous studies, his direction was mainly focused towards the area of California law and the effects these changes in the laws would have in the final adjudication process. Kingsnorth's studies evaluated the increase/decrease of

sentence severity (Kingsnorth et al., 1989) and specific deterrence (Kingsnorth et al., 1993).

The Riverside study addresses some of Kingsnorth's concerns, while at the same time evaluating further the impact of extralegal factors such as race, ethnicity, and counsel, in determining the final severity.

The Riverside County Experiment

The Riverside study evaluated the effects that extralegal factors such as language, ethnicity, and legal sophistication as determined by prior court contact, had on the adjudicated charge and subsequent degree of punishment. Data were subsequently analyzed by the variables of blood alcohol levels, type of counsel, and plea at arraignment. These variables were addressed in a random sample of those persons arrested and booked for driving under the influence of alcohol, as well as driving with a blood alcohol concentration of .08 percent or greater. These cases were followed from the initial contact at time of booking through arraignment, pleas of guilty or not guilty, trial readiness conference, post arraignment guilty plea, jury trial, and subsequent adjudication whether it be from

conviction by jury or change of plea prior to conviction. The possibility of plea bargaining as it may affect the sentence severity (punishment) was evaluated. Questions addressed in the study were as follows:

- Do the individuals pleading guilty as charged at arraignment receive a harsher degree of punishment than those persons exercising their right to plead not guilty?
- Does the variable of representation, when combined with defendant's legal sophistication, allow for a lesser punishment by means of a plea bargain to an alcohol related reckless driving charge?
- Does the defendant's legal sophistication, as shown by prior court contact/convictions, affect his/her decision to plead guilty versus not guilty at arraignment?

Chapter Two

Literature Search

The initial basis for the literature search was an evaluation of legally filed charges of driving under the influence, the process of plea bargaining, charge reduction, and the presence of determinant sentencing as it affects final sentence severity. An additional underlying factor is increased judicial expediency without elimination of legal fairness for all individuals seeking final adjudication no matter what their primary language, ethnicity, or race.

Initial literature analysis included the evaluation of the plea bargain process. This analysis elicited a vast number of articles to be reviewed. When streamlining the literature, only those sources significant to this research were specifically mentioned. Articles by Church (1979), Freed (1990), and Champion (1989), although not quoted, were valuable in allowing the researcher to obtain diversified knowledge of the plea bargain process. In addition, articles by Mather (1979) and McDonald (1979)

allowed for a historical review of the plea bargain process. To complete a background review of sentencing in California, the Uniform Determinate Sentencing Act of California (manual), prepared and published by the California District Attorneys Association, was reviewed prior to completing data analysis.

In California, the presence of the plea bargain process allows for a lesser degree of punishment through the use of guilty or nolo contendere to a lesser offense than initially charged. The literature reviewed acknowledged a variety of conflicting methods by which driving under the influence charges are adjudicated. Some studies, such as those conducted by Kingsnorth et al.(1989), evaluated "the role of legal and extralegal variables" as reflected in legislative reform in California. In addition, Kingsnorth et al. (1993), continued their analysis of DUI violators and the effects the changes in the law had on recidivism in specific areas of California's admin per se . Studies conducted in Alaska, Texas, and Kansas, compared the process of charge reduction and plea bargaining as reflected in the final outcome of adjudication of charges such as driving under the influence

(Rubinstein & White,1979; Callan,1979; Nitcher,1984). These studies further evaluated the possible discrepancy in plea bargaining, double jeopardy, and charge reduction. Thus, persons charged with DUI violations seemed to have fewer options in negotiating a reduced punishment/sentence. However, some states such as Alaska, were forced to change their strategy for the initial approval process by which the district attorney's office either approves or denies the initial complaint (Rubinstein & White,1979). In these instances the charge to be filed is reduced at initial filing instead of being reduced to a lesser charge at a later juncture. As stated in the Alaska study,(Rubinstein & White, 1979) there is no incentive for the middle class defendant to seek private counsel because they are above the income limit for court-appointed counsel and often do not earn enough to pay for private representation. Private attorneys say they are concerned because they are not able to seek or obtain a reduced charge because of the absence of the plea bargain process. Subsequently, the defendant cannot pay what would be charged; and they advise the defendant that unless the case has a triable issue, he should plead guilty as charged at arraignment without

counsel and accept sentence. This is different in states such as California, where there is the possibility of plea bargaining to the lesser sentence for ARR. In California a plea to ARR is codified by vehicle code sections 23103/23103.5. California law does not treat ARR as an incidentally related offense to driving under the influence as analyzed by Kansas. Studies in Kansas address the issue of double jeopardy (Nitcher, 1984).

The process by which individual states process their felony and misdemeanor cases, including those for DUI, can ultimately affect the severity of punishment persons receive if convicted for DUI or initial guilty plea to this violation. Specific factors noted are whether states allow for a plea to the reduced charge of ARR as well as whether they consider reckless driving a lesser included offense of DUI. California does not consider ARR a lesser included offense of DUI, but does allow a plea bargain to specially enacted vehicle code sections (23103/23103.5) to cover this violation.

States such as Kansas (Nitcher,1984) determined that alcohol is not an element present in reckless driving. Furthermore, according to Nitcher (1984), the requirement

of showing "the car was driven in a willful or wanton disregard for the safety of others" must be accomplished to find a defendant guilty of reckless driving. In direct conflict is the requirement of driving under the influence, which is proof that the defendant "drove or operated the vehicle in an intoxicated condition". The element of "drunkenness" is not required - only "under the influence". This intoxicated condition would impair the driver's ability to drive safely, not that he or she drove recklessly (Nitcher,1984). According to Nitcher(1984), the Kansas Superior Court determined that the elements of driving under the influence were different in that "the manner of driving is not important", only that the amount of alcohol consumed rendered the defendant under the influence as defined by code for purposes of driving a motor vehicle. This legal discrepancy has created different views on double jeopardy, as well as plea bargaining in other states in addition to Kansas.

