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Judicial decision-making and criminal sentencing : partisanship and sentencing severity by state trial judges

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ABSTRACT

JUDICIAL DECISION-MAKING AND CRIMINAL SENTENCING: PARTISANSHIP AND SENTENCING SEVERITY BY STATE TRIAL JUDGES

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American trial judges exercise an enormous power when they sentence criminal offenders to a specific length of incarceration. Does the partisan affiliation of the trial judge affect the final determination in an offender's length of incarceration? Using a psychological framework, I examine the effects that partisanship, and ideology have on a judge's perception of the root causes of crime and the primary purpose that sentencing should serve in our criminal justice system. Using a unique proxy measure for judicial partisanship I analyze violent felony cases in Washington State from 2000 to 2006. I find that a Republican judge hands down a sentence 4.4% longer than a Democratic judge, controlling for other case factors. Additional analysis shows that this finding is most prominent in rape cases, in which a Republican judge can be expected to hand down a sentence 34% longer than his Democratic counterpart. I conclude with several possible explanations on why rape cases would trigger an exceptionally longer sentence from a Republican judge.

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JUDICIAL DECISION-MAKING AND CRIMINAL SENTENCING: PARTISANSHIP
AND SENTENCING SEVERITY BY STATE TRIAL JUDGES

BY

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DEDICATION

For my mother and father, who assisted me in getting back on my feet
regardless of how many times I stumbled.

Without your love and encouragement,

I would not be who I am today.

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CHAPTER 1

INTRODUCTION

In 2013 over six million individuals were subject to the supervision of a state correctional system, with two million serving time in either prison or local jails and the remainder on probation or parole (Glaze and Kaeble 2014). While prosecutors initiate and file formal criminal charges against individuals, trial judges are the political actors with the ultimate authority to exercise the state's power to deprive a person of their liberty. State and federal legislatures, both experiencing financial budgetary constraints, continue to debate the issue of sentencing reform for the purpose of alleviating costs, the discussion being primarily concerned with statutory changes and modification of sentencing guidelines. Researchers in the fields of political science and criminology have contributed to these policy debates with empirical analyses of factors that influence sentencing outcomes. While political scientists have focused on the effects of judicial selection method and public opinion on sentencing behavior (Berdejo and Yuchtman 2013; Gordon and Huber 2004, 2007; Kuklinski and Stanga 1979; Nelson 2014), criminologists have concentrated on, among other things, characteristics of the judge, case, and defendant (Kulik, Perry, and Pepper 2003; Steffensmeier and Britt 2001; Steffensmeier and Hebert 1999; Tiede, Carp, and Manning 2010).

These two fields have not been mutually exclusive, rather the political science literature on state judicial behavior can be seen as acknowledging the importance of judge and defendant characteristics and incorporating them into broader theoretical models. The dominant approach to examining judicial decision-making among elected state judges is that, similar to members of Congress (Arnold 1990; Downs 1957; Kingdon 1977; Mayhew 1974), they are rational actors that seek reelection to the bench as their primary goal and therefore make decisions in accordance with that goal (Brace and Hall 1990, 1993, 1995; Brooks and Raphael 2002; McGuire 2012; Savchak and Barghothi 2007; Traut and Emmert 1998). While this body of literature has increased our understanding of how trial judges reach decisions when sentencing, it has largely sidestepped the question of whether a judge's individual penal philosophy influences sentencing behavior. Those who have attempted to account for judicial partisanship in their research have focused primarily on the state of Kansas (Gordon and Huber 2007; Lim 2013), finding little evidence that party affiliation influences sentencing outcomes. These studies have echoed the previous literature and attributed sentencing variations to selection method and electoral incentives.

The primary question of interest in this paper is whether the partisanship of state trial judges affects their sentencing behavior. In other words, do Democratic and Republican judges differ in their sentencing decisions in cases where they are able to exercise discretion? I hypothesize that Republican judges will sentence offenders more punitively than their Democratic counterparts. While this hypothesis may appear intuitively simple given that the Republican Party has largely taken ownership on the issue of crime (Egan 2013; Petrocik 1996) and Republican voters are more favorable towards the death

penalty¹ and longer criminal sentences², surprisingly little research has been done attempting to empirically measure the influence that partisanship has on criminal sentencing. The major contribution of this research is a renewed theoretical approach to judicial decision-making that focuses first and foremost on the sentencing philosophy of the individual judge.

Studying trial court judges and their sentencing decisions is important for a number of reasons. First, criminal sentencing is a forum where the fundamental concept of equality under the law interacts with individualized decision-making. The stakes are especially high in criminal cases as the outcome can be the deprivation of a citizen's liberty, property, and potentially his life. Additionally, 48 states and the District of Columbia deny the right to vote to those who are incarcerated for a felony and 12 states permanently disenfranchise certain classes of felons based on the crime and time period it was committed,³ again showing the high stakes of case outcomes. Lastly, appellate courts are highly deferential to the decisions of lower courts in sentencing appeals (O'Hear 2010), meaning the trial judge's sentence is likely to be the one that the offender will serve. In states that use a determinate sentencing scheme offenders are not eligible for parole, making the trial judge's decision all but final and determinative. Given the significance of the sentencing

¹ Pew Research Center. 2015. "Less Support for Death Penalty, Especially Among Democrats." April 16. (available at <http://www.people-press.org/files/2015/04/04-16-15-Death-penalty-release.pdf>).

² Public Opinion Strategies. 2012. "Public Opinion on Sentencing and Corrections in America." March. (available at http://www.prisonpolicy.org/scans/PEW_NationalSurveyResearchPaper_FINAL.pdf).

³ The Sentencing Project. 2014. "Statement of the Sentencing Project: To the Senate Judiciary Committee, Subcommittee on The Constitution, Civil Rights and Human Rights." December 9. (available at http://sentencingproject.org/doc/publications/rd_Statement_for_SJC_Hearing_on_Civil_and_Human_Rights_in_the_U.S._Dec_2014.pdf).

outcome in criminal trials it is important that researchers and policy makers have a better understanding of the factors that can influence the length of incarceration that is imposed by the judge.

This is a first step in attempting to better understand the effect of the human element in trial judge sentencing behavior. The human element refers to the individual view that each judge has on the causes of crime and the purposes of criminal sentencing. I operationalize this by using a proxy measure for the partisanship of the trial judge, which provides an indication of the judge's ideological views and sentencing philosophy (Carroll et al. 1987; Schanzenbach and Tiller 2008). Empirical examinations of how partisan identification affects a judge's decision-making dates back to the seminal work of Schubert (1959) and Nagel (1961). While partisanship is not perfectly correlated with ideology, research on judicial decision-making has confirmed conventional wisdom and found that "party is a dependable measure of ideology in modern American courts" (Pinello 1999, 243). Brace, Langer, and Hall (2000, 391) further state that "[w]ithin courts, partisan affiliation taps ideological differences among judges."

In the following I first develop my theoretical model that examines judicial penal philosophy and how that philosophy is connected to partisanship. This initial section will demonstrate how the partisan identification of a judge is connected to his views on criminal sentencing, and how these views affect sentencing outcomes. Second, I discuss the existing literature on sentencing behavior of federal and state judges. Third, I discuss judicial elections and criminal sentencing in Washington State. Washington provides an ideal – and conservative – case study as trial judges are chosen through nonpartisan elections, and they

have been operating under a sentencing guideline regime for over thirty years.⁴ Fourth, I detail the data and statistical methodology that will be used to test my hypothesis. Next, I present the findings from my analysis. Lastly, I conclude with a discussion of the implications of my findings as well as further research that can be conducted to better understand the complex process of judicial decision-making in the area of criminal sentencing. I examine criminal sentence outcomes within Washington State, where trial judges are chosen through nonpartisan elections, and find Republican and Democratic judges differ in their sentencing of rape offenders. On average, a Republican judge can be expected to hand down a sentence approximately 35% longer than a Democratic judge for a person convicted of the felony offense of rape.

⁴ Felony sentencing in Washington is governed by the 1981 Washington Sentencing Reform Act (RCW 9.94A.310)

CHAPTER 2

TRIAL JUDGES AND CRIMINAL SENTENCING

In *Sentencing as a Human Process*, Hogarth (1971) describes a magistrate's sentencing decision as one that is in all respects linked to the subjective perception of the sentencing judge. The author utilizes survey data collected from individual magistrates in Ontario, Canada and combines this with sentencing data to understand the role that the judge's personality plays in the decision-making process. After extensive data collection and rigorous empirical testing, he concludes that case facts, legal factors, and other "features of the external world are interpreted, assimilated, and made sense of in ways compatible with the attitudes of the magistrate" (382). Each judge possesses a unique set of beliefs regarding the root causes of crime and the purpose of sentencing, and these beliefs create a lens through which everything else is viewed. The facts of the case, governing law, social context, and characteristics of the defendant are all viewed from the lens of the judge as an individual human actor. In this respect, criminal sentencing is a complex process that originates with the judge as an individual and is therefore dependent upon the judge's beliefs and attitudes, which are themselves influenced by personal experience (Johnson 2006; Myers and Talarico 1987). Beliefs regarding the root causes of crime can be generally divided into two broader psychological views, the first being that individual behavior is best explained as the product of the person's circumstances, and the second

stating that each person is responsible for their own behavior, and their actions are rooted in their dispositions (Lane 2011, 764-65). In the case of criminal sentencing, liberal judges will subscribe to the circumstantial perspective, believing external factors are a significant cause for an offender's criminal conduct, and they will view rehabilitation as the primary goal of sentencing (Hofer, Blackwell, and Ruback 1999). Conversely, conservative judges will view the offender's disposition and personal decisions as a significant cause of the criminal act and will therefore view retribution as the goal of sentencing (Hofer, Blackwell, and Ruback 1999). Since conservative judges will be more focused on punishment of the offender it follows that the sentence they hand down will be more punitive than their liberal colleagues.

This argument served as the theoretical explanation for experimental research conducted by Partridge and Eldridge (1974), and Forst and Wellford (1981). Both of these studies consisted of providing federal judges with hypothetical cases on identical offenders and asking them to identify the sentence they would hand down. In the hypothetical case involving a person convicted of heroin possession, judges differed in their sentencing depending on whether the offender was presented as being addicted to heroin. Of those judges presented with an offender suffering from a heroin addiction, a small but significant portion gave a reduced prison sentence or suspended the sentence in favor of probation and commitment to a rehabilitation program (Partridge and Eldridge 1974, 47). These judges' decisions were altered upon the knowledge of the offender's circumstances, and sentences were reduced given the context of the offender's condition. In accord with the theory I have presented, the judges who lowered their sentences and focused instead on rehabilitation

would possess a liberal sentencing philosophy in which context matters. The judges whose sentencing did not change even in light of the offender's addiction would have a conservative leaning and would assign blame equally to the offender regardless of his situation.

