

## JUDICIAL ROTATION AS CENTRIPETAL FORCE: SENTENCING IN THE COURT COMMUNITIES OF SOUTH CAROLINA\*

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*Courts as communities theory emphasizes the sentencing differences that can arise between localities within a single state. The results of published studies have highlighted how local differences emerge based on informal sociological and political processes defined by the communities perspective. The findings from recent quantitative studies from South Carolina have revealed notably less county variation in sentencing than has been observed elsewhere. I use qualitative interviews with 13 South Carolina trial judges to investigate sentencing processes and to shed light on these findings. The interviews explore the state's legal structure and culture, including the practice of circuit rotation in which judges travel among counties holding court. The results suggest rotation serves as a centripetal force of sentencing culture, homogenizing what might otherwise be a more varied collection of county-specific norms. Rotation leads to increased uniformity through judge shopping and the cross-pollination of ideas and norms. Defendants can strategically judge shop and plead in front of a lenient judge—a process that gives rise to the term “plea judge,” which is a label for the most lenient judges who sentence a large number of defendants. Rotation also increases the interactions among judges and prosecutors, expanding networks and grapevines, and leading to cross-pollination and the sharing of ideas.*

**When it comes to sentencing, location matters.** This has been the premise of numerous studies during the past 50 years—from the seminal efforts of Eisenstein, Flemming, and Nardulli (1988) and Myers and Talarico (1987), to a more recent proliferation of multilevel research (e.g., Britt, 2000; Fearn, 2005; Johnson, 2006; Johnson, Ulmer, and Kramer, 2008; Kautt, 2002; Kramer and Ulmer, 2009; Ulmer and Johnson, 2004; Wang and Mears, 2010; Weidner, Frase, and Schultz, 2005). These studies were premised (implicitly or explicitly) on the court communities perspective, which explains how individual court communities develop localized legal cultures that exhibit geographic variation in case-processing norms, going rates, and substantive punishments. Local courts are

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considered to be “policy arenas” (Ulmer and Kramer, 1996: 384), and the different policies that develop across geographic subdivisions create a varied landscape of norms and sentencing outcomes. The aim of this line of research is, thus, focused on the differences between local courts or on what Eisenstein, Flemming, and Nardulli (1988) referred to as “the contours of justice.” **Location matters in sentencing because norms, practices, and outcomes vary by place.**

Although the literature on environmental and contextual court influences comprises numerous studies aimed at focusing on differences between counties and districts, I build on this line of research from the opposite angle. **By using qualitative interviews with trial judges from South Carolina, I examine ways that structural and cultural characteristics of a jurisdiction can reduce local differences**—how factors can create a force toward greater uniformity rather than significant geographic variability. **This inquiry is sparked by the results of recent quantitative studies of sentencing in South Carolina that have revealed less county-to-county variation in both the decision to incarcerate and the sentence-length decision than has been found in studies of other jurisdictions** (Hester, 2012; Hester and Sevigny, 2014). **The nature of county variation in South Carolina is noteworthy because the state never adopted sentencing guidelines and, thus, should reveal more diverse practices and outcomes than those uncovered in guidelines jurisdictions** (which account for most research sites examined in the latest wave of court context research).

Judicial structure and statewide legal culture may hold some answers for these unexpected findings. **South Carolina continues to employ the practice of judicial rotation wherein all judges travel from county to county holding court, a structural feature that could mitigate the development of localized patterns and spread sentencing norms statewide.** The theoretical ground of state legal culture remains uncultivated by researchers compared with the numerous studies published in the county legal culture literature. Still, the courts as communities research suggests several normalizing mechanisms that would lead to more uniform statewide culture. For example, Nardulli, Eisenstein, and Flemming (1988) noted that state codes, rules, and resources could impart a more statewide influence on legal culture. They speculated that **repeated opportunities for interactions among courtroom personnel—things like statewide attorney meetings, publications, and other “grapevines”—could lead to unexpected developments in statewide legal culture** (Nardulli, Eisenstein, and Flemming, 1988: 164–5). Yet, as noted, researchers in the formational courts as communities ethnography found pronounced local county landscapes that differed substantially in legal culture and outcomes. Although the results of studies have advanced this key aspect of the court communities perspective, the issue of greater statewide culture has remained unstudied by criminologists.

I build on the nascent state culture foundation through qualitative interviews with state trial judges. In so doing, I answer recent calls for more qualitative sentencing research. Ulmer (2012: 33), for example, has urged a “major renewal of court community ethnography,” with a focus on the “*in situ* decisions and activities of courtroom workgroup participants, and how these are shaped by their surrounding court community contexts.” A new era of qualitative research is particularly needed because the leading ethnographic sentencing studies were conducted decades ago<sup>1</sup> and a whole array of reforms has come to reshape sentencing practices dramatically since then.

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1. For notable exceptions of contemporary qualitative research related to courts, see Clair and Winter (2016); King et al. (2005); Ulmer (1997); Ulmer and Kramer (1996); and Wright and Levine (2014).

