FEDERAL OR STATE COURT FOR CIVIL & RAPE CASES?

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BACKGROUND

During the late 1960's black activists in the civil rights movement identified the American legal system as an instrument of oppression; the law and the courts imposed white law and white standards of morality on the black community (Cleaver, 1968). But, the United States did not have one legal system. The importance of multiple legal orders, one federal court system and fifty state court systems, was recognized by lawyers (NAACP v Gallion, 290 F.2d 337) and social scientists (Elazar, 1968; Jacob, 1972). The dual system of courts supplied blacks, especially southern blacks, with alternative tribunals to which they could take their cases. The lawyers for the NAACP claimed that the federal courts were the only arena for the adjudication of cases involving blacks because the southern state courts were committed to a policy of segregation. The social science literature echoed the NAACP's argument in such statements as "it is well known that Negroes ordinarily would prefer to litigate issues before the federal courts than before the state courts in the South" (Vines, 1965:8). The court cases and the social science literature of the 1960's indicated, therefore, that the 1960's was an era in which many law professionals and social scientists believed the federal courts to be more supportive of the rights of blacks than the southern state courts. Using data collected from lawyers in Maryland, Louisana, and Texas in 1978, this study examines the preferences of the attorneys of black clients as compared to the preferences of the attorneys of white clients for federal court as compared to state court jurisdiction.

THE RESEARCH PROBLEM

When both federal and state courts are available to hear a case, the choice of jurisdiction is one of the most important decisions an attorney must make. The wrong choice, can mean "certain defeat or costly delay" for the client (Jacob, 1972: 183). It is predicted that in cases of joint jurisdiction three factors will influence the attorneys decision of whether to have the case heard in the federal courts or in the state's courts: a) the race of the client, b) the level of legal centralization of the state in which the case would be heard, and c) the type of case.

RACE OF THE CLIENT

The reserach of the 1960's indicated that there was a tendency for the attorneys of black clients to opt for federal court jurisdiction whereas the attorneys of white clients were more likely to favor adjudication within the state court system (Vines, 1964; Vines, 1965; Elazar, 1968; Jacob, 1972). In the late 1970's, after the passage of civil rights legislation and the issuance of court decisions which prevent discrimination against blacks, it is not clear, a priori, whether to expect differences in the advice attorneys give black clients as compared to white clients in the choice of jurisdiction. In 1978 attorneys may still be influenced by the principle that seemed to guide jurisdictional selection in the 1960's, "blacks prefer to litigate in the federal courts", and therefore continue to recommend federal court jurisdiction to black clients as compared to white clients. Or, in 1978, attorneys may feel that given the changes in the law and/or the charges of an increasing conservativism in the federal courts that black clients and white clients should be similarly advised in the selection of jurisdiction.

LEVEL OF LEGAL CENTRALIZATION

A legal order's level of centralization is also expected to have an impact upon the federal court — state court decisions. Two major legal structures can be identified in the United States — a centralized or government controlled legal order and decentralized or community legal order. In the United States a centralized legal order is one in which the central government seeks to remove all non-legal issues from the legal decision-making process thereby guaranteeing certainty and uniformity in that process. It does this by authorizing the president or governor to appoint judges to the bench for lengthy terms, by authorizing the judge to conduct the voir dire examination of prospective jurors, by requiring a law degree for all aspirants to the bench, and by fostering a legal climate that supports appeals. A decentralized or community controlled legal order is one in which the community seeks to invoke its

control over the judicial process and thereby assure that justice is done according to the standards of the community. This is accomplished by electing judges to office for short terms, by avoiding educational requirements, by permitting lawyers to conduct the voir dire examination, and by encouraging a legal climate that is supportive of original jurisdiction.

Interestingly, these two legal structures are linked to Weber's (1978) concepts of formal rationality and substantive irrationality. In a liberal state the centralized or government controlled legal order is supposed to adhere to a policy of formal rationality whereas the decentralized or community controlled legal order operates on the basis of substantive irrationality. That is, the administration of justice in the centralized legal order is supposed to respond only to specific acts and only the "unambiguous general characteristics of the facts of the case are taken into account" (Weber, 1978:657).