In addition to the offender's contextual environment, judges also disagree on the seriousness of a particular case. The level of seriousness that is assigned by the judge based on the nature of the offense strongly influences the sentencing outcome, even controlling for the judge's tendency to be more lenient or tough in their sentencing (Clancy et al. 1981; Forst and Wellford 1981). Different judges will look at the same offense scenario and reach different opinions on how severe they consider the offense to be. In other words, a judge's sentencing proclivities may be best understood by interacting sentencing tendencies with the offenses being examined. The possibility of an interaction between a judge's partisanship and the offense committed is examined in a separate statistical model below.

A shortfall of this previous research is that it has been primarily devoted to judges who serve on federal courts. Since these Article III judges are appointed for life, they are largely immune from the external pressures of the electorate, factors that must be taken into consideration by state judges in election and retention systems. An elected judge may prefer to hand down a more lenient sentence based on the context of the offender and the offense, but this preference must be further weighed against potential backlash from constituents. This added interaction of electoral pressures and constituent preferences is what distinguishes this research from the previous scholarship on partisanship and sentencing.

Partisanship, Ideology, and Federal Sentencing

One of the prevailing theories among federal court scholars studying judicial decision-making is the attitudinal model, which states that the attitudes and values with which a judge associates should cause them to support certain legal claims while opposing others (Segal and Spaeth 1993, 69). Since federal judges do not typically state their ideological preferences, their liberal/conservative predispositions are determined by examining the partisan affiliation of the appointing president, which serves as a reliable proxy measure of ideology (George and Epstein 1992; Nagel 1961; Tate 1981). Research among federal judges has repeatedly shown that Democratic presidents appoint more liberal judges than their Republican counterparts (Brudney, Schiavoni, and Merrit 1999; Stidham, Carp, and Songer 1996), with the former deciding cases in accord with their liberal ideology and the latter with their conservative ideology (Nagel 1961; Segal and Spaeth 1993). Likewise, in federal criminal cases in which judicial discretion exists at the sentencing stage, it would be expected that Democratic judges would exercise their discretion in accord with their liberal ideology and hand down a less severe sentence than Republican Judges. Tiede, Carp, and Manning (2010) control for judge, defendant, and case characteristics and find evidence supporting this claim. The reason provided for this connection is that Democratic judges, reflecting a liberal ideology, will be more sympathetic to criminal defendants whereas Republican judges, exercising a conservative ideology, will favor prosecution and law enforcement (Tiede, Carp, and Manning 2010, 255; George 2001, 34; Schanzenbach and Tiller 2008, 720-21).

Examining the composition of federal district courts, Schanzenbach and Tiller (2007) found that even under the U.S. Sentencing Guidelines significant disparity in sentencing existed, and that this disparity was associated with the partisan affiliation of the sentencing judge. Using the proxy measure of the appointing president's party, the findings indicated that judges appointed by Democratic presidents gave less severe sentences than their Republican colleagues for drug, theft, and violent crimes. Later research built on this study and added individual judge identifying information by creating a unique database using cases from the Public Access to Court Electronic Records (PACER) system, which is a centralized database that houses federal court records. In an examination of 2,000 federal drug cases the results echoed earlier research; federal judges appointed by Democratic presidents handed down less severe sentences than judges appointed by Republican presidents (Schanzenbach and Tiller 2008).

More recently the Transactional Records Access Clearinghouse (TRAC)¹, an organization based out of Syracuse University has, through extensive Freedom of Information Act requests, collected over 20 years of federal sentencing data which includes judge identifying information. The most recent report published by TRAC (2012) and reported on by *The New York Times* found varying degrees of sentencing disparity among judges within the same federal courthouse.² Controlling only for the randomness in which cases are assigned to judges, the report found that of the eight judges in the Baltimore,

¹ While TRAC releases reports to the general public on sentencing variations among federal judges, access to the database which houses case and judge identifying information requires a paid subscription.

² Secret, Mosi. 2012. "Wide Sentencing Disparity Found Among U.S. Judges." *New York Times*, March 5 2012.

Maryland federal courthouse the median sentence was 57 months, with one judge handing down an average of 17 months incarceration and another judge handing down an average of 78 months. While political affiliation of the judges is not indicated in the report, it provides further empirical evidence that judges differ in their attitudes toward sentencing even in the presence of a sentencing guideline regime.

The previously discussed work has been focused on sentencing outcomes at the level of the federal judiciary. The primary reason for this has been limitations on data available at the state level. Every year the U.S. Sentencing Commission collects and publishes case-level sentencing data for all persons convicted of a federal offense. Prior to 2009, this sentencing data could not be cross referenced with the sentencing judge due to USSC policy. Since the release of judge level identifying information by TRAC, researchers have been able to connect sentencing outcomes with the sentencing judge. While this research provides strong evidence supporting the claim that judges' partisanship affects sentencing outcome, the findings are not necessarily generalizable to state trial judges. Unlike federal judges, trial judges in all but a handful of states serve for a fixed term, after which they are generally required to face the electorate in a competitive or retention election. Given the premise that a judge is primarily interested in retaining his seat on the bench, he must factor into his decision-making the preferences of the electorate and the possibility that he will be challenged in an upcoming election. While studying the effects of partisanship on the sentencing behavior of federal judges can provide a better understanding of the interaction between the two, the electoral constraints faced by state judges presents a fundamentally different environment that requires its own research focus.

On a more practical level, of the 1.1 million felony offenders that were sentenced in 2006, only 73,000 individuals were sentenced in federal courts (Durose et al. 2009). With 94% of sentences occurring in state trial courts, and trial judges in 39 states having to stand for some form of reelection, the focus on life tenured federal judges has overlooked the elected political actors that hand down the vast majority of criminal sentences. While case-level sentencing data has in the past been notoriously difficult to obtain, state sentencing commissions, which are employed by twenty-one states, have recently begun aggregating this data to monitor the effects of sentencing guidelines. The availability of this data has led to a new focus on state trial judge behavior.

The relationship between partisanship and attitudes toward crime runs deeper than the judicial system, and can be found in all aspects of politics. Republican presidential candidates and congressional candidates have long held a “tough on crime” stance that was synonymous with punishing offenders and increasing mandatory sentences (Holian 2004). In the 1980s President Reagan and the Republican Party came to own the issue of crime with this approach (Petrocik 1996). Focusing on media accounts of rising crime rates, the party labeled Democrats as coddlers of criminals and placed themselves as the defender of crime victims. Holian (2004) finds that beginning with Clinton, Democrats were able to shake the soft on crime label and rebrand themselves as the party of crime prevention. The partisan divide over how to prevent future crime and manage criminals is prevalent among the electorate and those who serve in office, making it seem almost inevitable that these differences would eventually arise within an elected judiciary.

State Trial Judges and Sentencing Behavior

Analysis of sentencing behavior at the state level has the benefit of introducing an additional layer of constraints on the sentencing judge in the form of political factors such as judicial selection method and constituent ideology. In other words, focusing on a state level analysis allows the researcher to view the judge's decision as a function of "what they prefer to do, tempered by what they think they ought to do, but constrained by what they perceive is feasible to do" (Gibson 1983, 9). While a judge may prefer to sentence an offender according to his or her personal attitudes, state selection method, constituent opinion, and sentencing guidelines established by the legislature all serve as constraints on these attitudes. Recent studies on sentencing behavior at the state level have examined the interaction between judicial selection method and sentencing outcomes, with results indicating that a judge's decision-making is influenced by his proximity to an upcoming election (Berdejo and Yuchtman 2013; Gordon and Huber 2004, 2007). In Pennsylvania, where trial judges stand for retention election, judges measured as liberal are found to sentence more punitively as they approach reelection (Gordon and Huber 2004).³ The reason given for this is that liberal judges fear being labeled as soft on crime by political opponents, and will therefore increase their sentencing behavior as they approach reelection to be more in accord with their conservative colleagues. In examining the variation in sentencing behavior between appointed and elected judges in Kansas, Gordon and Huber

³ To measure judicial ideology the authors utilize a formula based on judge attributes, including age, gender, and prosecutorial experience. Measuring judge ideology using such attributes has generally been regarded as controversial in the literature (Brace, Langer, and Hall 2000).

(2007) find that elected judges sentence more punitively than their appointed colleagues. They attribute this finding to the electoral constraints faced by elected judges and their proximity to the next election. While not conclusive, the limited research in the field has shown that judges may feel constrained by constituent preferences when sentencing offenders close to an election.

Sentencing decisions by state trial judges are inherently public acts, especially in higher profile cases likely to receive media attention. Additionally, voters prefer more punitive sentences than judges hand down. When asked whether “the courts in [the respondent’s] area deal too harshly or not harshly enough with criminals,” 82.8% of respondents answered that courts are “not harsh enough,” while only 12.2% and 5.2% answered that courts were “about right” or “too harsh,” respectively.⁴ Voters may prefer harsher sentences, however their preferences often lay dormant until after a perceived lenient sentence is handed down and made public through media reporting. Roberts and Edwards (1989) find that voters’ punitive tendencies are largely a product of their informational environment. When shown a newspaper account of a criminal trial and the resulting sentence, respondents almost always preferred a more punitive sentence than that handed down by the judge. In contrast, respondents that were shown more detailed court transcripts and case facts were much less likely to believe the sentence was too lenient. Through agenda setting and priming, the news media’s constant focus on crime related stories leads voters to believe crime rates are rising when in reality they have dropped

⁴ General Social Surveys, 1972-2006 [cumulative File]: Courts Dealing with Criminals – (available at <http://www3.norc.org/GSS+Website/Data+Analysis>). While the GSS is a national survey the responses from respondents in the Pacific region are almost identical to those for the nation as a whole.

(Beale 2006). In covering a story, media outlets can employ an episodic frame in which an issue is conveyed through a specific instance, or a thematic frame in which an issue is presented within a broader historical and geographic context (Iyengar 1996). Beale (2006, 448) posits that in the context of crime, market-driven media outlets are more likely to employ an episodic framing of a crime related story, which may result in viewers supporting more punitive punishments as they attribute the criminal conduct to the individuals personal attributes. Furthermore, relentless coverage of crime in the media can produce feelings of fear and anxiety in viewers, which leads to a preference for immediate solutions in the form of more punitive punishments (Sotirovic 2001).