## THEORY AND PRIOR RESEARCH

Eisenstein, Flemming, and Nardulli (1988) developed the courts as communities theoretical perspective to harmonize three separate strands of literature related to criminal courts—those that were focused on 1) individual actors, 2) the institutional and organizational contexts of the courtroom, and 3) outside environmental characteristics. With the communities metaphor, Eisenstein and colleagues combined these three levels of analysis and elucidated the ways that variation emerges in court communities, conceived of primarily at the county level. Over the course of three books and a series of articles, they introduced several concepts and principle features of the courts as communities perspective that can be distilled into a few key points.

First, members of the courtroom workgroup (chiefly the prosecutor, judge, and defense attorney) work together and interdependently to process cases and determine sentencing outcomes (Eisenstein and Jacob, 1977; Eisenstein, Flemming, and Nardulli, 1988). Second, the way in which any particular workgroup functions varies depending on a variety of factors, including the attitudes and preferences of the workgroup members and the degree of stability, similarity, and familiarity among the members (Eisenstein, Flemming, and Nardulli, 1988; Ulmer, 1997). Third, influence is exerted by the sponsoring organizations of the judge, prosecutor, and defense, and there is variation in the methods by which these organizations direct the individual actors in the workgroup, including the organizational structure, leadership styles, and historical relationships and power dynamics among the organizations. The interorganizational exchanges are further influenced by the emotional undercurrents within the court community, commonly shared workspaces, and the extent of informational grapevines (Flemming, Nardulli, and Eisenstein, 1992; Worden, 2007). Fourth, beyond the workgroup members and their sponsoring organizations, the environmental features of a local court community impact sentencing (Nardulli, Eisenstein, and Flemming, 1988; Ulmer and Johnson, 2004). These include the social, economic, and political atmosphere of the place, as well as the linkages between the court community and the outside political and social community and other influential local groups. Influences on county-level variation range from differences in the nature and flow of cases, the dominance of a large metropolis, and expectations of the community and local elites, to factors such as local jail and state prison capacity, and media coverage of crime (Eisenstein, Flemming, and Nardulli, 1988; Nardulli, Eisenstein, and Flemming, 1988).

Together, this rich bundle of factors operating at different levels works to shape the legal culture of a place. Legal culture can coalesce at different jurisdictional levels: county (or local) legal culture, state legal culture, and national legal culture (Eisenstein, Flemming, and Nardulli, 1988). A key component of local culture is the concept of *going rates*, a term that refers to the standard penalties given to typical crimes and offender profiles or sentencing “templates” within a local jurisdiction (Ulmer and Johnson, 2004: 140). For example, although burglary may formally carry a wide punishment range, the local norms of a county may develop an informal expectation that a first-time nonviolent burglary offender receives 2 years of probation. In another county, characterized by more punitive sentiments, the going rate for a first-time burglar may be 6 months in jail. The communities perspective expects different going rates to evolve based on the particular legal culture of the locality and that these going rates will contribute to differences in sentencing outcomes (see also Sudnow, 1965). In short, the theory focuses on local county

courts, their working norms, organizational interrelationships, and the social and political climates they operate within. The thrust of the metaphor embodies a focus on interjurisdictional differences; as Eisenstein and his associates (1988: 56) put it, their objective was “to impart understanding of how courts differ, the *contours* of justice” (emphasis in original).

Findings from subsequent studies of court and county context have confirmed that processing and sentencing norms vary substantially across locations within a jurisdiction (e.g., Bontrager, Bales, and Chiricos, 2005; D'Alessio and Stolzenberg, 1997; Dixon, 1995; Johnson, 2006; Johnson, Ulmer, and Kramer, 2008; Kautt, 2002; Kramer and Ulmer, 2002; Ulmer and Johnson, 2004). Nevertheless, as Johnson (2006) has observed, it is difficult to summarize concisely the literature on how environmental characteristics impact sentencing outcomes. Some researchers, for instance, have found that factors like racial composition and socioeconomic conditions impact sentencing outcomes, whereas others have not (Johnson, 2006; Ulmer and Johnson, 2004). Although findings vary within the literature, researchers have confirmed the broad court communities proposition that location matters. As Ulmer and Johnson (2004: 140) have asserted, informal local norms seem to shape sentencing outcomes “at least as much as formal policies.”

Because the courts as communities perspective is focused on explaining variation, the potential for more uniform statewide culture and norms has been overlooked. Yet the idea that variation among court communities exists along a continuum is implicit in the theory: At one extreme would be a greatly diffuse and independent set of county courts characterized by stark differences in cultures, norms, and outcomes. At the other extreme would be communities characterized by remarkable uniformity. County location should be highly salient to outcomes where state legal culture casts negligible influence and other community characteristics work to maximize the development of divergent local norms. But if instead state legal culture were strong and pervasive enough, it would work to normalize outcomes and practices at the expense of local variation.