> "The law in an ideal-typical formal rational system takes no notice of the characteristics of the alleged offender; rich or poor, black or white, ideological dissident or staunch supporter of the existing order, all are held to be equal in the eyes of the court and all are guilty or innocent by virtue of their acts alone." (Balbus, 1973:8)

Thus, a legally centralized system operates on the basis of universalistic criteria. In contrast, the administration of justice in a decentralized or community controlled legal order is guided by particularistic criteria.

The most centralized legal order in the United States is the federal court system. Federal court judges are presumed beholden to no group. They are appointed to the bench for a life. They are authorized to conduct the voir dire examination (Van Dyke, 1977). They are graduates of law schools (Goldman, 1965; Abraham, 1968). The federal court system routinely provides for appeals within its structure. The fifty states vary, however, in their levels of legal centralization. Some states, such as Maryland, are highly centralized in their structural characteristics and therefore resemble the federal court system. Other states, such as Texas, are decentralized in court structure.

It was hypothesized that when given a choice of jurisdiction, attorneys practicing laws in the decentralized or community controlled states would be more inclined to opt for federal court jurisdiction than would attorneys practicing law in centralized states. It was reasoned that there would be less impetus to move a case into the federal courts when the orientation of one's own state court system was already similar.

TYPE OF CASE

The type of case, was also expected to affect the decision of whether to have the case heard in the federal courts or in the state's courts. It was hypothesized that although both jurisdictions might be available to hear a case, some cases might be regarded as more appropriate for federal court adjudication while others would be considered to be state court cases. Thus, if there was joint jurisdiction for a case because of legal technicalities only, it was hypothesized that attorneys would opt for state court jurisdiction. If, however, the case raised important federal issues both legally and substantively, it was hypothesized that attorneys would opt for federal court jurisdiction.

INTERACTIONS

Interactions, were anticipated between these three factors. A two-way interaction between the state's level of legal centralization and the race of the client was predicted. As previously noted, centralized legal orders as compared to decentralized legal orders, are better able to insulate the legal machinery from the pressures of local political values and practices. This insulation presumably results in cases being decided on their merits rather than on the basis of the ascribed characteristics of the litigants. It was hypothesized that with decreasing levels of legal centralization attorneys of black clients as compared to attorneys of white clients would become more sensitive to the need to have their client's case decided on its merit rather than on their client's personal characteristics. Therefore, with decreasing levels of centralization attorneys of black clients were expected to opt for federal court jurisdiction. In decentralized states, however, it was hypothesized that attorneys of black clients would be more likely to advise federal court jurisdiction than would attorneys of white clients.

The two-way interaction between the race of the client and the state's level of legal centralization was expected to be mediated by the third factor, type of case. That is, a three-way interaction was anticipated between the race of the client, the state's level of legal centralization and the type of case. It was hypothesized that the two-way interaction between the state's level of legal centralization and the race of the client would be more pronounced in an atypical federal case — a case in which there is joint jurisdiction because of legal technicalities. In such a case it was expected that with increasing levels of decentralization attorneys of black clients would be far more inclined to opt for federal court jurisdiction than would attorneys of white clients. However, in a case which raises important federal issues, both legal and substantive, attorneys for both blacks and whites are hypothesized to seek federal court jurisdiction. Although, here too, with increasing levels of state court decentralization the attorneys for black clients are expected to be somewhat more inclined to seek federal court jurisdiction than are the attorneys of white clients.

DATA AND METHOD

The data for the study were collected during the summer of 1978 from trial lawyers in Baltimore, Marlyland; Houston, Texas; and, New Orleans, Louisiana using a mail survey. Maryland was selected for inclusion in the survey because it approximated the centralized model of legal authority — trail judges are appointed to the bench by the govenor for a fifteen year term of office. There are educational requirements for prospective judges (Desk Book, 1974, Document No. 69:193). The voir dire can be conducted by the judge alone (Van Dyke, 1977). Relative to other states appellate review is not an unusual procedure. Texas was included in the sampling design because it closely approximated the decentralized model of legal authority — judges are elected in a popular election for a four year term of office. There are no specific educational requirements for service on the bench (Desk Book, Document No. 69:193) Lawyers are authorized to conduct the voir dire examination (Van Dyke, 1977). Appellate review is less likely to be utilized than it is in other states. Louisiana was included in the study because both historically and empirically its legal order is that of a mixed jurisdiction: Louisiana is the only state to have adopted the Napoleonic Code and therefore its structural features include aspects of both the centralized and decentralized models of legal authority (Dainow, 1974; Desk Book, 1974, Documents Nos. 69, 70, 72, 73: 93, 96, 97).