The research on trial judge decision-making has so far focused primarily on the effects that elections have on a judge's sentencing behavior. There has been little focus on whether the judge's sentencing behavior is influenced by his partisan identification and ideology. One reason for this is that party identification is inherently difficult to determine at the trial level unless the state employs partisan elections. But is it reasonable to conclude that judges chosen through nonpartisan elections are themselves void of any partisan leanings? On the contrary, research has indicated that party organizations remain active in judicial elections even in states with nonpartisan selection methods (Hall 2009; Streb 2007). Additionally, candidates running for office in a nonpartisan election may have held a previously partisan position or may be actively involved with – yet not endorsed by - a party organization (Taylor and Schreckhise 2003). In the case of nonpartisan judicial elections, candidates may try to signal their party affiliation through their campaign slogans. While judges, in general, adopt a slogan that is some variation of ‘tough on crime,’

a more liberal candidate may attempt to distinguish themselves by advertising that they are ‘tough but fair’ (Linde 1988). This can be done by focusing on certain traits and issues when campaigning, receiving endorsements by partisan groups and individuals, or by simply being known in the community as a Democrat or Republican. If a correlation between partisanship and sentencing is found among nonpartisan judges, one may question whether the lack of party label at the ballot box actually removes party from elections. I examine this issue further in my discussion of operationalizing and measuring party identification, and in my closing remarks.

CHAPTER 3

RESEARCH DESIGN

To empirically test the hypothesis that a judge's partisan affiliation will affect their sentencing behavior, I utilize felony sentencing data from Washington State. Washington provides an ideal setting for my examination of the effects of partisan affiliation. Trial judges in Washington are chosen in nonpartisan elections, and serve four year terms. Judges who run in nonpartisan elections and serve long terms are considered to be more divorced from the electoral connection than their partisan counterparts (Gordon and Huber 2004). This electoral disconnect should allow Washington trial judges to give greater weight to their own sentencing preferences as opposed to the preferences of their constituents. Additionally, trial judges in Washington have been sentencing offenders under state sentencing guidelines for over thirty years. The sentencing guideline regime is well established in the state, and it provides judges with a large degree of personal discretion when handing down a final sentence. Since its inception the Washington State Sentencing Guidelines Commission has collected a myriad of information on every felony sentence handed down in the state. This has provided researchers with a unique opportunity to isolate specific factors in sentencing while controlling for others. Lastly, the political landscape in Washington has changed dramatically over the past thirty years. While all but two counties voted Republican in the 1980 presidential election, the state has become largely split in the

number of counties voting Republican and Democrat. This political transformation has resulted in judges of both parties sitting in counties that have changed their partisan voting preferences since the judge's first election.

The dataset I use identifies all felony offenses for the years 2000 through 2006 within Washington State, as reported and collected by the Washington State Sentencing Guidelines Commission.¹ The sentencing data includes a rich set of variables regarding defendant characteristics, offense criteria, judge information, and applicable sentencing guidelines for each offense. I augment this data by identifying the partisanship of the trial judge using a proxy measure. The year 2000 provides a preferable starting point since it marks the first year after Chelan and Douglas counties were split into separate judicial districts.² I limit my analysis to cases involving a visible violent offense, a set of cases in which the judge is always able to exercise discretion in sentencing. The subset of cases examined include those where the highest count was some form of aggravated assault, robbery, or rape. This results in 10,231 observations for discretionary sentences handed down by a total of 230 judges. Since the subset of cases being examined are more visible to the public, there is greater potential for the judge's sentence to be influenced by constituent preferences and electoral considerations (Gordon and Huber 2004). This provides a more conservative test of my hypothesis as it incorporates the electoral pressures that have been found to influence sentencing decisions. More broadly speaking, this model recognizes

¹ Data was obtained from Carlos Berdejo and Noam Yuchtman (2013). The authors modified the dataset by including election data for each judge and then creating an electoral proximity variable based on this information. This variable is discussed further in a later section.

² Using data after this transformation occurred eliminates any potential influence that might be attributed to the rearrangement of districts and change in constituencies.

sentencing as a complex real-world process in which the trial judge must weigh a multitude of often conflicting factors when handing down a criminal sentence.

Judicial Elections in Washington

Felony offenses in Washington are adjudicated in the Superior Courts, which are currently organized into 32 judicial districts comprising 39 counties. These districts are composed of either a single county or two or more adjacent counties. Superior Court judges are elected and retained through nonpartisan elections and serve for a term of four years. Their constituency is the entirety of their judicial district rather than just the county they serve in. If more than one candidate files for election for the same seat, the candidates face each other in what is considered a primary election, usually held in September of presidential year elections. If one candidate in the primary obtains more than 50% of the vote they are certified as the winner and do not appear on the ballot in the general election. If no candidate receives more than 50% of the vote in the primary election, the top two vote getters face each other in the general election. When a vacancy occurs on the court the governor appoints a judge to fill the position and the appointee serves until the next general election, at which point they must win election to serve the remainder of the term

Criminal Sentencing in Washington

Sentencing in Washington for felony offenses is governed by the Washington Sentencing Reform Act of 1981 (WSRA).³ The WSRA establishes presumptive sentencing ranges

³ Revised Washington Code [RCW] 9.94A.310

based on the seriousness of the offense and the offender's prior criminal record.

Additionally, the guidelines for any given offense are affected by certain facts that warrant an enhanced sentence, such as the presence of a firearm in the commission of a crime. For any given case the trial judge's discretion is largely – although not absolutely – constrained by the applicable guideline ranges. For example, first degree assault⁴ is classified as a Class A serious violent offense with a seriousness level of XII.⁵ To calculate the offender's score the judge or prosecutor assigns point values depending on the nature of the offender's adult and juvenile history. The seriousness level of the offense represents the row in the sentencing matrix and the resulting offender score represents the column. An offender convicted of first degree assault with an offender score of five (indicating the presence of a prior record) would have a sentencing range of 138 to 184 months. If the offender is found to have been in the possession of a firearm during the commission of the assault, 60 months is added to the high end of the guideline range, creating a new range of 138 to 244 months. The sentencing judge exercises full discretion in determining an appropriate length of incarceration within this range.

Criminal sentencing at the state level was fundamentally altered following the U.S. Supreme Court's decision in *Blakely v. Washington* (2004).⁶ Prior to the *Blakely* decision, Washington judges had non-reviewable discretion to sentence an offender within the

⁴ RCW 9A.36.011

⁵ Offenses are divided in 16 seriousness levels determined by the legislature ranging from low (level I) to high (level XVI).

⁶ *Blakely v. Washington*, 542 U.S. 296 (2004).

guideline range and could hand down sentences outside the standard range if they found that “there were substantial and compelling reasons justifying an exceptional sentence.”⁷ Exceptional sentences that were outside the standard range were subject to substantive appellate review to determine if the sentence was reasonable. In *Blakely* the Supreme Court held that any factual finding which authorized a judge to exceed the standard sentence range must be found to exist by a jury beyond a reasonable doubt, or agreed to by the defendant when negotiating a plea agreement. The practical effect of the Court’s decision was to limit the judge’s ability to impose a sentence above the standard range when the defendant contests the facts that allow for the enhancement. Judges are still able to sentence below the standard range in the presence of mitigating circumstances, and sentences below and above the standard ranges are appealable by the state and defendant respectively.

A substantial number of criminal cases are adjudicated through plea agreements, which are negotiated by attorneys in the shadow of the trial judge (Lacasse and Payne 1999). In other words, even in those cases settled through a plea agreement, the trial judge’s sentencing preferences have an indirect effect on the prosecutor’s sentencing recommendation (Bibas 2004). A judge is only expected to reject the terms of a plea agreement if the punishment is inconsistent with the interests of justice and prosecuting standards.⁸ Prosecutors exercise their own discretion in determining the specifics of each charge that is filed, which results in different guidelines being applicable. Additionally, judges are able to take into account certain mitigating factors that may justify a downward

⁷ RCW 9.94A.535.

⁸ RCW 9.94A.431.

departure for a given case. All of these components, when combined, lead to variation in sentencing outcomes in spite of the presence of a guideline structure.

Dependent Variable

The construction of the dependent variable for an analysis of criminal sentencing has been handled differently by scholars in the field. In examining trial sentence outcomes Berdejó and Yuchtman (2013) use the standard length of confinement in months as their dependent variable. Other researchers examining sentencing outcomes in petty and misdemeanor offenses, which often result in no confinement, have used a sentencing severity scale as their dependent variable (Gibson 1980; Kuklinski and Stanga 1979; Nelson 2014).⁹ While using this severity scale has its advantages in its ability to account for alternative punishments, the scale's original construction has been repeatedly modified overtime, and its applicability to felony sentences is less than ideal. Additionally, any resulting coefficients are difficult to interpret in a substantive manner, since they do not represent a length of time with regards to punishment. Since the cases I am examining are serious felonies that are likely to result in a measurable length of incarceration, I utilize the temporal length of the sentence in creating my dependent variable, with a maximum cap of 720 months. This cap recognizes a sentence of 60 years as being equivalent to a life sentence (Gordon and Huber 2004; Johnson 2006).

⁹ Research on petty and misdemeanor offenses often requires examining sentences that are less than incarceration, such a community service, probation, or fines. To account for this variation scholars have used modified version of a sentencing severity scale that was originally printed in the 1968-70 edition of *Federal Offenders in U.S. District Courts*.

One problem that occurs when trying to model criminal sentencing data with the original sentence length is that there is over-dispersion in the distribution of sentences, with a large amount of cases falling on the lower end. Simply stated, the sentences are not normally distributed, which undermines a basic assumption of regression analysis. To correct for this issue, I transform the dependent variable by utilizing the natural logarithm (+1) of length of incarceration (in months) handed down by the sentencing judge (Gordon and Huber 2004, 2007). Adding the value of one is arbitrary, but it accords with previous research as it prevents sentences of one month and less from being dropped (Johnson 2006; Sullivan, McGloin, and Piquero 2008). Using the natural logarithm corrects the distribution problem as it normalizes the data while also retaining the substantive effects of a sentence increase. For example, a five month increase of a person's sentence from five months to 10 is more serious than an equal increase from 50 to 55 months. The former increase doubles the original sentence while the latter represents only a 10% increase. The natural log of the sentence retains this assumption of proportional increase.