This possibility of stronger statewide cultural has been suggested by researchers on several occasions in the communities literature. For instance, Nardulli, Eisenstein, and Flemming (1988: 30) pointed to environmental factors that include socioeconomic structure, political makeup, and “a structural-legal domain embodying relevant laws, codes, and rules, as well as facilities.” Environmental factors can have both a county and a state dimension. One example, referred to by researchers throughout the communities texts, is the constraining effect of limited state prison capacity. Where a state is experiencing a severely overburdened prison system, space limitations might constrain workgroups across counties to reserve incarceration temporarily for only the most serious offenders. In less austere times, more options may be presented and, thus, greater room for variation may emerge.

Other aspects of communities theory can be extrapolated to account for a statewide culture in ways that were not necessarily anticipated by Eisenstein and colleagues. For instance, Nardulli, Eisenstein, and Flemming (1988: 41) recognized that court system infrastructure variants are “important to note because they have an important impact upon the terrain in a court community.” One example is the infrastructure characteristic of judicial calendaring. In some places, an individual calendaring system assigns a case to the same judge for the duration of the judicial process, whereas other counties use a master calendaring system. In the master calendaring system, different judges handle different aspects of the case (indictment, pretrial motions, disposition, sentencing, etc.). Master

calendarizing opens up an opportunity for judge shopping, when, for example, an attorney can persuade a court administrator to route a case into a particular judge's courtroom, or when an attorney delays a case set for sentencing that might then allow that case to be heard by a more favorable judge at a later date (Eisenstein, Nardulli, and Flemming, 1988; Ulmer, 1997). In contrast, Ulmer (1997: 83) found that the individual calendarizing systems used in two counties he studied made judge shopping "nearly impossible."

In South Carolina, a variant of master calendarizing is imposed centrally on all counties. Rotation requires judges to preside in workgroups throughout the state and likewise means a local court receives many different judges in the course of the year. Nardulli, Eisenstein, and Flemming (1988: 164–5) speculated in passing that "diffusion of innovations, structures, and practices brought about by statewide meetings, publications, and grapevines may lead to structures that one may not otherwise expect to find." Eisenstein, Nardulli, and Flemming (1988: 50–1) made a similar observation about the "indirect effects from the general context of the state": "Both state political culture and interaction among judges, prosecutors, and others in state meetings produce some 'norming effects' on things like severity of sentences and technologies used . . . . Thus, states exhibit a state legal culture that produces differences on matters not encompassed by the national legal culture." By producing a web of cross-jurisdictional networks and facilitating the sharing of ideas, rotation could lead to cross-pollination of perspectives and practices and to a norming effect from these extensive interactions.

Eisenstein and associates (1988) found only weak state legal culture influences in their foundational work. Subsequently, other researchers have tended to disregard state legal culture, focusing instead on differences among local courts, the heart of the theory. Accordingly, the theoretical mechanisms that might lead to greater uniformity among court communities remain underdeveloped by criminologists. In fact, almost no progress has been made on exploring variations in the degree of local legal culture divergence, although geographic uniformity—ensuring that like cases are treated alike throughout a state—seems to be an important issue for scholars and policy makers. State legal culture is thus an area ripe for further theoretical development. In the next section, I frame the current study in the legal and structural context the South Carolina judges operate in. I discuss the nonguidelines, hybrid indeterminacy that operates in South Carolina, and the pertinent judicial structural features, including circuit rotation.

## CONTEXT OF SENTENCING IN SOUTH CAROLINA

Despite considerable efforts throughout the 1980s and 1990s to enact advisory sentencing guidelines, South Carolina remains a nonguidelines state [Harwell-Beach, 1998; Hester, 2016; South Carolina (SC) Sentencing Guidelines Commission, 2001]. Judges impose a maximum sentence, and the parole board determines a release date, subject to various statutory rules described as follows [Bureau of Justice Assistance (BJA), 1998; McAninch, Fahey, and Coggiola, 2007; Stemen, Rengifo, and Wilson, 2005]. The design might be described as "restricted indeterminacy": Even though the sentencing system is not structured as in presumptive or guidelines states, South Carolina has implemented a variety of sentencing laws since the 1970s, including limited truth-in-sentencing, mandatory minimums, and other laws that qualify its indeterminate status.

Felonies are structured into six classes whose maximum terms are provided in 5-year increments (e.g., a 5-year maximum for a Class F felony, a 10-year maximum for a Class E

felony, and so on, up to a 30-year maximum for a Class A felony, with some offenses—e.g., murder—exempt from classification). Misdemeanors are similarly organized into three classifications. The offense categories provide an increasing stair-step of statutory maximum penalties judges must comply with, but they still leave judges with tremendous windows of discretion that grow ever broader with the seriousness of the offense. Mandatory sentences also restrict judges' discretion for some offenses, especially drug and weapons violations (Ghent, 1998; SC Sentencing Guidelines Commission, n.d.). Judges are not allowed to sentence below the minimum specified terms, although mandatory sentences may be suspended unless the statute expressly provides that no suspended sentences are allowed (e.g., SC Code Ann. § 44-53-370; see also McAninch, Fairey, and Coggiola, 2007).