The controversy of double jeopardy, as discussed by Nitcher (1984), centers on the issue of whether reckless driving is an element of driving under the influence and that, in the alternative, alcohol consumption is not

included in the evaluation of reckless driving. Thus, in Kansas, according to Nitcher (1984), persons charged with a violation of driving under the influence of alcohol may not plea bargain to an alcohol-related reckless driving offense as a lesser included offense of driving under the influence. This decision was based on the basic legal definition of a lesser included offense. By definition, a lesser included offense is as follows:

> Offense is a "lesser included offense" if elements of lesser offense are identical to and are capable of being wholly subsumed within elements of greater offense and factual predicate for lesser included offense is part of factual predicate required to establish greater offense. (Words and Phrases, 1992)

In understanding the entire process by which a defendant may plead to a lesser charge, rather than the initial charge, one should also understand what is meant by "lesser offense". By definition, a lesser charge is as follows:

> A "lesser offense" is one composed of some, but not all of the elements of the greater offense, and which does not have any element not included in greater offense so that it is impossible to commit greater offense without necessarily committing lesser offense. (Words and Phrases, 1992)

It should be noted, however, that the study does not address the possibility of legislating a new code section,

such as California, for alcohol-related reckless driving offenses to which a plea bargain may be accepted. In Kansas (Nitcher,1984), there may not be a plea bargain to ARR offense as a lesser included offense of DUI. In California, however, individuals booked for DUI may obtain a lesser sentence by the enactment of ARR code sections and the plea bargain process.

There were a variety of legal and research sources for California, Alaska, Kansas and Texas, which reflected the controversy surrounding the continued use of plea bargaining for all types of offenses (Caiafa & Farnsworth,1982; Rubinstein & White,1979; Nitcher,1984). The plea bargaining process has continually been revised and subsequently eliminated in some states. When addressing procedures for adjudication of DUI violators, the plea bargain process is always in the forefront. In addition, discrimination between defendants as reflected in the sentence upon a DUI conviction versus a lesser charge of ARR must be analyzed to the degree of conceived benefit for those defendants exercising their right to counsel. Representation, whether it be court appointed counsel or privately retained counsel, may or may not be as important

in states where plea bargaining has been eliminated (Rubinstein & White, 1979).

The areas of individual rights as related to the process of legal adjudication versus judicial expediency are many times theorized as being in conflict. The process of plea bargaining, as applied, may lend itself to this conflict. Of equal importance is the defendant's ability to understand the legal process through which his charge is adjudicated. The judiciary understands the legal process, but may be hampered by an additional, overpowering secondary concern described as "judicial expediency". This secondary concern is not readily known or understood by the individual defendant who is understandably concerned specifically with his/her own set of personal circumstances. However, the adjudication of the individual case, although unbeknownst to the defendant, may be affected by the desire to increase judicial expediency. According to Brereton and Casper (1981), the assumption that defendants are less likely to receive harsher sentences by pleading guilty than those going to trial may not be true. This statement is based on studies conducted in three California counties.

Studies conducted in Alaska (Rubinstein & White, 1979) address the legal adjudication process in its entirety, rather than the adjudication of specific legal charges. Defendants residing in Alaska, according to Rubinstein and White(1979), do not have the benefit of the plea bargaining process. Rubinstein and White(1979) also indicate that the district attorney's office investigates each and every case from the initial filing of reports and complaint to determine whether or not "weak spots" are present (Rubinstein and White, 1979; Sudnow, 1964). If weak spots are present, Alaska's current policies direct the modification of the complaint prior to initially filing with the court. This process may be a reflection of the quest for judicial expediency; however, as shown by Sudnow (1965), and Rubinstein and White(1979), persons affected to the greatest extent are those who are in the middle class. These persons often do not have the financial resources to obtain private counsel. However, their economic status renders them ineligible for court appointed counsel. These defendants, therefore, are often left in a dilemma as to how to plead.

The process that is used to adjudicate driving under

the influence violations has been studied by numerous researchers. In California, Sudnow (1965) conducted research in which he evaluated various crimes and the persons who are ultimately sentenced for these crimes. The research also discussed the process by which the defendant may receive a lesser sentence for a crime other than the original one charged. In California, Sudnow (1965) studied the process which has been labeled as plea bargaining and in the process established the concept of "normal crimes". In this study, counsel, namely the public defender, gained knowledge of the typical manner in which a crime is committed. It became evident that other crimes might be included for purposes of further evaluation (Sudnow, 1965). The final adjudication which may be obtained from a plea of guilty to a lesser charge is made possible by the complaint being altered or amended (Sudnow, 1965). Thus, the sentence for one of these "normal crimes" can be somewhat predetermined if the defendant has committed one of these "normal crimes".

In evaluating Sudnow's research (1965) against the Kansas City research (Nitcher, 1984), it is noted that normal crimes (Sudnow's, 1965) are evidenced mainly by

violations of the penal code and thus the lesser included elements are contained in numerous violation. Sudnow (1965) addresses this issue by distinguishing between "necessarily-included" lesser offenses, and " situationally-included" lesser offenses. Of two offenses designated in the penal code, the lesser is considered to be that for which the length of required incarceration is the shorter period of time. Inclusion refers to the relation between two or more offenses. The necessarily included lesser offense is a strictly legal notion (Sudnow, 1965). Simply stated:

> "The test in this state of necessarily included offense is simply that where an offense cannot be committed without necessarily committing another offense, the latter is a necessarily included offense".

Sudnow (1965) stated that the distinction between these two terms is critical as the former referred to the "manner in which the crime occurs", whereas the latter related to "where the crime occurs". These distinctions in California allow for plea bargaining to lesser offenses (Sudnow, 1965).