Key Explanatory Variable

The key explanatory variable *Party ID (PID)* is used to represent the party affiliation of the trial judge and is coded as either 0 or 1, where 0 equals affiliation with the Democrat Party and 1 equals affiliation with the Republican Party. As discussed, judges in Washington obtain their position either by election or appointment by the Governor. For those judges that were appointed, I code their partisanship based on the partisan affiliation of the appointing Governor. In states where governors have the power to appoint judges the governor “tend[s] to appoint persons who have, through their past political, legal or social actions reflected the values, policies, and preferences held by [the] Governor[.]” (Sheldon and Maule 1997, 106). In Washington the governor is able to appoint judges when a vacancy occurs on a court or when a new seat is created by the legislature. As the Washington governor has been a member of the Democratic Party since the beginning of 1985, the judges in the dataset were all Democratic appointees. There are a total of 57 judges who were appointed within the subset of observations, representing a total of 2,838 discretionary sentences.

Since judges in Washington are chosen through nonpartisan elections, identifying which of the two major parties the judge identifies with presents an initial obstacle. As previously discussed, one of my assumptions is that judges running for office will seek to signal to voters their partisan identification through local campaigning and endorsements. If candidates for the bench are sending these partisan signals, the voters most likely to pick-up on them would be those most interested and active in politics. Prior research has generally shown that those voters who are politically active and more ideologically extreme are most

likely to participate in a state's primary election (Brady, Han, and Pope 2007; Norrander 1989). Because judicial elections are low-salience affairs for the general public, they become more salient for elite activists who work to mobilize primary voters (Key 1956; Canes-Wrone, Brady, and Cogan 2002). In short, "nonpartisan elections . . . attract the more attentive voter" Baum (1994, 167). An underlying assumption in my partisan proxy measure is that voters who participate in Washington's primary elections will be knowledgeable enough to differentiate competing judicial candidates.

Given this assumption I use the voting results from Washington's primary elections to measure a judge's partisanship. I measure the partisanship of the trial judge by looking at the primary election results from when the judge was first elected to the bench, as long as that election is contested.¹⁰ Focusing on the judge's first election, and only those elections that are challenged, I ensure that primary voters had a choice between at least two candidates. To determine the partisanship of the judicial candidate who wins the primary election, I use the results from the U.S. House of Representatives primary for the same county. For example, if the voters in a given county cast more total votes in the congressional race for the Democratic Party primary candidates than for the Republican Party primary candidates, I code the judge who wins their contested primary election as a Democrat. In those judicial races where the judge is elected by voters of multiple counties I add the votes for the U.S. House race for each county to ensure that all votes are accounted for. Again, the assumption is that primary voters casting a Republican ballot will vote for a

¹⁰ Election results were obtained from the Washington State Secretary of State website (www.sos.wa.gov/elections/press.apx) and through the county auditor websites of the various Washington counties.

Republican U.S. House candidate and the judicial candidate that most closely aligns with the Republican Party. An added benefit of this measure is that it captures the partisanship of the judge at the time of election and holds that partisanship constant even though constituency ideology may change over time. In other words, this measure of judicial partisanship should be exogenous to constituent ideology over time. As this is a unique method by which to measure judicial partisanship the reader may question its validity. I discuss this aspect in greater detail in my concluding remarks on further research.

To help in explaining this measurement I provide an example by means of Judge William Acey, who was first elected in September 2000 to the Superior Court of Asotin, Columbia, and Garfield counties. Judge Acey ran against Scott Boyles for an open seat on the court in the September primary. Judge Acey received 79% of the vote in Asotin, 75% of the vote in Columbia, and 84% of the vote in Garfield. Voters participating in the September primary were also able to cast a ballot for a U.S. House candidate. Asotin, Columbia, and Garfield County all wholly reside in the state's Fifth Congressional District, in which two Democratic candidates, two Republican candidates, and an Independent were running to appear in the General Election. In Asotin County the Republican primary candidates received a combined 69% of the two party vote share; in Columbia County they received 79%, and in Garfield County they received 81%.¹¹ Judge Acey won all three counties by a significant majority, and the Republican Party's House candidates won each county by an almost similar margin. In total, Judge Acey won 79% of the vote share in his

¹¹ Total ballots cast for each county were: Asotin – 4,926 judicial ballots; 4,616 House ballots. Columbia – 1,370 judicial ballots; 1,416 House ballots. Garfield – 977 judicial ballots; 973 House ballots.

election, and the Republican Party won 73% of the two party vote share among the same pool of voters. Judge Acey is therefore coded as Republican under the assumption that the primary voters who participated in the election possessed information regarding Judge Acey's party preference.

Using the previously discussed method, I am able to determine the partisanship of 70 judges, representing 3,432 discretionary sentences. These 70 judges obtained their seat through a competitive primary election in a county or counties that also had a competitive U.S. House primary. Judges whose partisanship was not able to be determined either first obtained their seat in an uncontested election, or obtained their seat in a county or counties that did not have a competitive two-party House primary. Additionally, several of Washington's larger counties, which hold a disproportionate share of judicial seats, do not require that an uncontested judge appear on the ballot.¹² The total number of judges, both elected and appointed, whose party affiliation was able to be determined is 127, accounting for 6,270 discretionary sentences. Forty-four percent of judges were identified by using the party of the appointed governor, and 56% were identified through the electoral proxy measure. Of those judges whose affiliation was identified, 71% were coded as Democrat and 29% were coded as Republican. Democratic judges clearly outnumber their Republican counterparts in my analysis. This is not surprising given the fact that Washington is, and has been, largely Democratic, and that slightly less than half of the judges included were measured using the appointing governor's party.

¹² Counties with a population of more than 100,000 residents automatically issue a certificate of election to a candidate running for election to the bench if no other candidate has filed for the position by the end of the withdrawal period. For the years examined this included Benton, Clark, King, Kitsap, Pierce, Skagit, Snohomish, Spokane, Thurston, Whatcom, and Yakima county.

Control Variables

County Ideology: One factor that can influence sentencing behavior of trial judges is the overall ideology of the county they preside in. Elected trial judges may feel constrained to issue sentences that will be agreeable with their constituency, meaning Democratic leaning judges in Republican counties may feel pressured to hand down more punitive sentences, even though they would prefer a less severe sentence. To control for county ideology, I include the variable *County ID (CID)* which is measured as the percentage of the county casting a vote in the closest presidential election for the Democratic Party candidate. The value used for each observation is the county election result from the presidential election that occurred closest to the sentence date. As an example, for a sentence handed down in November of 2005 the results used would be from the 2004 election, as that represents the closest presidential contest. Presidential vote share at the county or district level is a commonly employed proxy measure for estimating the ideology of the county (Carson et al. 2010; Jacobson 2009; Minozzi and Volden 2013).

A potential concern is that the *County ID* variable will be highly correlated with the measurement of a judge's partisanship as both use county election results. Statistical analysis shows that the correlation between these two variables is -0.29, a mild correlation in the expected direction. This partly results from the spread of appointed judges, who are all coded as Democrat but were appointed in both Republican and Democrat dominated counties. Of the cases examined by appointed Democrat judges, 31% occurred in a county that leaned Republican. An additional reason for this low correlation is the shift in partisanship at the county level that has occurred in Washington over the course of the

1980s and 1990s. Western Washington has gone from being almost solidly Republican in the 1980s to majority Democratic beginning in the 1990s. Alternatively, eastern Washington has gone from being a mix of Republican and Democratic counties in the 1990s, to being solidly Republican since 2000. The fact that counties in Washington have changed over time is significant since an elected judge is only coded at the time he is first elected to the bench, and his partisanship remains constant thereafter. A judge elected in Democratic controlled Spokane County in 1996 would be representing a county that voted for a Republican candidate in the presidential elections that pertain to the data being examined. In other words, Washington's intra-partisan shifts over the past several decades has resulted in longer tenured judges often presiding in counties that have swung towards the opposite party since they were elected. These partisan swings allow a unique opportunity for examining whether changing constituents influence a judge's presumed sentencing preferences.

Electoral Proximity: The proximity of the upcoming election can lead to judges of both parties handing down increasingly more severe sentences as their election approaches in an attempt to maintain a tough on crime image (Gordon and Huber 2004, 2007; Berdejo and Yuchtman 2013). To control for electoral cycle, I use Berdejo and Yuchtman's coding, which represents the linear distance between a judge's first day in office and the day of election. This distance is measured on a continuous scale of 0 to 1, where 0 represents

maximum electoral pressure and 1 represents a judge's first day following an election.¹³

This variable was constructed by Berdejo and Yuchtman using county level election data from the Washington State Secretary of State's office.

Adjudication Type: Another factor that is likely to influence sentencing decisions is whether the case is adjudicated via a plea agreement as opposed to going to trial. Prior literature demonstrates that defendants who agree to plead guilty and thus save the state the cost of going to trial are more likely to receive a sentence less severe than they would have had they lost at trial (Adelstein 1978; Alboneti 1997; Taha 2001). This, however, is not a guarantee; rather pleading guilty is a calculated decision on the part of the defendant based on an assessment of a variety of factors, including the odds of success at trial, the potential sentence if found guilty, and the current sentence being offered by the state. Additionally, while the prosecutor may enter into an agreement on the charges, he can only recommend a sentence based on the guidelines. The judge still retains the authority to use his/her discretion when handing down the final sentence. To control for this influential factor, I include the dummy variable *plea*, with 0 indicating adjudication by trial and 1 representing a guilty plea. I predict that defendants who plead guilty to the charged offense will receive a less severe sentence than those who are found guilty at trial.

Defendant Characteristics: As previously mentioned and in accordance with the literature in the criminology field, defendant characteristics play a significant role in sentencing (Bushway and Piehl 2001; Curan 1983; Steffensmeier, Ulmer, and Kramer

¹³ The authors construct their electoral proximity measure by taking the number of days between the date of sentence and the judge's next election. This number is then divided by 1,461, which is the number of days in four years, a full election cycle for trial judges. A sentence handed down on the judge's first day on the bench would be equal to 1 and a sentence handed down on the day of election would be equal to 0. Gordon and Huber (2004) operationalize electoral proximity in the same manner.