One of several rules may apply for parole eligibility depending on the classification of the offense. As a baseline, many prisoners are eligible after serving just 25 percent of their sentence, but others must serve 33 percent, 85 percent, or 100 percent of their sentence, which are determined by various statutory designations (such as “violent offenses,” truth-in-sentencing requirements for offenses with a 20-year maximum or greater, and other special provisions). Consequently, South Carolina judges continue to exercise large amounts of discretion, constrained only by the occasional mandatory penalty (some of which can be imposed and then suspended) and statutory maximums that are measured out in 5-year increments according to felony class designations. The statutory maximums, mandatory minimums, and parole eligibility rules create a textured landscape—a restricted indeterminacy—that continues to allow extensive judicial discretion.

## SOUTH CAROLINA JUDICIAL SYSTEM

South Carolina's judicial system consists of 46 counties grouped into 16 judicial circuits. A chief prosecutor, known as a solicitor, is elected to serve each circuit. South Carolina was the only state in the nation where prosecutors continued to control the docket (Siegel, 2005) until 2012 when a SC Supreme Court case, *State v. Langford III*, declared the practice a violation of separation of powers. The courts of general jurisdiction are called “circuit courts,” and the circuit judges are selected by the legislature, which is a rare method of judicial appointment shared only by Virginia (Hester, 2016).

A noteworthy characteristic of the court system is the continued practice of trial judge rotation throughout the various circuits. Judges in South Carolina do not sit exclusively in one court or county, but instead, they travel throughout different counties during the year. The SC Constitution mandates this practice (SC Constitution, Art V, s 14). Currently, the traveling judge requirement is implemented ad hoc through order of the chief justice. Judges spend much of their time in their home circuit; rotation occurs frequently but nonsystematically. In fiscal year 2001, the judges traveled to an average of 12 counties, and counties saw an average of 13 judges rotating through during the year for criminal court sessions (Hester and Seigny, 2014).

Currently, approximately 50 full-time active circuit judges hear cases in the general jurisdiction courts, and the ratio of judges to the general population is one of the lowest in the nation. According to Schauffler et al. (2004), South Carolina had approximately 1.1 general jurisdiction judges per 100,000 in the general population; the national average was around 4 per 100,000. Consequently, caseload burdens are also among the greatest in the country. Given the heavy caseloads, plea bargaining is the predominant way of conducting

business in South Carolina courtrooms. In 2001, more than 98 percent of offenders were sentenced after a guilty plea as opposed to after a trial (Hester and Hartman, 2016); this is consistent with the high plea rate in other U.S. jurisdictions (see Wang and Mears, 2010; Wright, 2005). Pleas in South Carolina take one of three forms: 1) a straight plea where the defendant pleads guilty with no recommendation from the prosecution, 2) a recommended plea where the prosecutor offers a recommendation that has no binding effect on the judge or outcome, and 3) a negotiated plea that is presented to the judge as an agreed-to outcome by the parties that the judge must either accept or reject. Whether a judge accepts a negotiated plea is discretionary and varies across judges according to their preferences on taking pleas.

South Carolina judges almost never make use of a presentence investigation report. There is a mechanism for requesting a report from the probation department, but it is only rarely used by a small number of judges. South Carolina judges typically pronounce the sentence at conviction or the entry of the plea; on the rare occasion a presentencing report is requested, it takes weeks to receive it, and by then, the presiding judge is likely holding court in a different county. Furthermore, judges are aware of the additional work the reports place on probation officers. In this heavily overburdened jurisdiction, presentencing reports have simply never been integrated into the sentencing process (Hester, 2016; Richards, 1986).

As noted, the aim of several recent studies has been to analyze sentencing practices in South Carolina with 2001 data collected by the now disbanded SC Sentencing Commission during the period it was developing and attempting to institute sentencing guidelines.<sup>2</sup> Hester and Sevigny (2014) reported offender-level findings that were in keeping with the general expectations published in the sentencing literature. For the decision of whether to imprison, the strongest predictors were offense seriousness, criminal history, offense type, and mode of disposition (plea or trial). Racial disparities were present and statistically significant but of moderate substantive size: Black offenders experience a 1.48 increase in odds of incarceration compared with White offenders, controlling for other relevant legal and extralegal factors. The results were similar for the prison-length determination with one exception. Legal factors were the strongest predictors of prison length except for criminal history, which exerted a modest influence. Moving up one of the five designated criminal history categories increased prison length by only 4 percent on average. In terms of racial disparities, Blacks received approximately 7 percent longer sentences than did Whites, controlling for the other predictors (Hester and Sevigny, 2014).

Most surprising, as already observed, were the county-level findings. The unconditional hierarchical linear models revealed statistically significant variation between counties, but only about 2 percent of the variation in disposition (in or out of prison) and duration (length of prison for those incarcerated) was attributable to county-level differences. Although the interclass correlation coefficient is frequently taken as the measure of significant interjurisdictional variation (see, e.g., Johnson, 2006; Wooldredge, 2010), the fact that there is little between-county variation in relation to the within-county variation does not necessarily constitute conclusive evidence that sentencing is uniform throughout the state. Nonetheless, a comparison of the unconditional county-level statistics from South

2. The data cover the universe of offenders (more than 17,000) sentenced in the general jurisdiction courts for fiscal year 2001 and include standard outcome measures (whether an offender was incarcerated and the length of incarceration) and typical control variables.