Within these three states it was deemed necessary to select areas for sampling which had large black populations. Lawyers responding to the questionnarire had to have some knowledge of what it meant to represent a black client. In Maryland, the Baltimore SMSA was selected for sampling as was the Houston SMSA in Texas and the New Orleans SMSA in Louisiana: 23.7%, 19.3%, and 30.9% black, respectively (1973 U.S. Bureau of the Census). From areas within these three SMSA's lawyers were randomly selected from the geographical rosters of the Association of Trail Lawyers of America and the National Association of Criminal Defense Lawyers. One hundred and fifty lawyers were selected from each SMSA. Seventy-five of these lawyers were randomly selected and mailed a questionnaire in which they were told that they were counsel to a black client and the remaining seventy-five lawyers were mailed a questionnaire in which they were told they were counsel to a white client.

The lawyers were presented with the alleged facts for two cases; a rape case and a civil eviction case. The rape case was selected to represent that category of crime which although considered to be among the most violent of the personal injury crimes (Blumberg, 1973; FBI Uniform Crime Reports, 1977) is not typically considered to be a case for federal court jurisdiction. In 1977, for example, of the 39,055 criminal cases commenced in the U.S. District Courts only .3% or 119 cases were for sexual offenses of any type (U.S. Statistical Abstracts 1978, Table 324:195). The facts, of the rape case presented to the lawyers, however, included the transportation of the alleged victim across state lines thereby allowing for the option of either state court or federal court jurisdiction.

The civil case was a case in which the tenants of an apartment building were bringing suit for damages against a landlord who was seeking to evict them. The plaintiffs alleged

that the eviction was being carried out to impede and prevent their reporting housing code violations to the appropriate authorities. The federal courts and the state courts were available to hear the case because of a diversity of citizenship issue, the landlord was a resident of one state while the tenants and the apartment building were located in another state. The civil case, represented a case more likely to be heard in federal court. In 1977, for example, of the 130,567 civil cases commenced in the U.S. District Courts, 25% or 33,346 cases, involved the diversity of citizenship issue (U.S. Statistical Abstracts 1978, Table 322: 194).

The data were analyzed using analysis of variance for repeated measurements as the design of the questionnaire was that of a split-plot experiment (Kirk, 1968). Lawyers received all treatments on the one within subject variable, the type of case. Lawyers indicated their federal-state court preference in the rape case and in the civil case. But, lawyers received only one treatment on the two between-subject variables. The lawyer was either from Maryland, Louisiana or Texas and the lawyer represented either a black client or a white client. As noted by Kirk (1968:247), there are statistical problems associated with the idea that the same subjects are observed at each level of a treatment. The data were analyzed using a repeated measurement split-plot designs.

FINDINGS

The analysis of variance results for the decision of whether to have the case heard in the federal courts or in the state courts are presented in Table 1. Only one effect is statistically significant, the main effect for the race of the client. Lawyers representing black clients were significantly more likely to advise their clients to have their cases heard in the federal courts than were the lawyers representing white clients. This finding indicates that regardless of the nature of the case and regardless of the state's level of legal centralization, the attorneys of black clients were more likely to advise their clients to seek federal court jurisdiction than were the attorneys of white clients.