The Kansas City research (Nitcher, 1984) addressed the

issue of double jeopardy as to pleas of guilty to alcohol related reckless driving or incidentally related offense to driving under the influence. As with Sudnow's research (1965), the legal definition of the section violated, driving under the influence, as well as entire criminal process, created vast disparities in the legal field.

The Kansas research (Nitcher, 1984) seemed to reflect, unlike Sudnow's research (Sudnow, 1965), the elements contained within the driving under the influence and reckless driving area are not "lesser included offenses". This seems to be the case as there is no element of alcohol required in reckless driving, nor does the violation of driving under the influence require specifically the driving of a vehicle in a "willful or wanton disregard for the safety of others" (Nitcher, 1984). Sudnow's (1965) categorization of "normal crimes" as related to vehicle code violations, specifically DUI and ARR, are not easily distinguished. The alternatives, therefore, for plea bargaining of offenses in the vehicle code to lesser charges contained in the original complaint are not deemed legally correct and thus are prohibited by law (Nitcher, 1984). With these discrepancies come additional factors

which may affect the outcome of individual cases as related to the elements of the crime and the process by which they are adjudicated.

Other studies conducted in Alaska, Texas and California (Rubinstein & White,1979; Callan,1979; Caiafa & Farnsworth, 1982), address the issue of the crime, the process of plea bargaining, and the degree of severity of the punishment. Included in these resources was the ability to create a code section to specifically address the issue of alcohol related reckless driving, the elimination of plea bargaining, the reassessment of the district attorney's filing procedures, and final adjudication procedures. The courts are saddled with "weighted caseload" requirements which in turn dictate judicial expediency. This process is established by creating certain time limits for each type of violation and the estimated processing time allotted from start (filing of the complaint/cite) to finish (adjudication either by guilty plea or upon conviction after trial).Studies reviewed evaluated, analyzed, and addressed issues of plea bargaining, defendant's individual attributes, and final outcomes. The final adjudicated charge will reflect the

severity of the sentence, and this may or may not be an outcome of representation.

Chapter Three

Methodology

Overview

Over a three-month period from April 1, 1992, through and including June 30, 1992, 698 persons were booked into the Riverside County Jail for driving under the influence. A random sample was drawn from this initial booking population using ten days within each given month, thus allowing for a non-biased number of weekdays and weekend days. The sample included 21 weekdays and nine weekend days, constituting a normal month schedule. A random sample was chosen rather than the entire population due to the inability to secure all records in a timely manner because of the number of computer operators assigned to various courtrooms. Many variables entailed individual case research. The lack of computerization for such items as blood alcohol results and financial status created a great increase in the processing time. In addition, each court entry for each defendant required a specific computer inquiry. There was no access to unabridged court records.

Sample Characteristics

The total population of 698 persons revealed the following results by gender: 79 female (11.3%) and 619 male (88.7%). The sample group showed that 27 of the persons booked (11.1%) were female and the remaining 216 persons booked (88.9%) were male. Thus, within two-tenths of a percent, the sample and total population had the same proportion of individuals based on gender.

For ethnicity, the total population of arrestees had 309 Hispanic persons (44.3%), 81 black persons (11.6%), 272 white persons (39%) and 36 "other" persons (5.1%). When comparing the total population against the random sample by race, the following became evident. The random three month sample had 114 Hispanic persons (46.9%), 36 black persons (14.8%),86 white persons (35.4%) and 7 "other" persons (2.9%).

There were 157 persons of minority status and 86 persons who were non-minority. This indicates that for every white, or non-minority individual booked for driving under the influence, two minority individuals were booked for the same offense. During this same period of time the sample revealed that persons booked for violations of

driving under the influence, ranged in ages from 18 years to 76 years of age. However, the majority of DUI bookings were for persons between the ages 21 to 45 (Table 3.1).

The sample included the independent variable of gender, which was not evaluated against the dependent variables because the number of females was so small. The male/female population breakdown was somewhat different by ethnicity (Table 3.2).

Table 3.1

Distribution of Legal and Extra-Legal Variables in all DUI Cases

	NUMBER	PERCENT
Ethnicity/Race		
African American	36	14.8
White	86	35.4
Hispanic	114	46.9
Other	7	2.9
	243	100.0
Gender		
Male	216	88.9
Female	27	11.1
	243	100.0
Age		
18-20	21	8.6
21-29	100	41.2
30-39	69	28.4
40-high	53	21.8
	243	100.0
Plea at Arraignment		
Guilty	83	34.2
Not Guilty	76	31.3
Warrants	84	34.6
	243	100.0
Counsel		
Pro Per (No Lawyer)	104	42.8
Public	112	46.1
Private	27	11.1
	243	100.0
Prior Record		
None	158	65.0
Any Priors	25	10.3
DUI Priors	60	24.7
	243	100.0
Alcohol Related Reckless (ARR)		
Reduction to ARR	12	4.9
No Reduction	154	63.4
Wrnts/Dismissals	77	31.7
	243	100.0

Table 3.2

Total Population: Gender Percentages by Ethnicity

	Male	Female
African American	14.00%	6.60%
White	28.80%	2.50%
Hispanic	44.40%	1.20%
Other	1.70%	0.80%
Totals	88.90%	11.10%

It appears that the largest male ethnic group of DUI offenders are Hispanic, whereas the female DUI offenders are mostly African American. The sample population was analyzed based on minority status/ethnicity rather than gender(Figure 3.1).