Carolina in 2001 with those reported for Florida in 1998 (Arazan, 2007) and Pennsylvania from 1997 to 1999 (Ulmer and Johnson, 2004) indicates less variance across counties in South Carolina compared with those two states (for example, the variance component for the in/out decision was .08 in South Carolina compared with .20 in Florida and .40 in Pennsylvania).

In addition, I conducted supplemental analyses (available by request) that compared coefficients of variation for county-level descriptive statistics, decomposed by offense type (person, property, drug, or other), for South Carolina, Florida, Minnesota, and Washington for 2001; these comparisons revealed much lower coefficients of variation (CVs) in South Carolina compared with the other three states for the decision to incarcerate.<sup>3</sup> As one example, the property offense CV for the in/out decision was 26 percent in South Carolina compared with 45 percent in Florida, 94 percent in Minnesota, and 43 percent in Washington. Comparisons for the sentence-length statistics were more varied. For example, the CV for violent offenses was lower in South Carolina (45 percent) than in Minnesota (69 percent) or Washington (60 percent) but higher than in Florida (37 percent). For drug offenses, the sentence-length CVs in South Carolina were somewhat higher than in the other three jurisdictions (48 percent vs. 34 percent in Florida, 42 percent in Minnesota, and 40 percent in Washington). For the other offense types, the CVs in South Carolina were lower than those of at least one, if not all three, of the other states.

These county-level variation comparisons are especially noteworthy because presumptively binding sentencing guidelines were in effect in Florida, Minnesota, and Washington during this time (see Frase, 2005; Frase et al., 2015). Consequently, workgroups in these three states were under considerable legal constraints from their guidelines, whereas judges and workgroups in South Carolina exercised vast amounts of sentencing discretion. With no guidelines to constrain, the myriad individual, court, and environmental factors discussed in reference to courts as communities theory should have led to the development of sharply differing sentencing policy arenas throughout the state—unless, that is, some other mechanisms of the South Carolina court communities created a pull toward greater uniformity. To probe beyond what the quantitative data can answer, I conducted interviews with South Carolina trial judges as explained in the next section.

## DATA AND METHOD

Researchers have called for more qualitative examinations of criminal courts for many years in large part because qualitative methods provide the potential for depth and insight to complement quantitative findings. Goldstein (2002: 669) noted that elite interviews<sup>4</sup> are beneficial for “(1) gathering information from a sample of officials in order to make generalizable claims about all such officials’ characteristics or decisions; (2) discovering a particular piece of information . . . ; (3) informing or guiding work that uses other sources of data.” The results of qualitative judge studies have shed light on numerous aspects

3. The coefficients of variation were calculated as the ratio of standard deviation to the mean. The county-level descriptive statistics for Florida are from Cochran (2016).

4. Kezar (2003: 397) defined elite interviews as those wherein the interviewees who are known to have participated in a certain situation, in which the researcher has reviewed information necessary to arrive at a provisional analysis, where the researcher produces an interview guide based on this analysis, and where the result of the interview is the participant’s definition of the situation.



of sentencing theory. For instance, Daly (1989) interviewed judges to probe why female offenders are sentenced more leniently when compared with male offenders. She found evidence of a judicial paternalism aimed at the protection of children and families rather than at the women themselves, and this was true among both male and female judges. Kramer and Ulmer (2002) used qualitative interviews with judges to explore ways in which workgroups disagreed with certain policy decisions imposed by the Pennsylvania sentencing grid (for example, sentences for high-severity offenses and for offenders of low-severity offenses but with extensive prior records). Ulmer and Kramer (1996) interviewed judges and attorneys to explore quantitative findings related to trial penalties. They found that workgroup members generally agreed trial penalties were a way to encourage guilty pleas; that pleas were viewed as a sign of remorse; and that pleading led to a less-severe penalty at least in part because it allowed the defendant to avoid “emotional reactions to ‘ugly facts’” that often come out in trial (Ulmer and Kramer, 1996: 396). Most recently, Clair and Winter (2016) employed judge interviews to explore different strategies trial judges use to address racial disparities in various phases of the judicial process. Along these lines, qualitative inquiry was especially appealing for the current project given the findings related to county-level variation uncovered in prior research and, more generally, given that little exists theoretically on the question of what factors and features might make a jurisdiction more likely to exhibit greater statewide legal culture.

## SAMPLE

As discussed, recent empirical research from South Carolina has been conducted with 2001 sentencing data collected by the former sentencing commission as part of its failed attempts to promulgate guidelines (see Hester, 2016). **Accordingly, for the current project, a purposive sample of 13 of the 50 trial judges who sentenced offenders in the 2001 data set was interviewed.** I chose the population of the 50 judges from 2001 judges for the sampling frame because the findings of court community uniformity had been based on the practices of those judges. Although interviewing the 2001 bench sacrificed some contemporaneity, it maximized the potential to draw theoretical inferences back to the findings of uniformity.