1998). My model includes the defendant's age, gender, minority status, and prior criminal history to control for these factors. Age is calculated using the defendant's date of birth and date of sentencing, thus indicating the age of the defendant on the date he was sentenced as opposed to the date of the offense. Minority status is captured through a dichotomous variable measuring whether the defendant is a non-Hispanic Caucasian (coded as 1) or any other racial group (coded as 0). This information is provided for each case by the WSSGC in their reporting. Prior criminal history is also coded as a dichotomous variable indicating whether the defendant either has or does not have a prior criminal history. In accordance with previous findings, I predict that females will receive less severe sentences than their male counterparts, minority defendants will receive more severe sentences than Caucasians, and those with a prior history will receive more severe sentences than those without (Albonetti 1991, 1997; Dixon 1995; Spohn and Holleran 2000; Zatz 2000)

Sentencing Controls: Each defendant's sentence range is calculated by the trial judge who completes a sentencing worksheet created by the WSSGC. The outcome is a sentencing range that is capped at both the low and high end. The recommended minimum and maximum sentence provided by the WSSGC worksheet provides an ideal measure to control for the severity of the offense committed as it takes into account the nature of the offense, the level of violence, and the defendant's prior history. The guideline ranges reflect a consensus within the state on the appropriate length of incarceration given the unique nature of each case and defendant. The variables *low range* and *high range* are included to reflect the guideline range that is applicable for each case.

To control for the effects of the Supreme Court's *Blakely* decision I include a dummy variable indicating whether the sentence was handed down prior to or after the decision was handed down. Since *Blakely* had the effect of diminishing the trial judge's discretion to hand down more severe sentences, I predict that there will be fewer sentences exceeding the standard range after the *Blakely* decision.

Table 1 provides case-level summary statistics for the dependent variable, key explanatory variable, and control variables.

Table 1
Summary Statistics for Model Variables

Variable	Mean	SD	Min	Max
Assigned Sentence (months)	46.66	90.67	0	720
Assigned Sentence (natural log +1)	3.03	1.22	0	6.58
Judge Party Identification (1=Republican)	0.29	0.45	0	1
County Democratic Vote Share	0.514	0.09	0.226	0.7
Defendant Male (1=yes)	0.92	0.27	0	1
Defendant White (1=yes)	0.61	0.49	0	1
Age of Defendant (years)	29.8	10.3	15.84	84.72
Any Prior Convictions (1=yes)	0.52	0.50	0	1
Adjudicated via Plea (1=yes)	0.93	0.26	0	1
Electoral Proximity	0.54	0.29	0	1
Assault (1=yes) [reference]	0.59	0.49	0	1
Rape (1=yes)	0.03	0.17	0	1
Robbery (1=yes)	0.38	0.49	0	1
Post Blakely (1=yes)	0.41	0.49	0	1
Low end of Guideline Range	35.79	54.95	2.25	703.5
High end of Guideline Range	47.13	67.04	6.75	720

$N = 6,270$

The summary statistics indicate that the average defendants in the cases examined are white males approximately thirty years of age who have at least one prior conviction. Furthermore, a substantial majority of cases, 93%, are adjudicated by means of a plea

bargain with the prosecutor. While a prosecutor's recommendation of a negotiated sentence is taken into consideration by the trial judge, the judge is not bound by this recommendation and is free to hand down a sentence anywhere within the guideline ranges.

Since only 29% of cases are heard by Republican judges, it is important to determine whether judges of both parties have handled similar cases within this sample. If Democratic judges overwhelmingly handle more serious offenses, or offenders with prior convictions, then the assumption of random assignment might be brought into question. The first three columns of Table 2 compare case characteristics of both sets of judges with *p*-value tests for equality of means reported in column three.

Women make-up about 9% of the sample in both groups and minority defendants in both groups make up about 40%. About 52% have at least one prior conviction and both groups heard a similar mixture of assault, robbery, and rape cases. Some of the case characteristics do differ across the two groups. One area of cases that in which the difference between groups achieves statistical significance is the percentage of cases adjudicated by plea agreement; 93% for Democrats and 91% for Republicans. Although this difference is substantively small, it raises an initial concern that attorney negotiations may be systematically different depending on the party affiliation of the judge. That the low and high end of the guideline ranges are the same for both groups does appear to demonstrate that judges of both parties were working within similar guidelines when sentencing.

Table 2

Case Characteristics for Republican and Democrat Judges

Variable	All Violent offenses			Pleas Only			Trials Only		
	(1) Democrat Judges	(2) Republican Judges	(3) Dem = Rep	(1) Democrat Judges	(2) Republican Judges	(3) Dem = Rep	(1) Democrat Judges	(2) Republican Judges	(3) Dem = Rep
	Mean	Mean	<i>p</i> -value	Mean	Mean	<i>p</i> -value	Mean	Mean	<i>p</i> -value
County Democratic Vote Share	0.532	0.471	0.000	0.531	0.471	0.000	0.545	0.473	0.000
Defendant Male (1=yes)	0.919	0.915	0.571	0.916	0.912	0.583	0.961	0.949	0.543
Defendant White (1=yes)	0.600	0.619	0.176	0.607	0.627	0.146	0.515	0.529	0.774
Age of Defendant (years)	29.98	29.36	0.032	29.74	29.03	0.016	33.10	32.85	0.804
Any Prior Convictions (1=yes)	0.522	0.531	0.535	0.510	0.522	0.388	0.687	0.618	0.141
Adjudicated via Plea (1=yes)	0.931	0.913	0.016	1.000	1.000		0.000	0.000	
Assault	0.581	0.598	0.225	0.588	0.598	0.519	0.482	0.599	0.017
Rape	0.030	0.031	0.914	0.021	0.024	0.439	0.159	0.102	0.096
Robbery	0.389	0.371	0.205	0.391	0.378	0.377	0.36	0.299	0.198
Electoral Proximity	0.551	0.527	0.003	0.553	0.528	0.003	0.524	0.521	0.920
Post <i>Blakely</i> (1=yes)	0.451	0.291	0.000	0.469	0.305	0.000	0.21	0.134	0.044
Low End of Guidelines Range	35.53	36.43	0.555	31.14	31.98	0.537	94.52	83.19	0.243
High End of Guidelines Range	46.79	47.96	0.530	41.45	42.54	0.516	118.63	104.97	0.240
Observations	4,463	1,807		4,154	1,650		309	157	

P-values come from a two-tailed test that the mean of Democrat judges equals the mean of Republican judges.

To further examine the issue of attorney negotiations Table 2, columns four to nine look at the case characteristics for both groups of judges for only cases where a plea agreement was reached (columns four to six) and where the defendant went to trial (columns seven to nine). The two characteristics that deserve mentioning are the difference in means of assault and rape cases that were decided by trial. The difference in these cases being decided by trial rather than plea agreement may reflect the decision-making of the attorneys handling the cases. It is possible that defense attorneys and prosecutors strategically determine whether to negotiate a plea agreement in light of the presiding judge who is that is assigned to the case. This does not fully explain why Republican judges preside over more assault trials and fewer rape trials than Democratic judges. For now, I believe the lack of significance in the means of the guideline ranges demonstrates that judges from both parties handed down sentences in which they were constrained by similar sentencing grids.

Empirical Model

The unit of observation in my data set is the case i , heard by judge j , within county k . Each case represents a specific defendant, offense, sentence date, and sentence. My empirical model is as follows:

$$sentence_{ijk} = F(t) + \beta_1 PID_{ik} + Z_{ik} + \varepsilon_{ijk}$$

(1)

where $sentence_{ijk}$ is the sentence outcome associated with case i (natural logarithm); $F(t)$ is a set of year fixed effects, including a dummy variable indicating whether the case was

decided before or after *Blakely*; PID_{ik} , my explanatory variable of interest, is the party identification of the sentencing judge, Z_{ijk} contains a set of defendant, offense, county, and sentencing guideline controls; and ε_{ijk} is a mean-zero stochastic error term.

Because some aspects of observations, such as the offense, defendant characteristics, and sentencing guidelines are specific only to the case while other aspects such as judge party affiliation and constituent ideology are characteristics of the judge and county, the data exists at multiple levels of analysis. To accurately model effects that occur at different levels of analysis while correctly apportioning the variance explained at each level, I utilize a multilevel model that contains fixed effects for both the judge who issued the sentence and the county in which the judge is employed (Gelman 2006; Nelson 2014; Steenbergen and Jones 2002). In this model individual cases are nested within judges, and those judges are nested within counties. Since each judge is expected to sentence differently based on their personal sentencing philosophy, nesting the cases at this level allows me to control for the variance in judge's sentencing not accounted for in my model. Additionally, judges are nested within one of the counties that makeup Washington State, and differences in sentencing may exist both within these counties and across counties.

In using a hierarchical linear model (HLM), equation (1) can be more accurately articulated as:¹

$$Sentence_{ijk} = \gamma_{000} + \nu_{00k} + \delta_{0jk} + \varepsilon_{ijk}$$

(2)

¹ Foundation and interpretation for this model is based off Steenbergen and Jones' (2002) European Union study (227-234).

In this revised model, γ_{000} represents the grand mean of sentencing across cases, judges, and counties. ν_{00k} represents the sources of cross-county variation which would cause specific counties to deviate from the grand mean. Similarly, δ_{0jk} contains sources of cross-judge variation that would cause deviation from the grand mean. Lastly, ϵ_{ijk} represents variation across individual cases that cause deviation from the grand mean. Having specified the relevant factors that are likely to influence the sentence outcome, the individual-level of my model is expressed as:

$$\begin{aligned} \text{Sentence}_{ijk} = & \alpha_{0jk} + \alpha_{1jk}\text{Gender}_{ijk} + \alpha_{2jk}\text{Race}_{ijk} + \alpha_{3jk}\text{Age}_{ijk} \\ & + \alpha_{4jk}\text{Priors}_{ijk} + \alpha_{5jk}\text{Plea}_{ijk} + \alpha_{6jk}\text{GL}_{ijk} + \epsilon_{ijk} \end{aligned} \quad (3)$$

Where Gender_{jk} is a dichotomous variable representing the defendant's sex, Race_{ijk} contains a dummy variable indicating racial minority status, Age_{ijk} is a continuous variable of defendant's age at sentence, Priors_{ijk} is a dummy variable representing the existence of a prior record, Plea_{ijk} is a dummy variable controlling for whether the offender entered into a plea agreement with the state or received a trial, and GL_{ijk} contains variables controlling for the applicable sentencing guideline ranges

Judge party affiliation (PID), the independent variable of interest, is nested at the judge level, along with electoral proximity (lindist). The formal expression of the model at the judge level would be introduced into the model via the case-level constant α_{0jk} , where:

$$\alpha_{0jk} = \beta_{00k} + \beta_{01k}\text{PID}_{jk} + \beta_{02k}\text{lindist}_{jk} + \delta_{0jk} \quad (4)$$

Modeling the judge-level constant β_{00k} , I can introduce the county-level variable of constituent ideology (CID) as follows:

$$\beta_{00k} = \gamma_{000} + \gamma_{001}CID_k + \nu_{00k}$$

(5)

The variable CID_k is the proxy measure for county ideology, calculated as the percentage of the county that supported the Democratic presidential nominee. Assuming that the effect of judge level characteristics is fixed and the effect of case-level predictors are also fixed (Steenbergen and Jones 2002, 229), the complete multilevel model is expressed as:

$$\begin{aligned} Sentence_{ijk} = & \gamma_{000} + \gamma_{001}CID_k + \gamma_{010}PID_{jk} + \gamma_{020}lindist_{jk} + \gamma_{100}Gender_{ijk} \\ & + \gamma_{200}Race_{ijk} + \gamma_{300}Age_{ijk} + \gamma_{400}Priors_{ijk} + \gamma_{500}Plea_{ijk} \\ & + \gamma_{600}GL_{ijk} + \nu_{00k} + \delta_{0jk} + \varepsilon_{ijk} \end{aligned}$$

(6)

By specifying the model at different levels of analysis and acknowledging that the variables I have included do not fully account for all variation in sentencing, the variance components for ε_{ijk} , δ_{0jk} , and ν_{00k} , can capture the unexplained variance in sentencing at different levels of analysis.