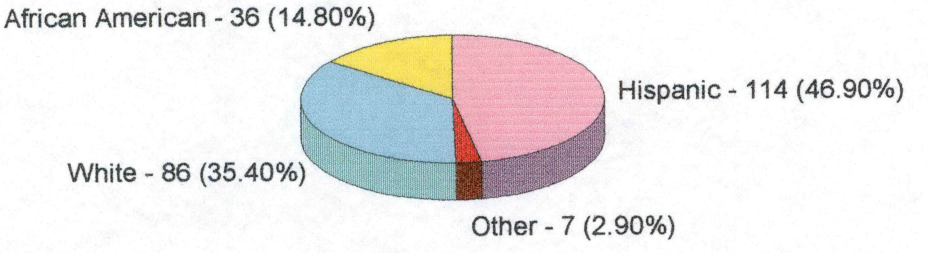
Variables Studied

The judicial process is initiated when the complaint is filed, and continues to the scheduled arraignment, plea, pre-trial conference, trial settlement conference, jury trial and subsequent conviction or discharge. Data included the defendant's counsel status, whether public defender, court appointed private counsel, or privately retained counsel, to ascertain if this choice influenced the final adjudication. The level of blood alcohol was recorded to see if this is a viable factor in sentencing.

The dependent variable was the severity of punishment as implemented by the court ordered sentence. The terms and conditions of the sentence can be a combination of the several elements of the sentence. The adjudicated charge will determine the severity of the punishment received at time of sentence subsequent to a conviction or guilty plea. Thus, the severity of punishment could include elements

Figure 3.1

All DUI Cases By Ethnicity



such as a higher fine, jail, probation, California driver's license restriction, and/or an alcohol program for those persons convicted of driving under the influence. A conviction or plea to a lesser charge of alcohol related reckless driving revealed a lesser degree of punishment, which included a lesser fine, probation, jail only if requested to work off fine, or alcohol program participation only if specifically requested. These terms and conditions of sentence became a direct reflection of the degree of severity imposed for a guilty plea or conviction to driving under the influence, driving with a blood alcohol level of .08% or greater, or alcohol-related reckless driving. Specific judge assignment to the driving under the influence courtroom is a factor only as to the percentage of guilty pleas taken at arraignment versus entry of not guilty pleas. During the period of the study the Riverside Municipal Court assigned driving under the influence cases to one main courtroom where the defendant was arraigned. If the defendant wished to plead guilty at arraignment without the benefit of representation, he/she was able to do so. If the defendant pled not guilty, the court would address counsel status, either grant or deny

request for court appointed counsel, and continue the matter for pre-trial conference (trial readiness conference, or TRC) and jury trial. The case could be adjudicated any time in the future. Thus, there was no one judicial officer who would take all driving under the influence pleas. Most requests for reduced punishment would be by stipulation between the parties, including the district attorney, defendant, and/or counsel.

The independent variables were as follows:

- Gender
- Age
- Priors
- Adjudicated Violation
- Race
- Ethnicity
- Blood Alcohol Results
- Counsel

The court appearances from initial arraignment and plea to the final adjudication were analyzed as to counsel status, blood alcohol results, adjudicated charge, and severity of punishment. These results allowed a

determination of whether a lesser adjudicated charge was achieved by the presence of counsel or whether counsel representation really had no effect.

Chapter Four

Analysis

For a three month period (4/1/92-6/30/92), 698 individuals were booked within Riverside County for DUI violations. From that total population a random sample of 243 individuals was analyzed. Of these individuals, 34.2% (83) pled guilty at arraignment, 31.3% (76) pled not guilty at arraignment, and 34.6% (84) either had first appearance status of bench warrant (b/w) or non-appearance at subsequent hearings. These three categories basically divided the random population into thirds. At the time of booking, data was obtained for the total sample for specific variables such as race, age, blood alcohol level and booking charge (see Table 3.1).

Persons appearing at arraignment were then evaluated further as to type of counsel, and subsequent final sentence severity as specified in the adjudicated charge. The breakdown for ethnicity reflected results which, when analyzed, showed it to be an important variable. The data for ethnicity/race were as follows: White 35.4%(86), AA

14.8%(36), Hispanic 46.9%(114), and Other 2.9%(7). It was at this point that the research branched off into the area of ethnicity in addition to race. The sample was divided into groups based on ethnicity as reflected by language, because it appeared that a major factor in convictions might be related to language ability. Two groups were used: English as Primary Language (EPL) which contained members of the English-speaking (White and African American population), and English as Secondary Language group (ESL), which contained members of the Hispanic and Other ethnic groups, mostly Asian.

The criteria for recoding the groups by EPL and ESL were as follows. Subjects who were placed in the ESL group were persons who required an interpreter at all hearings. Although this group mainly consisted of those of Hispanic origin, there were also persons who required interpreters for other languages. The ESL group contained 121 individuals with a breakdown of 46.9% Hispanic and 2.9% other, for a total of 49.8% of the sample. The balance of 122 persons were categorized as EPL. The breakdown was white, 35.4% and AA, 14.8%, for a total of 50.2%. Thus, for these two groups, membership was approximately equal.

These new categories allowed a more in-depth analysis of the independent variables of race and ethnicity against the dependent variables of adjudicated charge, priors and counsel. These data allowed for a thorough evaluation of the results. Collapsing and recoding the extralegal variables such as race and ethnicity, as well as the legal factors such as type of counsel and prior court contact, allowed insight into the levels of sentence severity and how the final outcome could be affected (Kingsnorth et al., 1989).