Unlike in quantitative analyses where the appropriate  $N$  for a random sample can be identified based on statistical power and other methodological needs, selecting the appropriate number of cases in qualitative work is more difficult to determine (see Roulston, 2010), even though a significant body of literature has recently been developed on this issue (see, e.g., Francis et al., 2010; Guest, Bunce, and Johnson, 2006; O'Reilly and Parker, 2012). Much of the scholarship has been devoted to determining when the researcher has reached “saturation,” the point at which the interviews provide a “full and complete description” (Becker, 1998) of the research question and after which further data collection would be largely redundant (Corbin and Strauss, 2008; Creswell, 2014; Guest, Bunce, and Johnson, 2006; see also Jacobs and Wright, 1999).

The appropriate sample size for reaching saturation is highly variable from project to project and depends on the research question, the population being studied, and the overall design of the research. For instance, Kuzel (1992) suggested that six to eight interviews are appropriate for a homogenous sample, whereas 12 to 20 should be obtained where greater variation exists. Others offered different suggestions (for a review, see Guest, Bunce, and Johnson, 2006: 61), but a few guiding principles have emerged from the

literature: 1) The researcher should begin with some expected sampling frame in mind; 2) the researcher should be flexible and continue sampling if saturation has not been reached; and 3) the researcher should have some a priori criterion for when saturation has been achieved—that is, a stopping condition (Francis et al., 2010; Guest, Bunce, and Johnson, 2006; see, e.g., Mullins, Wright, and Jacobs, 2004).

I began with the assumption that given the practice of rotation and the homogeneity of the judicial profession, the number of judges needed for this project would be modest. For one, judges in general go through considerable selection and professional socialization processes that tend to make them a homogenous population. Guest, Bunce, and Johnson (2006: 74) suggested samples as small as four individuals may be adequate where the subjects are specialists who “possess a certain degree of expertise about the domain of inquiry” based on the idea that higher degrees of professionalism and expertise increase the homogeneity of the sampling frame. Furthermore, in the decades leading up to 2001, there was only one law school in the state, which most of the judges on the bench at this time attended. Thus, apart from the general similarities and strong socialization processes that have frequently been noted as applying to judges (see, e.g., Crow and Gertz, 2008; Johnson, 2006; Spohn, 1990; Steffensmeier and Britt, 2001), there would have been considerable overlap in both the specific socialization processes (professors, curriculum, etc.) and the networkings of these South Carolina judges.

In addition, because geographic coverage is closely tied to the issue of state culture, the county of residence was a factor for sample size consideration. On average, the 50 judges held court in 12 different counties in 2001; thus, adequate coverage was almost guaranteed because of the extensiveness of rotation. The 13 judges ultimately interviewed held residency in 10 of the 16 circuits (two were “at large” and two were residents in the same county) and sentenced offenders in all but four of the state’s 46 counties during 2001. Thus, on the particular question of the likely influence of judicial rotation, the judges provided considerable geographical coverage and would all be well suited to provide an informed perspective on county differences.

I did, however, want to ensure that I leveraged variation among the judges. Most significantly, I wanted to speak with judges at different points along the continuum of punitiveness. Presumably there are meaningful differences in punishment preferences among judges, but attributes like race, gender, and age seem to be poor proxies for these attitudes and preferences (see Frazier and Bock, 1982; Gruhl, Spohn, and Welch, 1981; Johnson, 2006; Kritzer and Uhlman, 1977; Myers and Talarico, 1987; Spohn, 1990; Steffensmeier and Britt, 2001; Steffensmeier and Herbert, 1999; Welch, Combs, and Gruhl, 1988; Worden, 1995). By using the 2001 South Carolina Sentencing Guidelines Commission data referenced earlier, I constructed two measures of punitiveness: the percentage of offenders incarcerated and the average prison sentence length for those sent to prison. To supplement the punitiveness measures, I considered the judges’ judicial caseloads for the year. And although the results on judge attributes have been mixed, they remain theoretically relevant, so I factored in gender,<sup>5</sup> age, and time on the bench as of 2001 as secondary considerations for choosing among judges who fell on similar places along the punitiveness continuum. The final sample of 13 represents considerable

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5. Only 1 of the 13 judges interviewed was female. Yet, in 2001, only 3 of the state’s 50 trial judges were women.

geographic coverage of the state and provides representation along the potentially relevant characteristics of punitiveness, caseload, gender, age, and tenure.