Results and Discussion

Table 3 includes the results from two separate analyses. Model 1 provides an initial test of the partisan influence hypothesis by using the previously discussed dichotomous measure of party affiliation. Since the dependent variable has been transformed using the natural logarithm of the sentence, the coefficients are best interpreted as a percentage

Table 3
Hierarchical Linear Model

	(1) Baseline Model	Percent Change	(2) Interaction Model	Percent Change
County level:				
County Ideology	0.347		0.333	
	(.213)		(.215)	
Judge level:				
Electoral Proximity	-0.084		-0.084	
	(.061)		(.063)	
Republican Judge	0.043*	+ 4.4	0.023	
	(.020)		(.023)	
Republican Judge * Robbery			0.028	
			(.044)	
Republican Judge * Rape			0.298**	+ 34.7
			(.112)	
Case level:				
Defendant Male	0.250***	+ 28.4	0.248***	
	(.026)		(.026)	
Defendant White	-0.031**	- 3.1	-0.031**	
	(.011)		(.011)	
Defendant Age	0.001		0.001	
	(.001)		(.001)	
Prior Convictions	0.498***	+ 64.5	0.497***	
	(.020)		(.020)	
Adjudicated via Guilty Plea	-0.223***	- 25	-0.225***	
	(.044)		(.046)	
Robbery	0.306***	+ 35.8	0.298***	
	(.022)		(.022)	
Rape	0.612***	+ 84.4	0.523***	
	(.107)		(.110)	
Post <i>Blakely</i>	.079†		0.080†	
	(.047)		(.047)	
Guideline Minimum	0.027***	+ 2.7	0.027***	
	(.005)		(.005)	
Guideline Maximum	-0.010**	- 1.0	-0.010**	
	(.004)		(.004)	
Constant	1.979		1.994	
Log likelihood	-6654.86		-6651.41	

Notes: Dependent variable is the natural log of the sentence (in months) assigned by the judge. Robust standard errors are included in parentheses. $N = 6,270$ for both models. Year effects are excluded from results. Both models are significant at the .001 level or better based on Wald χ^2 test. Standard errors are clustered around counties. *** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$ † $p < 0.10$

change on the sentence handed down given a unit change in the independent variable. This change is provided in the model in the second column for all variables that achieve statistical significance at the .10 level or better. Model 2 provides a more conservative test of the partisan hypothesis by interacting partisanship with each specific offense. This interaction examines whether one category of offenses is more likely to be influenced by the partisanship of the sentencing judge. Since *R*-squared values are an inappropriate measure of model fit when using HLM (Kreft and De Leeuw 1998), the log likelihood values are used to compare the two models. When comparing the log likelihood values between two models measuring the same dependent variable, the model with the lower log likelihood is considered to be a better predictor. While the change in the log likelihood values between the two models is substantively small, the smaller value in Model 2 indicates that it may provide a slightly better fit than Model 1.

The results from Model 1 indicate that a Republican judge will hand down a sentence that is approximately 3.6% longer than a Democratic judge, *ceteris paribus*. The result is statistically significant at the .10 level. Rather surprisingly, the coefficient for the county ideology measure is in the opposite direction as hypothesized, although this finding fails to achieve significance. Judges from the examined set of cases do not appear to be influenced by the changing partisanship of their constituency, at least with regards to sentencing decisions. Additionally, the electoral proximity variable, while in the expected direction, also fails to achieve a level of significance. The cases examined in this study and the addition of the partisanship measure casts some initial doubt on the literature claiming judges sentence more severely as they approach election. As expected, several of the case

characteristic variables that have been shown to have an effect on sentencing achieve high levels of significance. Males are likely to receive a sentence that is almost 30% longer than females. White offenders can expect a sentence that is about 3% lower than non-whites. The presence of at least one prior conviction can have the effect of increasing sentence length approximately 65%, and an offender who forgoes a trial in favor of a guilty plea can expect a 25% decrease in their sentence.

Model 2 casts a somewhat different light on the partisan hypothesis, and the results appear to show that rape offenses are the cases where the judges' partisanship have the largest effect. The coefficient for the party ID and rape interaction is substantively large and achieves greater statistical significance than the party ID coefficient by itself in Model 1. Additionally, all of the control variables maintain their effects in both models. Of the three categories of crimes included, rape is generally the most heinous and the sentences handed down are much larger than for assault and robbery. This hold true for Democratic and Republican judges, both of whom hand down more severe sentences for rape offenses than for assault and robbery offenses. This violent crime may represent the very type of criminal conduct that a Republican judge believes deserves a "tough on crime" approach. Based on these findings, a person convicted of rape can expect a sentence increase of 34% attributed solely to the partisanship of the sentencing judge. Based on these findings, an offender sentenced to ten years in prison by a Democratic judge for the crime of rape would receive an additional three years by a Republican judge.

Figure 1 provides a visual representation of the marginal effects of party identification on sentencing behavior for each of the three categories of offenses, holding

all other variables at their mean. The effects shown in Figure 1 are derived from the interaction effects captured in Model 2. The purpose of Figure 1 is to show the party ID variable in relation to its 95% confidence band. For the assault and robbery offenses, the bands for both groups of judges are small and largely indistinguishable from each other. For the rape offense the bands become larger but only slightly overlap. While partisanship does not appear to play a significant role in sentencing of assault and robbery offenders, it does factor in when sentencing offenders guilty of the more emotionally charged crime of rape.

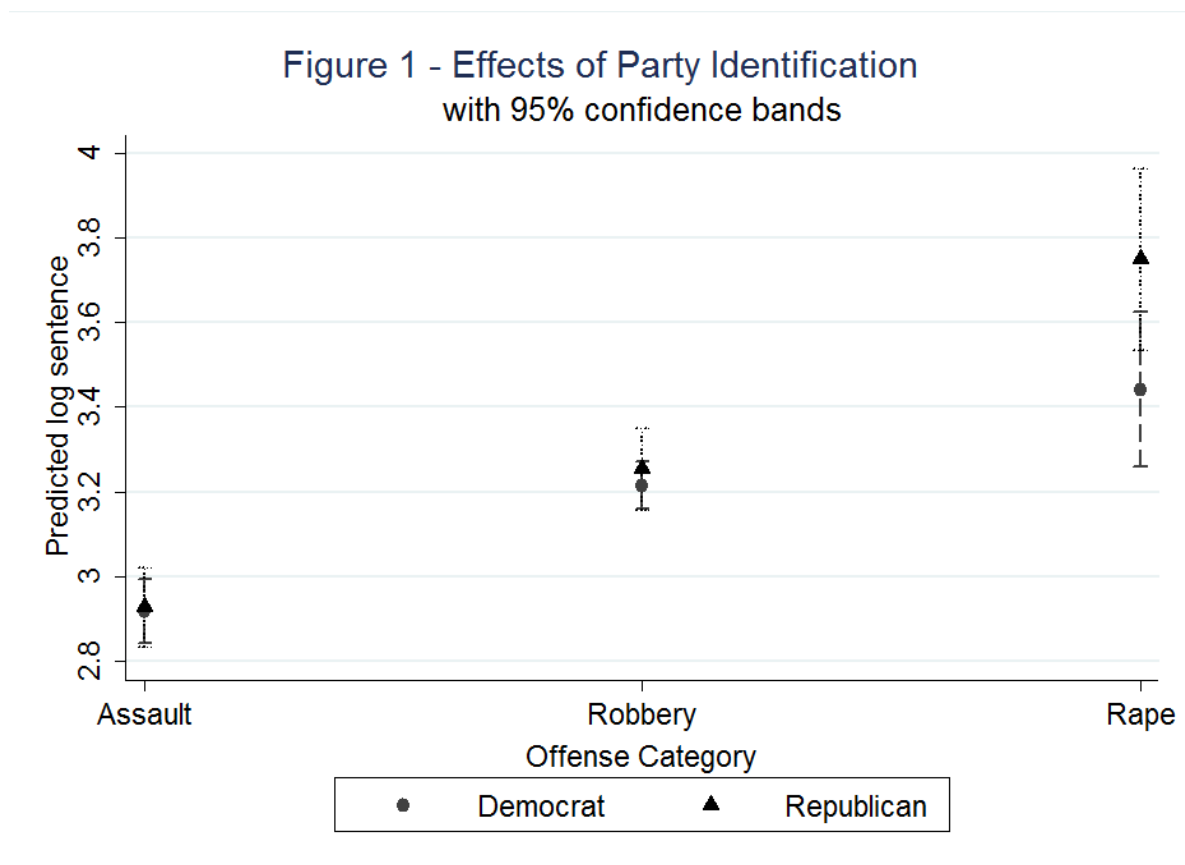


Figure 1: Effects of party identification.