Cases were first analyzed by guilty or not guilty pleas at arraignment. For the total sample 34.2%(83) pled guilty at arraignment (see Table 3.1).The distribution of cases by type of plea at arraignment is shown in Figure 4.1.(Percentages are based on the total number of 243 individual cases.) More guilty pleas were entered by the ESL group: 21%(51--48 Hispanic, 3 other), in contrast with 13.2%(32--13 AA, 19 white) of the EPL group pleading guilty. Although the initial total-sample breakdown was basically the same (guilty 34.2%, not-guilty 31.3%), the effect of the extra-legal factor became evident when subdividing the group by the language variable. Opposite results

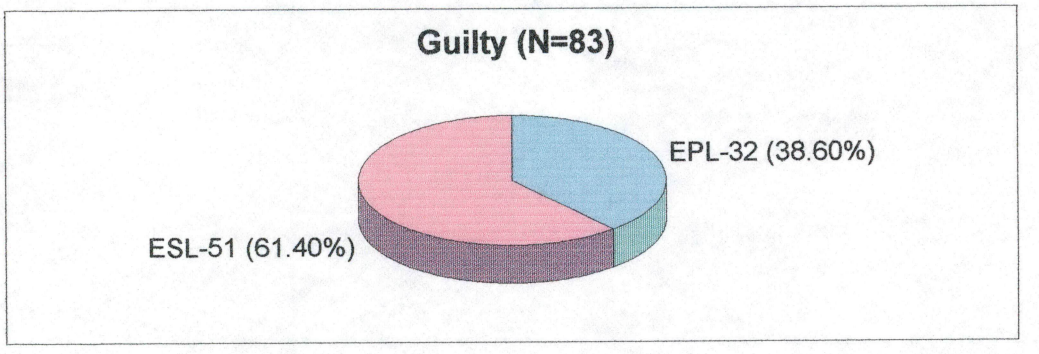
were obtained in the analysis of not guilty pleas at arraignment. Twice as many of the EPL group entered not guilty pleas: 20.6%(50--38 white, 12 AA), in contrast with 10.7%(26, all Hispanic) of the ESL group pleading not guilty (Figure 4.1).

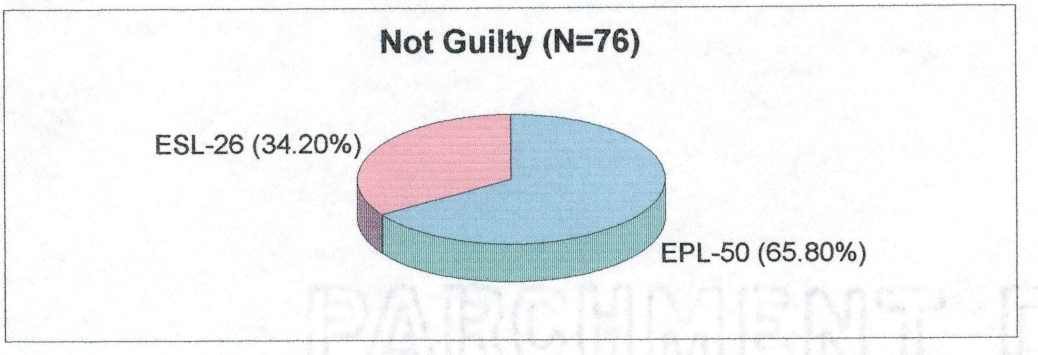
The greater number of persons pleading guilty within the ESL group may be indicative of a lesser degree of legal sophistication than members of the EPL group. In addition, these results may be indicative of lower socio-economic status and/or less prior court contact by ESL individuals.

The greater percentage of ESL individuals pleading guilty at arraignment versus EPL individuals ultimately created a higher degree of sentence severity because, in essence, by procedure ESL individuals admitted guilt without complete understanding and knowledge of their legal rights, the true meaning of their blood results (alcohol level, drugs, refusal) and/or the code section charged. Thus, a larger number of ESL individuals had prior DUI sentences (Table 4.1).

Figure 4.1

Status At Arraignment By ESL/EPL





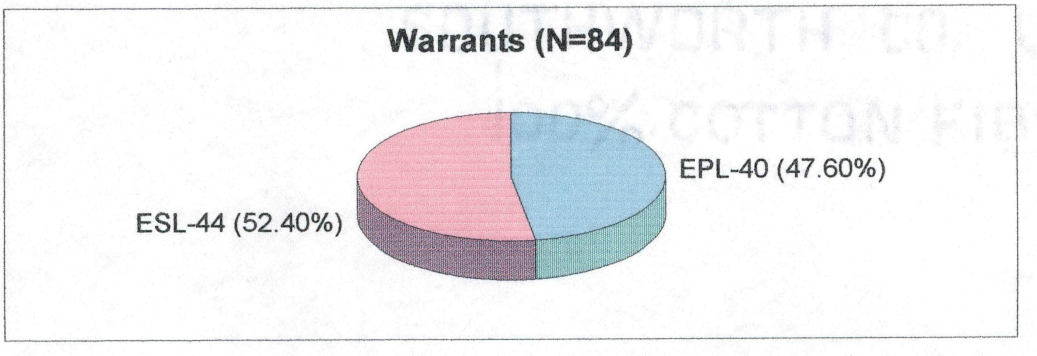


Table 4.1
Prior Offenses of All Kinds (N=243)

EPL	None		Other		DUI	
	Number	Percent	Number	Percent	Number	Percent
African American	21	8.60%	6	2.50%	9	3.70%
White	51	21.00%	12	4.90%	23	9.50%
ESL						
Hispanic	81	33.30%	7	2.90%	26	10.70%
Other	5	2.10%	0	0	2	0.80%

EPL is English as Primary Language

ESL is English as Secondary Language

As stated earlier, the shift between the percentage of individuals pleading guilty versus not guilty within the EPL and ESL groups may be determined by their legal sophistication associated with prior court contact and/or funds available to hire their own attorney. The level of socio-economic status may be indicative of counsel status; Kingsnorth et al.(1989) notes that socio-economic status is "...a surrogate variable for social class".