In following Kuzel's (1992) recommendations, I initially anticipated that interviewing around eight judges who varied primarily along the punitiveness continuum would be sufficient to provide saturation. Although the first eight interviews revealed all of the statewide norm concepts ultimately identified in the final sample of 13, I expanded the interviews through theoretical sampling (see Charmaz, 2002: 689; see also Mullins, Wright, and Jacobs, 2004) after the first eight revealed a mechanism for uniformity that I had not anticipated (i.e., the phenomenon of the plea judge and practices related to judge shopping and plea routing, explored fully later in this article). Although the plea-judge concept came up in the first interview and was a feature throughout the first eight, I wanted to ensure it had adequately been explored as it had not been anticipated. This led me to seek interviews with two additional judges who sentenced among the greatest number of offenders in 2001 (as the number of offenders sentenced was a key component of the plea-judge concept) and who were among the most lenient; I also added interviews with two more punitive judges because the concept of the punitive "hanging judge" emerged as an important corollary to the plea judge. Finally, I added one final judge who was near the mean on the punitiveness measure so that the final sample was not overly representative of the punitiveness extremes. These additions brought the final number of judges interviewed up to 13.

## DATA COLLECTION

I conducted the interviews between December 2014 and March 2015. They ranged from 30 minutes to more than an hour and averaged 45 minutes. Given the regional differences between me and the judges, and the pressing schedules of the traveling judges, the interviews were conducted via telephone<sup>6</sup> (see Berry, 2002; Stephens, 2007; Holt, 2010). Interview methodology necessarily raises the potential for various "interactional problems," which include ethical issues and technical aspects of the interview approach (Roulston, 2014). These issues range from confidentiality concerns, disclosing the purpose of the interviews, establishing rapport, getting cooperative responses, and asking questions clearly in terms the participants can readily understand and engage with (Kvale and Brinkmann, 2009; Roulston, 2014; Silverman, 2013; Smigel, 1958). As for the ethical issues, I began each interview by introducing myself, my academic affiliation, and my background, as well as by expressing my interest in sentencing in general and in South Carolina sentencing in particular. I informed the judges the interviews were voluntary, that the judge's identity would remain confidential, and invited the judge to ask any questions about the research project, my interest in the subject, or anything else related to the interview request.

Interviewing elites, and court elites in particular, carries with it a special set of challenges related to access to participants and cooperation of participants (Goldstein, 2002; Smigel, 1958). Smigel (1958) emphasized the paramount need to create interest in the

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6. Some researchers prefer to record interviews, whereas others suggest not recording. Recording seems most efficacious for in-person interviews as it frees the questioner from constant note taking and helps maintain a conversational approach (Berry, 2002; Peabody et al., 1990). I chose not to record the interviews to avoid the potential chilling effect (see, e.g., Katz, 2001). As the interviews were via phone, I could take copious notes without damaging rapport.

subject for the participant of a legal elite interview. In introducing the project, I explained that I was interested in studying sentencing in general and that in particular I had been studying sentencing in South Carolina for some time by using the 2001 sentencing commission data. I had familiarized myself with each judge's professional background from his or her biographical profile in the 2000 and 2001 South Carolina Legislative Manuals, which are small books published by the state's legislature and which contain information about various elected public officials and the state's judges. Early in the interactions, I signaled to the judges that I was familiar with their state's legal system; for instance, I referred to South Carolina prosecutors as "solicitors" rather than as "D.A.s," I referenced the "circuit courts," and I knew to call terms of criminal court "General Sessions." My objective was not to present myself as an expert but to present myself as a researcher who was a serious student of this particular legal system so that the judge could fill in some gaps in the way sentencing worked and provide his or her perspective on the issues discussed. The judges seemed to be naturally interested in criminal sentencing as a subject of social importance and a significant part of their experience as a trial court judge.

To establish rapport, I began with a broad, open-ended question about the judge's general approach to fashioning an appropriate sentence in a case. This question was an effective opening to the interviews; the precedent was established of the author asking a short question and the judge subsequently doing most of the talking, but with frequent probing and follow-up by the author (on the importance of short questions and long answers and probing in interview methodology, see e.g., Bernard and Ryan, 2010: ch. 2; Roulston, 2014). The interviews were semistructured and employed mostly open-ended questions. The following examples include some of the most pertinent questions from the interview guide for the current study:

### ***Approach to Sentencing***

*For a typical case, what is your approach for identifying an appropriate sentence? What case or offender characteristics matter the most?*

*How influential are other parties in shaping your sentence (the prosecutor, defense attorney, the defendant, victims, etc.).*

*How often do you take a straight up plea versus a recommendation or a negotiated plea?*

### ***South Carolina Legal Culture***

*What are your thoughts on the practice of judicial rotation in SC? What are the benefits and burdens?*

*Can you give any examples of regional or county-to-county differences in sentencing and criminal case processing norms that you've seen as you've held court in different parts of the state?*

I informed the judges that I had previously conducted empirical studies of sentencing in South Carolina with the 2001 data collected by the former sentencing commission and that I was specifically interested in sentencing practices as they existed at that time. To

the extent that practices or norms had evolved since 2001, I asked them to frame their answers with reference to that earlier period. The judges all recalled the previous guidelines effort, and most were aware that the commission had collected some sentencing data. To minimize researcher bias, I did not inform the judges of the empirical findings (at least not at the outset of the interviews—on several occasions, the findings did come up after the interviews had been concluded). I posed the question about judicial rotation in a neutral way that did not suggest any policy linkages—I simply asked what the judge’s thoughts were on the practice and what were the benefits and burdens. I also framed the more closed-ended question of county-to-county variations as one difference (rather than, for example, asking whether the judge would agree that sentencing is mostly similar across counties). The judges were also questioned about several issues not covered in the current study, including the degree to which prior record influenced their sentencing, as well as their thoughts on the failed sentencing guidelines effort in South Carolina.