One explanation for the large effects of partisanship on rape sentences may be the highly visible and graphic nature of this crime. Given the theory that Republican judges will seek to hold individuals personally accountable for their actions and will value punishment and retribution over rehabilitation, the emotional and graphic facts of a rape crime may have a greater psychological effect on the judge than the fact patterns of assault and robbery cases. An offender convicted of rape may, as a result of his heinous conduct, trigger a Republican judge's underlying belief that punishment should be most severe when the offense is as egregious as sexually assaulting another person. Democratic judges, employing a more liberal and contextual approach to sentencing, are therefore expected to hand down a sentence within the applicable guidelines, but with a focus on rehabilitation and deterrence. A Democratic judge may also give more weight to the external circumstances of the offender's situation, such as his familial history, educational background, and socioeconomic status. That is not to imply that these are excuses used to justify the behavior, but rather to show ideology results in judges giving different weights to different factors when they hand down sentences.

In addition to the judge's personal sentencing philosophy, rape offenses and subsequent sentencing decisions are likely to be monitored more closely by media outlets and potential political opponents. Simply stated, a rape story can be easily sensationalized by local media, who will then follow the case and report on its progress. Montana trial court judge G. Todd Baugh received national media attention and public backlash when he sentenced a convicted rapist to 30 days in jail, suspending the remainder of the 15-year

prison term.² Rather than run for reelection the judge chose to step down when his term expired. More recently, a California trial judge was thrust into the headlines when he sentenced an offender convicted of rape to a 10-year prison term, ruling that the mandatory minimum sentence of 25-years to life would amount to cruel and unusual punishment.³ Three county supervisors called for the judge to resign and pledged to support a petition drive to obtain the required amount of signatures to have the judge recalled. The visibility of rape offenses, as portrayed through these examples, may provide an opportunity for Republican judges to demonstrate their “tough on crime” approaches to sentencing, a campaign slogan often used by conservative judges (Linde 1988). In other words, the Republican judge is leveraging the high visibility of rape cases to demonstrate to voters that he is making good on his campaign promise. Unlike the more lenient sentences in the examples, these harsher sentences would appease local constituents and fail to rise to the level of national media focus.

² Preston, Jennifer. 2013. “Protesters Demand Montana Judge Resign Over Rape Sentencing.” *New York Times*, August 29, 2013.

³ Associated Press. 2015. “County Leaders Call for Judge to Quit Over Sodomy Sentence.” *New York Times*, April 9, 2015.

CHAPTER 4

CONCLUSION

Trial judges in the United States are the only persons authorized to incarcerate individual citizens. While their decisions are often constrained by sentencing guidelines and other institutional factors, there exists a broad area in which they are able to exercise individual discretion. To better understand how a given judge will determine a final sentence in a case, I have put forward a theoretical argument that places the decision-making process within the judge's personal views on the root causes of crime and the purposes of punishment.

If a judge's individual ideology is a factor that affects their sentencing behavior, then it should be considered in discussions on the merits of judicial selection methods. In Washington State, trial judges are chosen through nonpartisan elections. If one purpose of judicial elections is to allow the electorate to decide what qualities are preferred in a judge, then allowing the candidates to openly affiliate with a political party may better inform citizens on how they will handle sentencing decisions. As long as sentencing is determined by individual human beings, and these individuals are allowed some degree of discretion in their decision-making, there is likely to exist discrepancy in the outcome. An additional question then is whether the general public, possessing a desire for more severe punishment of criminals, should in fact be responsible for the selection of trial judges. While reasonable

people may disagree on these normative questions, political scientists can assist in the discussion by providing empirical evidence that leads to more informed policy debates.

This research has primarily focused on only one factor that influences decision-making by trial judges, the judge's own ideology. A comprehensive study of decision-making by these political actors would entail an integrated model that examines the additional factors that affect decision-making and how these factors are connected. Such an integrated model would include the influence that sensationalized media stories of criminal cases have on the public's opinion on sentencing. This information would then be integrated with the method of judicial selection used by the state. States where trial judges are elected could be looked at against states where they are appointed to see whether public opinion and electoral concerns are influencing sentencing decisions. Furthermore, the electoral proximity hypothesis deserves further investigation to better understand the effect that elections have on decision-making, especially when the election is imminent. While I have attempted to control for prosecutorial discretion by accounting for plea agreements and trials, prosecutors deserve a much more extensive focus as unique political actors in the sentencing process. In Washington State each county elects a district attorney in partisan elections. These actors may have their own political agendas and electoral constraints, and they often dictate to prosecutors what charges to file in a case. Lastly, as I have attempted to show in this research, the ideology of the judge must be accounted for to gain an understanding of what his views are on the root causes of crime and the purpose of sentencing.

In further research I hope to begin to connect the various theories that have developed in the literature to create an integrated model of decision-making that can be applied to state trial judges and their behavior in criminal sentencing. One component of this model requires knowing the partisanship of the trial judge, which can be difficult to obtain given the prominence of nonpartisan elections. I believe the measure that I have used in this research can be tested by leveraging the election systems used in many of the states. Approximately 20 states employ closed primaries, in which each voter is only permitted to vote in his or her party's primary. Publically available voter rolls from these states generally include biographical information on each voter and which party's primary election they voted in for each election year. If current and past trial judges in the state are active participants in elections, then their party affiliation should be clear from the primary election in which they choose to vote. Once this data is collected, additional factors can be added in to see what measures correlate with the judge's partisanship. My use of primary election results from contested elections could then be measured against the actual partisanship of the judge – as indicated by their voting history – to test the validity of the measure. To my knowledge, no scholarship has attempted to leverage public voter rolls in states with primary elections to examine the partisanship of political actors selected through nonpartisan elections. To be sure, such a collection and cross referencing of data would require substantial time and resources. The collection of this data could have profound effects on judicial elections scholarship and on nonpartisan elections research in general. If

a candidate is running for office in a nonpartisan election but has voted in the Republican primary for the past 10 years, then is the election nonpartisan in name only? I hope to answer this question more fully in future work.

REFERENCES

- Abramowitz, Alan I., and Kyle L. Saunders. 1998. "Ideological Realignment in the U.S. Electorate." *Journal of Politics* 60(3): 634-52.
- Adelstein, Richard P. 1978. "The Plea Bargain in Theory: A Behavioral Model of the Negotiated Guilty Plea." *Southern Economic Journal* 44(3): 488-503.
- Albonetti, Celesta A. 1991. "An Integration of Theories to Explain Judicial Discretion." *Social Problems* 38: 247-66.
- _____. 1997. "Sentencing under the Federal Sentencing Guidelines: Effects of Defendant Characteristics, Guilty Pleas, and Departures on Sentence Outcomes for Drug Offenses, 1991-1992." *Law & Society Review* 31(4): 789-822.
- Aldrich, John H. 2011. *Why Parties? A Second Look*. Chicago: University of Chicago Press.
- Arnold, Douglas R. 1990. *The Logic of Congressional Action*. New Haven: Yale University Press.
- Beale, Sara Sun. 2006. "The News Media's Influence on Criminal Justice Policy: How Market-Driven News Promotes Punitiveness." *William and Mary Law Review* 48(2): 397-481.
- Berdej6, Carlos, and Noam Yuchtman. 2013. "Crime, Punishment, and Politics: An Analysis of Political Cycles in Criminal Sentencing." *The Review of Economics and Statistics* 95(3): 741-56.
- Bibas, Stephanos. 2004. "Plea Bargaining Outside the Shadow of Trial." *Harvard Law Review* 117(8): 2463-2547.
- Brace, Paul, Laura Langer, and Melinda Gann Hall. 2000. "Measuring Preferences of State Supreme Court Judges." *Journal of Politics* 62(2): 387-413.
- Brace, Paul, and Melinda Gann Hall. 1990. "Neo-Institutionalism and Dissent in State Supreme Courts." *Journal of Politics* 52(1): 54-70.

- _____. 1993. "Integrated Models of Judicial Dissent." *Journal of Politics* 55(4): 914-35.
- _____. 1995. "Studying Courts Comparatively: The View from the American States." *Political Research Quarterly* 48(1): 5-29.
- _____. 1995. "Studying Courts Comparatively: The View from the American States." *Political Research Quarterly* 48(1): 5-29.
- Brady, David W., Hahrie Han, and Jeremy C. Pope. 2007. "Primary Elections and Candidate Ideology: Out of Step with the Primary Electorate?" *Legislative Studies Quarterly* 32(1): 79-105.
- Brooks, Richard R. W., and Steven Raphael. 2002. "Life Terms or Death Sentences: The Uneasy Relationship between Judicial Elections and Capital Punishment." *Journal of Criminal Law & Criminology* 92(Spring/Summer): 609-40.
- Brudney, James J., Sara Schiavoni, and Deborah J. Merritt. 1999. "Judicial Hostility toward Labor Unions—Applying the Social Background Model to a Celebrated Concern." *Ohio State Law Journal* 60(5): 1675-1772.
- Bushway, Shawn D., and Anne Morrison Piehl. 2001. "Judging Judicial Discretion: Legal Factors and Racial Discrimination in Sentencing." *Law & Society Review* 35(4): 733-64.
- Canes-Wrone, Brandice, David W. Brady, and John F. Cogan. 2002. "Out of Step, Out of Office: Electoral Accountability and House Members' Voting." *American Political Science Review* 96: 127-40.
- Carson, Jamie L., Gregory Koger, Matthew J. Lebo, and Everett Young. 2010. "The Electoral Costs of Party Loyalty in Congress." *American Journal of Political Science* 54(3): 598-616.
- Clancy, Kevin, John Bartolomeo, David Richardson, and Charles Wellford. 1981. "Sentence Decision Making: The Logic of Sentence Decisions and the Extent and Sources of Sentence Disparity." *Journal of Criminal Law and Criminology* (1973-) 72(2): 524-54.
- Curan, Debra A. 1983. "Judicial Discretion and Defendant's Sex." *Criminology* 21(1): 41-58.
- Dixon, Jo. 1995. "The Organizational Context of Criminal Sentencing." *American Journal of Sociology* 100: 1157-98.