The County of Riverside has guidelines for determining who is eligible for public defender/court appointed counsel appointment. Therefore, many ESL persons who are not found "indigent" by the guidelines are not eligible for court appointed representation. However, these individuals are not positioned within the higher socio-economic group (monetary assets) whose members are able to retain their own attorney, and they often lack knowledge of their right to request representation at time of arraignment. These individuals, therefore, represent themselves, largely to their detriment. The degree of legal sophistication appears to have an initial detrimental effect on persons pleading guilty at arraignment. By law they receive the most severe sentences as they plead guilty to the more severe charge.

This process then enhances future problems, as individuals now have priors and receive harsh sentences later if violations for the same code sections occur. At this point, the legal sophistication is directly reflective of the language status of EPL versus ESL, as the EPL members have begun to understand the legal process, whereas, the ESL individuals still maintain their tendency to plead guilty as charged at arraignment.

Persons situated within ESL usually lack high socio-economic status as well as a high degree of legal sophistication. The ESL group had a somewhat smaller percentage of DUI priors, 11.5% (28-- Hispanic 26, other 2), versus EPL, 13.2% (32--AA 9, White 23). The effect extra-legal factors had on the final sentence severity became more evident when it was found that the ESL group (mainly Hispanics) had almost as many DUI priors as both ethnic groups in the EPL. Thus, if the sample had been divided by race rather than language, the Hispanic members would have dramatically increased the percentage of persons with DUI priors (see Table 4.1).

Also, while ESL individuals had a larger number of DUI priors, they also had fewer priors of "other" type, or

other types of prior offenses, with ESL 2.9%(7) versus EPL 7.4% (18 -AA 6, white 12). This may be a reflection of a lower degree of legal sophistication, as the vast majority of ESL individuals plead guilty at arraignment, thus creating a DUI prior when the possibility exists that defendant would not have legally been found guilty. In addition, it indicates that the majority of ESL subjects obtained court contact by alcohol and/or drug violations.

Data analyzed by blood levels seemed to validate the theory that extralegal factors do play a role in the final outcome of adjudicated charge, which is indicated by the degree of sentence severity. This was evident mainly in the lower blood alcohol levels for ESL defendants. The EPL and ESL groups contained basically the same number of individuals, but the results were noticeably different.

In the EPL group with low (.08%) blood alcohol level 29%(4) were adjudicated as charged (AA-2, White-2), and the ESL within the same blood level percentage, 44.4% (4 Hispanic/other) were adjudicated as charged. However, when sentence severity shifted to a lesser sentence for Alcohol-related reckless driving, the levels reversed and the EPL subjects increased to 42.8%(6--AA 2, white 4) and ESL were

only 22.2% (2 Hispanic/other).

Thus, there is more likelihood that a white defendant with a low blood alcohol level will receive a lesser sentence than either the AA defendant, or the ESL subjects consisting of Hispanic/other individuals. As addressed earlier, there were only 7 "other" subjects in the ESL group of 121 individuals. (see Table 3.1)

The other blood alcohol level reflected similar results. It is noteworthy that in the category of "drugs, refusal and unknown" minority individuals were adjudicated as charged while two white members of the EPL group received a lesser sentence of alcohol-related reckless (Table 4.2). These results, when coupled with the variable of counsel and plea at arraignment, indicated that the trend to plead guilty at arraignment by members of ESL and minority members of the EPL group appeared to be based on extralegal factors. These factors appeared to precipitate the more severe sentence (i.e., there was no specific knowledge of the possible decision) .

Table 4.2

Distribution of Adjudicated Charge For EPL and ESL Groups By BA Level

	EPL		ESL
Low - .08%	African America	White	Hispanic/Other
As Charged	2	2	4
Alcohol Related Reckless	2	4	2
Warrants/Dismissals	1	3	3
Subtotals	5	9	9
Group Totals:	**14**		**9**
.09% - .10%			
As Charged	4	10	9
Alcohol Related Reckless	0	1	1
Warrants/Dismissals	2	3	3
Subtotals	6	14	13
Group Totals:	**20**		**13**
.11% - High			
As Charged	8	32	51
Alcohol Related Reckless	0	0	0
Warrants/Dismissals	5	10	22
Subtotals	13	42	72
Group Totals	**55**		**72**
Drugs,Refusal,Unk			
As Charged	8	8	16
Alcohol Related Reckless	0	2	0
Warrants/Dismissals	4	11	11
Subtotals	12	21	27
Group Totals	**33**		**27**

EPL (English Primary Language) contains African American and White

ESL (English Secondary Language) contains Hispanic and Other

Chapter Five

Summary and Conclusions

Overview

The Riverside study was an examination of persons booked into Riverside County Jail for DUI and/or a combination of DUI and other violations.

From a total population of 698 persons, a random sample of 243 persons was followed intensely from the initial date of arrest, through arraignment or non-appearance, further hearings, and final court adjudication. The individuals were followed from the initial examination period (April 1, 1992 through June 30, 1992) and continuing through June 30, 1993, to determine if persons who initially went to warrant for non-appearance were subsequently adjudicated by other than warrant status.

Summary

This study was conducted to test three hypotheses specific to the relationship between legal sophistication and reduced sentences in case of driving under the

influence of alcohol. The questions were, do persons with less legal sophistication tend to plead guilty at arraignment and thus receive harsher sentences? Is legal representation a factor in pleading and punishment, and does prior court contact affect decisions to plead guilty at arraignment? Analysis of these data led to the identification of additional factors related to outcome in court. It was found that legal sophistication was related to minority status, and an additional hypothesis was developed. This hypothesis is that persons of minority status, specifically primary language, are victims of discrimination in sentencing.