Although not statistically significant, several substantively interesting patterns did emerge from the study. First the type of case did have an effect upon the federal court — state court decision. As had been predicted, the civil eviction case was more likly to be heard in federal court ($\overline{X}$ = 49.7) than was the rape case ($\overline{X}$ = 42.1). Second, the state's level of legal centralization also had an impact upon the federal

TABLE 1: FEDERAL VS. STATE COURT DECISION (Analysisl of variance)

Source	*df**	*MS*	*F*	*P*
Mean	1	57.6	187.7	.000
Race	1	3.1	10.0	.002
State	2	.4	1.2	.292
Race, State	2	.1	.2	.858
Error	139	.3		
Case	1	.3	1.9	.169
Case, Race	1	.0	.0	.982
Case, State	2	.3	1.8	.167
Case, State, Race	2	.1	.8	.444
Error	139	.2		

Conversion Values:
Black = 1, White = 0
Maryland = 1, Louisiana = 2, Texas = 3
Civil Case = 1, Rape Case = 2

*Cell sizes equal by listwise deletion.

TABLE 2: ATTORNEY PREFERENCE FOR FEDERAL COURT BY CLIENT RACE & CASE (Means)

	Race of Client	
Type of Case	*Black*	*White*
Rape Case	.51	.31
Civil Case	.59	.39

TABLE 3: ATTORNEY PREFERENCE FOR FEDERAL COURT BY CLIENT RACE & STATE CENTRALIZATION LEVEL (Means)

Level of Legal Centralization	*Race of Client*	
	Black	*White*
High, Maryland	.48	.27
Medium, Louisiana	.62	.37
Low, Texas	.56	.40

court — state court decision. As was hypothesized, lawyers in the most centralized state, Maryland, were the least likely to opt for federal court jurisdiction ($\overline{X}$ = 39.2) as compared to lawyers in the decentralized state of Louisiana ($\overline{X}$ = 51.1) and Texas ($\overline{X}$ = 48.0). Third, an interesting pattern emerged in an interaction between the state's level of centralization and the type of case. In the civil case, attorneys in Maryland, Louisiana, and Texas were equally likely to advise federal court jurisdiction respectively. However, in the rape case the effect of the state's level of centralization became evident. In Maryland, the most centralized state in the study, attorneys were less likely to advise federal court jurisdiction ($\overline{X}$ = .29) than were attorneys in the less centralized states of Louisiana ($\overline{X}$ = .52) and Texas ($\overline{X}$ = .46). Thus, centralized does not seem to affect the jurisdictional decision in the civil case, a more typical federal court case, but does not have an impact in the rape case, a case which is atypical of federal court jurisdiction.

The major finding of this study was that in 1978 the attorneys of black clients still followed the ideas presented by lawyers and social scientists in the 1960,s. As previously noted, the attorneys of black clients as compared to the attorneys of white clients were more likely to prefer Federal court jurisdiction regardless of the type of case, as shown in Table 2, and regardless of the state's level of legal centralization, as shown in Table 3. It seems, therefore, that even after the passage of the civil rights legislation of the 1960's and early 1970's, and even equal treatment of blacks, that the attorneys of black clients in inter-racial cases still believe that the federal courts are the most "just" forum for their client's cases. The attorneys for whites, however, in intra-racial cases believe that their clients can receive a favorable decision within the state court system and therefore advise state court jurisdiction.

More research is needed in the area of jurisdictional selection. Since the choice of courts is one of the most important decisions an attorney can make, it is necessary to know the basis for the decision. These data indicate that the federal court — state court decision is based primarily on the race of the client and partly on the type of case and state's level of legal centralization. In particular, this study shows that in inter-racial cases lawyers representing the black client prefer federal court jurisdiction whereas in the same case but one which is intra-racial in structure, attorneys representing a white client prefer state court jurisdiction.

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Contemporary Family: Reporduction, Production and Consumption

Although the private sphere of the home and family appears separate from the social world of commodity production, work occurs in the home that 1) is essential to production in the marketplace, 2) reinforces a sexual division of labor that subordinates women to men both in family and in jobs outside the home, and 3) intensifies psychological strian among family members.

With the near annihilation of community and family services enacted during Reagan's administration, along with the monumental increase in defense spending and development of nuclear weapons, we need, more than ever, to reevauate our priorities. We must find ways to intergrate our public and private lives so that the values we say we cherish, more than the reified ideologies we cling to, can find new forms of social expression. Rather than fearful attempts to defend a family system whose humanistic influences are constrained and in many ways distorted into their opposites, we must preserve the relations we value by transforming them to promote equality and love among women, children, and men.