- Downs, Anthony. 1957. *An Economic Theory of Democracy*. New York: Harper and Row.
- Egan, Patrick J. 2013. *Partisan Priorities: How Issue Ownership Drives and Distorts American Politics*. New York: Cambridge University Press.
- Epstein, Lee, William M. Landes, and Richard A. Posner. 2013. *The Behavior of Federal Judges: A Theoretical & Empirical Study of Rational Choice*. Cambridge: Harvard University Press.
- Forst, Brian and Charles Wellford. 1981. "Punishment and Sentencing: Developing Sentencing Guidelines Empirically from Principles of Punishment." *Rutgers Law Review* 33: 799-837.
- Gelman, Andrew. 2006. "Multilevel (Hierarchical) Modeling: What it Can and Cannot Do." *Technometrics* 48(3): 432-35.
- George, Tracey E. 2001. "Court Fixing." *Arizona Law Review* 43(1): 9-62.
- George, Tracey E., and Lee Epstein. 1992. "On the Nature of Supreme Court Decision Making." *American Political Science Review* 86(2): 323-37.
- Gibson, James L. 1980. "Environmental Constraints on the Behavior of Judges: A Represented Model of Judicial Decision Making." *Law and Society Review* 14(2): 343-70.
- Gibson, James L. 1983. "From Simplicity to Complexity: The Development of Theory in the Study of Judicial Behavior." *Political Behavior* 5(1): 7-49.
- Gimpel, James G., and Robin M. Wolpert. 1996. "Opinion-Holding and Public Attitudes toward Controversial Supreme Court Nominees." *Political Research Quarterly* 49(1): 163-76.
- Glaze, Lauren E., and Danielle Kaeble. 2014. "Correctional Populations in the United States, 2013." *U.S. Department of Justice, Bureau of Justice Statistics*. NCJ 248479.
- Gordon, Sanford C., and Gregory A. Huber. 2004. "Accountability and Coercion: Is Justice Blind when It Runs for Office?" *American Journal of Political Science* 48(2): 247-63.
- _____. 2007. "The Effect of Electoral Competitiveness on incumbent Behavior." *Quarterly Journal of Political Science* 2: 107-38.
- Gruhl, John, Cassia Spohn, and Susan Welch. 1981. "Women as Policymakers: The Case of Trial judges." *American Journal of Political Science* 25: 308-22.

- Hall, Melinda Gann. 1987. "Constituent Influence in State Supreme Courts: Conceptual Notes and Case Study." *Journal of Politics* 49(4): 1117-24.
- _____. 2009. "The Controversy Over Electing Judges and Advocacy in Political Science." *Justice System Journal* 30(3): 284-91.
- Hofer, Paul J., Kevin R. Blackwell, and R. Barry Ruback. 1999. "The Effect of the Federal Sentencing Guidelines on Inter-Judge Sentencing Disparity." *Journal of Criminal Law and Criminology (1973-)* 90(1): 239-322.
- Hogarth, John. 1971. *Sentencing as a Human Process*. Toronto: University of Toronto Press.
- Holian, David B. 2004. "He's Stealing My Issues! Clinton's Crime Rhetoric and the Dynamics of Issue Ownership." *Political Behavior* 26(2): 95-124.
- Iyengar, Shanto. 1996. "Framing Responsibility for Political Issues." *Annals of the American Academy of Political and Social Science* 546: 59-70.
- Jacobson, Gary C. 2009. *The Politics of Congressional Elections*. 7th ed. New York: Pearson.
- Johnson, Brian D. 2006. "The Multilevel Context of Criminal Sentencing: Integrating Judge- And County-Level Influences." *Criminology* 44(2): 259-96.
- Key, V.O. 1956. *Politics, Parties, and Pressure Groups*. 3d ed. New York: Thomas Crowell.
- Kingdon, John. 1977. "Models of Legislative Voting." *Journal of Politics* 39(3): 563-95.
- Kreft, Ita G G, and Jan de Leeuw. 1998. *Introducing Multilevel Modeling*. Sage Publications.
- Kuklinski, James H., and John E. Stanga. 1979. "Political Participation and Government Responsiveness: The Behavior of California Superior Courts." *American Political Science Review* 73(4): 1090-99.
- Kulik, Carol T., Elissa L. Perry, and Molly B. Pepper. 2003. "Here Comes the Judge: The Influence of Judge Personal characteristics on Federal Sexual Harassment Case Outcomes." *Law and Human Behavior* 27(1): 69-86.

- Lacasse, Chantale, and A. Abigail Payne. 1999. "Federal Sentencing Guidelines and Mandatory Minimum Sentences: Do Defendants Bargain in the Shadow of the Judge?" *Journal of Law and Economics* 42(S1): 245-70.
- Lane, Robert. 2011. "Rescuing Political Science from Itself." In *Oxford Handbook of Political Psychology*, eds. David O. Sears, Leonie Huddy, and Robert Jervis. New York, NY: Oxford University Press, 755-95.
- Linde, Hans A. 1988. "Elective Judges: Some Comparative Comments." *Southern California Law Review* 61: 1995-2006.
- Mayhew, David H. 1974. *Congress: The Electoral Connection*. New Haven, CT: Yale University Press.
- McGuire, Kevin T. 2012. "Public Opinion, Religion, and Constraints on Judicial Behavior." In *New Directions in Judicial Politics*, ed. Kevin T. McGuire. New York: Routledge, 238-55.
- Minozzi, William, and Craig Volden. 2013. "Who Heeds the Call of the Party in Congress?" *Journal of Politics* 75(3): 878-02.
- Myers, Martha A., and Susette M. Talarico. 1987. *The Social Contexts of Criminal Sentencing*. New York: Springer-Verlag.
- Nagle, Stuart S. 1961. "Political Party Affiliation and Judges' Decisions." *American Political Science Review* 55(4): 843-50.
- Nelson, Michael J. 2014. "Responsive Justice?: Retention Elections, Prosecutors, and Public Opinion." *Journal of Law and Courts* 2(1): 117-52.
- Norrande, Barbara. 1989. "Ideological Representativeness of Presidential Primary Voters." *American Journal of Political Science* 33: 570-87.
- O'Hear, Michael M. 2010. "Appellate Review of Sentences: Reconsidering Deference." *William and Mary Law Review* 51: 2123-67.
- Partridge, Anthony and William B. Eldridge. 1974. *Federal Judicial Center*. "The Second Circuit Sentencing Study: A Report to the Judges of the Second Circuit."
- Petrocik, John R. 1996. "Issue Ownership in Presidential Elections, with a 1980 Case Study." *American Journal of Political Science* 40(3): 825-50.
- Pinello, Daniel R. 1999. "Linking Party to Judicial Ideology in American Courts: A Meta-analysis." *Justice System Journal* 20(3): 219-54.

- Putz, David W. 2002. "Partisan Conversion in the 1990s: Ideological Realignment Meets Measurement Theory." *Journal of Politics* 64(4): 1199-1209.
- Roberts, Julian V., and Don Edwards. 1989. "Contextual Effects in Judgments of Crims, Criminals, and the Purposes of Sentencing." *Journal of Applied Social Psychology* 19(11): 902-17.
- Schanzenbach, Max M., and Emerson H. Tiller. 2007. "Strategic Judging Under the United States Sentencing Guidelines: Positive Political Theory and Evidence." *Journal of Law, Economics & Organization* 23(1): 24-56.
- Schanzenbach, Max M., and Emerson H. Tiller. 2008. "Reviewing the Sentencing Guidelines: Judicial politics, Empirical Evidence, and Reform." *University of Chicago Law Review* 75(2): 715-60.
- Schubert, Glendon A. 1959. *Quantitative Analysis of Judicial Behavior*. Glencoe, IL: The Free Press.
- Segal, Jeffrey, and Harold Spaeth. 1993. *The Supreme Court and the Attitudinal Model*. New York: Cambridge University Press.
- Sheldon, Charles H., and Linda S. Maule. 1997. *Choosing Justice: The Recruitment of State and Federal Judges*. Pullman: Washington State University Press.
- Spohn, Cassia, and David Holleran. 2000. "The Imprisonment Penalty Paid by Young Unemployed Black and Hispanic Male Offenders." *Criminology* 38: 281-306.
- Steenbergen, Marco R., and Bradford S. Jones. 2002. "Modeling Multilevel Data Structures." *American Journal of Political Science* 46(1): 218-237.
- Sotirovic, Mira. 2001. "Affective and Cognitive Processes As Mediators of Media Influences on Crime-Policy Preferences." *Mass Communication & Society* 4(3): 311-29.
- Steffensmeier, Darrell and Chester L. Britt. 2001. "Judges' Race and Judicial Decision Making: Do Black Judges Sentence Differently?" *Social Science Quarterly* 82(4): 749-64.
- Steffensmeier, Darrell and Chris Hebert. 1999. "Women and Men Policymakers: Does the Judge's Gender Affect the Sentencing of Criminal Defendants?" *Social Forces* 77(3): 1163-96.

- Steffensmeier, Darrell, Jeffrey Ulmer, and John Kramer. 1998. "The Intersection of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male." *Criminology* 36: 763-98.
- Stidham, Ronald, Robert A. Carp, and Donald R. Songer. 1996. "The Voting Behavior of President Clinton's Judicial Appointees." *Judicature* 80: 20-8.
- Streb, Matthew J. 2007. "Partisan Involvement in Partisan and Nonpartisan Trial Court Elections." In *Running for Judge: The Rising Political, Financial, and Legal States of Judicial Elections*, ed. Matthew J. Streb. New York: New York University Press.
- Sullivan, Christopher J., Jean Marie McGloin, and Alex R. Piquero. 2008. "Modeling the Deviant Y in Criminology: An Examination of the Assumptions of Censored Normal Regression and Potential Alternatives." *Journal of Quantitative Criminology* 24(4): 399-421.
- Taha, Ahmed E. 2001. "The Equilibrium Effect of Legal Rule Changes: Are the Federal Sentencing Guidelines Being Circumvented?" *International Review of Law and Economics* 21(3): 251-69.
- Taylor, Jon, and William D. Schreckhise. 2003. "The Impact of Issue Voting on a Local Nonpartisan Election." *State & Local Government Review* 35(3): 174-82.
- Tiede, Lydia, Robert Carp, and Kenneth L. Manning. 2010. "Judicial Attributes and Sentencing-Deviation Cases: Do Sex, Race, and Politics Matter?" *Justice System Journal* 31(3): 249-72.
- Transactional Records Access Clearinghouse. 2012. "Surprising Sentencing Deviations in Federal Courthouses." TRAC, Syracuse University, <http://trac.syr.edu/tracreports/judge/302>.
- Traut, Carol Ann, and Craig F. Emmert. 1998. "Expanding the Integrated Model of Judicial Decision Making: The California Justices and Capital Punishment." *Journal of Politics* 60(4): 1166-80.
- Zatz, Marjorie. 2000. "The Convergence of Race, Ethnicity, Gender and Class on Court Decisionmaking: Looking Toward the 21st Century." *Criminal Justice: The National Institute of Justice Journal* 3: 503-52.