When analyzing the additional hypothesis, these data revealed that "primary language" was indeed an important variable. The study showed that although individuals falling within the minority status of African American (AA) were less likely than whites to obtain a lesser sentence, persons with a language barrier seemed to obtain a larger percentage of harsher sentences overall. For the purposes of the Riverside study, the racial groups were run individually and then re-calculated by primary language as follows: English Primary Language (EPL) containing AA and

white, and English Secondary Language (ESL) containing Hispanic and other. The EPL and ESL groups were basically the same numerically. The EPL had 122 individuals and the ESL had 121 individuals. When analyzing the type of representation, the group breakdowns were also similar (Figure 5.1 and Figure 5.2). In addition , as seen in Figure 5.1 and Figure 5.2, data reflects that EPL individuals were less likely to represent themselves. When subdividing the EPL data as to African American and white the results were as follows: 18%(12) of the African American individuals were granted the public defender,1.6%(2) retained private counsel, and 9.8%(12 proceeded in pro per. The white individuals had a somewhat different outcome, with 32%(39) public defender, 11.5%(14) private counsel, and 27.1%(33) in pro per (Figure 5.3). The individuals being granted the public defender were 50%(61), and private counsel levels were 13.1%(16). The largest percentage of the EPL group were white at 70.6%(86) and African American 29.4%(36).The ESL group was mainly Hispanic. For purposes of this study, the ESL group in Figure 5.2 is designated Hispanic/other. The breakdown as to representation showed that 42.1%(51) were granted the

Figure 5.1

Type of Representation - EPL Group (N=122)

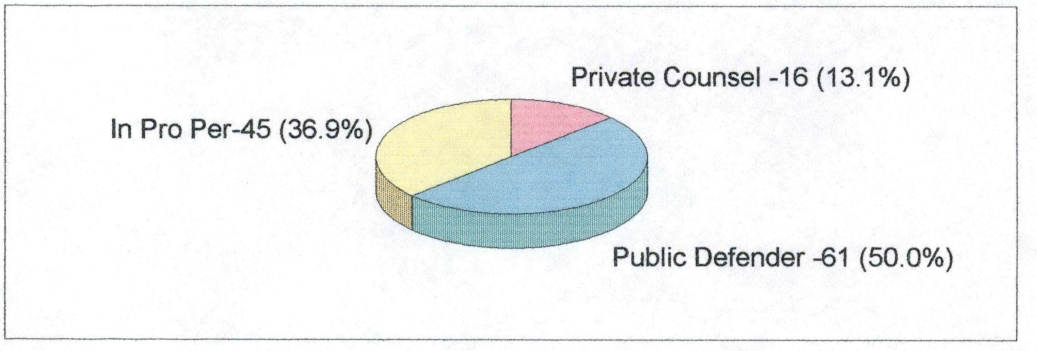


Figure 5.2

Type of Representation - ESL Group (N=121)

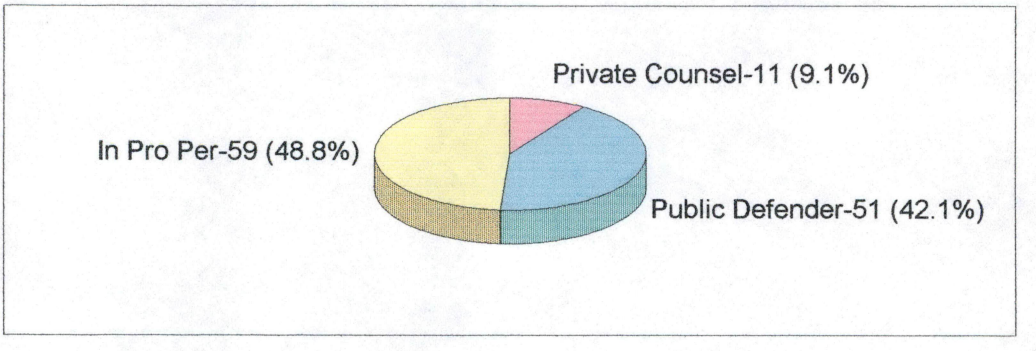
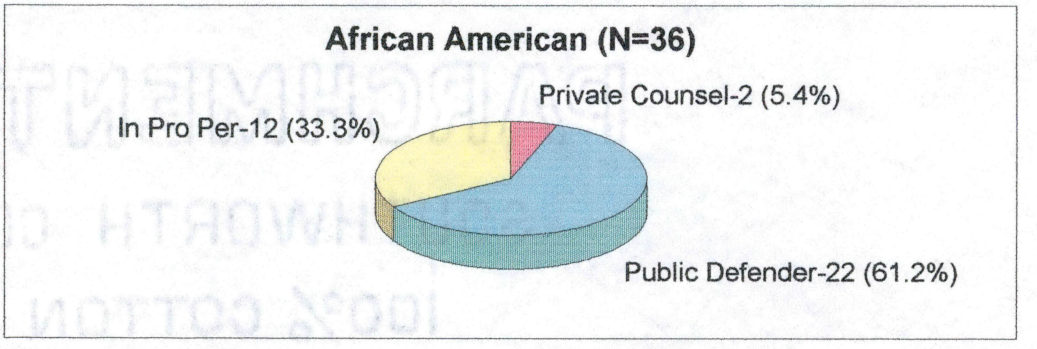
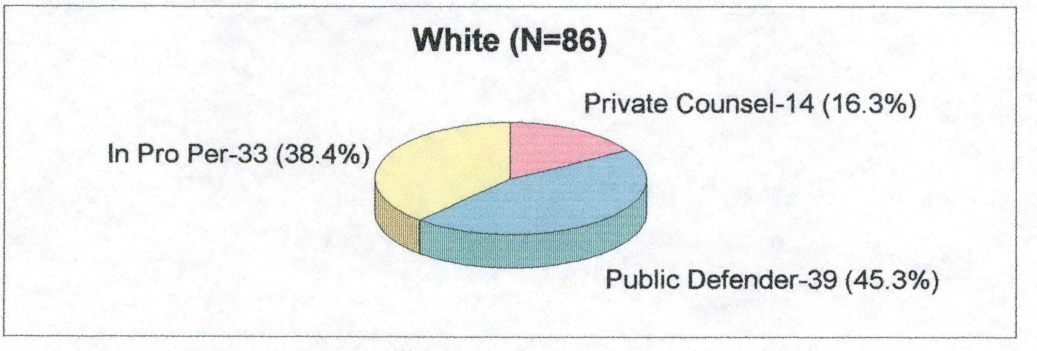


Figure 5.3

Type of Representation By Client Race: EPL Group

(N = 122)





public defender, 9.1%(11) retained private counsel, and 48.8%(59) proceeded in pro per. These figures were evident as the majority of ESL individuals plead guilty at arraignment, thus not requiring counsel.

These results subsequently established the anticipated effects of extralegal factors, specifically language and legal sophistication, on the final sentence severity. The guilty plea automatically removed the opportunity to receive a lesser sentence, and prevented the further exercise of the individual's legal rights. The language barrier appeared to affect the individual's degree of legal sophistication by preventing the individual from fully comprehending his/her legal rights. Conversely, a larger percentage 20.6%(50) of the EPL subjects plead not guilty at arraignment, and only 10.7%(26) of the ESL plead not guilty (see Figure 4.1). The decision to plead guilty versus not guilty at arraignment could have been an outcome of either socio-economic status or legal sophistication.

Bi-county Analysis

A study conducted by Kingsnorth et al., (1989), in

Sacramento dealt with the impact of legislative reform on the role of legal and extralegal variables. The Sacramento study contained mainly white individuals 77.2%, African American 8.4%, Hispanic 12.2%, other 2.2%. The Riverside study contained mainly Hispanic individuals, 46.9%, white, 35.4%, African American,14.8%, and others,2.9% (Table 5.1). The ethnic/minority status differences may be indicative of the variations between the two studies and their final outcomes. The percentages of individuals in the Sacramento study having legal representation 55.3% were similar to the Riverside study, which was 57.2%. The variations became evident when looking at the type of representation. When addressing the variable of representation, as shown in Table 5.1, the Sacramento study conducted by Kingsnorth et al.(1989) and the Riverside study conducted in 1992 had similar percentages of individuals proceeding in pro per : Sacramento, 44.7%, and Riverside, 43.8%. In addition to the larger percentage of white individuals in the Sacramento study, there was a correspondingly larger percentage of privately retained counsel. When addressing public defender appointment percentages between the two studies, the data showed a

Table 5.1

Comparative Distribution: Riverside and Sacramento Studies

	RIVERSIDE		SACRAMENTO	
Race/Ethnicity				
EPL	Number	Percent	Number	Percent
White	86	35.4	1503	77.2
African American	36	14.8	163	8.4
ESL				
Hispanic	114	46.9	238	12.2
Other	7	2.9	43	2.2
Counsel				
Pro Per	104	43.8	926	44.7
Private	27	11.1	595	28.7
P/D or Apptd	112	46.1	501	24.2
Other	0	0	49	2.4

larger percentage of public defender appointment in the Riverside study. This may have been a result of Riverside's larger percentage of minority subjects, specifically, Hispanic. These differences may also have been reflective of the degrees of the subjects' socio-economic status and/or subjects' legal sophistication .

Conclusion

The Riverside study included both legal and extralegal factors. Variables such as gender, ethnicity, race, primary language, initial booking charge, plea at arraignment, blood alcohol level, priors, and adjudicated charge were analyzed and subsequently collapsed to obtain specific results. The initial hypothesis was that minorities, more often than not, receive harsher sentences from lack of legal sophistication and anticipated lower economic status. Without knowledge or financial means, individuals would not be able to pursue their legal alternatives. Thus, the possibility to ultimately receive a lesser sentence or reduced charge is eliminated by lack of options pursued.

The Riverside study determined that primary language was a more relevant factor in affecting sentence severity

than mere minority status. Persons with English Secondary Language were more likely to plead guilty at arraignment than individuals for which English Primary Language (see Figure 4.1).

The data ultimately determined that extralegal factors did affect sentence severity as seen in Table 4.2 . In addition, the minority status did affect the final outcome of plea to a lesser charge. Of the entire group (243), minority/non-English speaking individuals received a larger percentage of more severe, plea of guilty as charged, sentences than the minority/English speaking individuals. The white, non-minority/English speaking individuals received the largest percentage of less severe sentences, basically obtained by the plea bargain process to a lesser charge of ARR. These results were obtained most predominantly in the " Low - .08%" and " Drugs, Refusal, Unknown" blood alcohol levels as noted in Table 4.2 The white EPL individuals received more ARR dispositions and a larger percentage of representation.

The research showed, at least in this study, that extralegal factors such as language and ethnicity when combined with minority status do affect the legal process

and the ultimate degree of sentence severity upon final adjudication. The outcome was obtained by the degree to which individuals have the knowledge and assets to pursue their legal rights.

The Riverside findings as to extralegal factors such as race, gender, and age were in agreement with the Sacramento study conducted by Kingsnorth et al.,(1989). Kingsnorth et al.,(1989) found that extralegal factors such as race, gender, and age did not play a vital role in minority subjects receiving a harsher sentence. However, the Sacramento study was conducted on legal and extralegal factors with emphasis on court sentencing practices, while the Riverside study dealt more with the individuals' degree of legal sophistication and pursuance of the legal options available. In addition, the Riverside study found that the extralegal factor of Primary Language appeared to have a major effect on the individual's ability to understand his legal rights, fully utilize his legal options, and possibly receive a lesser sentence.

The area of the effects of extralegal factors is controversial. As with all research, the demographics of the data-gathering area and subject population, and the

issues analyzed, will ultimately affect the final outcome. This appeared evident in the research conducted in Riverside. After extensive analysis, the Riverside study showed that, based on data available, the extralegal factor of Primary Language was an important consideration in an individual's obtaining a lesser sentence.

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