## ANALYSIS

Soon after the interviews were conducted (typically within 24 hours), the handwritten notes were transcribed and research memoranda were created for each interview (see Corbin and Strauss, 2008). **The interview data were coded and analyzed with NVivo software** (QSR International, Victoria, Australia) **and followed the principles of grounded theory.**

**In grounded theory, coding the interview data is itself part of the analysis** (Charmaz, 2002; Corbin and Strauss, 2008; Emerson, Fretz, and Shaw, 1995). The first stage, open coding, involves reading through portions of the data to **identify concepts** (or themes<sup>7</sup>) **and categories of concepts** (see Bernard and Ryan, 2010; Creswell, 2014; Emerson, Fretz, and Shaw, 1995: ch. 6). Corbin and Strauss (2008, p. 198) defined open coding as “breaking data apart and delineating concepts to stand for blocks of raw data.” As the coding progresses, the researcher also begins to relate concepts and themes to each other, linking ideas and elaborating on processes. This practice is sometimes referred to as axial coding. **Coding is interactive**—it involves constant comparison of concepts and themes; **the interviews are read and re-read, and concepts are refined.** As concepts are identified and links between themes are made, the researcher begins to develop a descriptive account, as well as (perhaps) theoretical insight into the processes being studied. Closed or selective coding can then be used for a more “fine-grained, line-by-line analysis” of the data (Emerson, Fretz, and Shaw, 1995: 160) to synthesize concepts and theory (Charmaz, 2002). In the next section, I present the findings from the interviews.

## RESULTS

The interview data revealed that judicial rotation has a defining influence on creating a more statewide legal culture. Rotation acts as a centripetal legal culture force that pulls together would-be disparate, localized practices into a more uniform set of statewide norms. **The resulting pull toward uniformity occurs through two primary mechanisms: 1) judge shopping and 2) the cross-pollination of ideas and practices.**

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7. In the NVivo software, these are called “nodes,” but in the literature, and in this article, researchers tend to refer to “themes” and “concepts.”

## CIRCUIT ROTATION AND PLEA JUDGES

Traveling engenders an openly embraced practice of judge shopping and plea routing, which is the result of an extreme and unique form of statewide master calendaring (compare with Eisenstein, Flemming, and Nardulli, 1988; Ulmer, 1997). A judge's reputation is quickly established and spreads throughout the state, and judges readily self-identified as being "harsh," "stringent," or "tough," on the one hand, or "lenient" or a "plea judge," on the other hand. The informal term "plea judge" emerged as a key concept to refer to lenient judges who sentence a larger proportion of the state's criminal cases because of judge shopping.

Rotation allows defendants to avoid tough judges by waiting on a plea judge to come to town. Several judges gave accounts of tough "hanging judges" who would travel to a circuit for a week of court and by Tuesday no one would plead guilty in front of them: Criminal court business would essentially shut down for the week. As Judge Hall<sup>8</sup> explained, "The lawyers know if there's a harsh judge they can just not plead and wait for a plea judge, and if the solicitor wants to put the case on the trial docket they can do that, but chances are before the case comes up another judge will come to town." Accordingly, said the same judge, "sentencing ends up being on the shoulders of judges whose sentences are the lightest"—the plea judges. Judge Andrews gave a more pointed account: "One month Judge Softy is coming to town so there's a waiting list for Judge Softy. Everybody games the system. The attorneys say, 'Oh, I'm gonna be on vacation this week but I'll be back the week Judge Softy is here.'" In contrast, when a plea judge is holding court, business is brisk and defendants readily enter pleas.

Even prosecutors and the more punitive judges appreciate and rely on the efficiency provided by the plea judges. As Judge Hall again explained, "When solicitors look at their dockets they want to move cases. They might want an outcome in a particular case but they can also step back and look at their entire caseload and they want cases to move. So they want these [plea] judges too." Judge Darnell, a self-proclaimed "stringent" judge, spoke favorably of having plea judges rotate into his home circuit because it "helps clear out the docket, and that's good." In fact, because prosecutors have controlled the docket, they could assign the harsher judges to trials and have plea judges take pleas for an entire week of criminal court, thereby ensuring a steady disposition of cases. Defense attorneys can "hold out" for a plea judge, and when one comes to town, defendants line up to plead guilty. Because defendants can openly judge shop, the more lenient plea-judge standards of sentencing become the foundation for going rates. As with the calendaring system more generally, the concept of judge shopping has been noted by researchers in the court communities literature (e.g., Eisenstein, Nardulli, and Flemming, 1988; Ulmer, 1997), but South Carolina's rotation system leads to an exaggerated form of shopping not previously captured by communities theory.

This does not mean that a few plea judges hold prosecutors hostage by continually lowering the sentencing "floors." Prosecutors have tremendous power and discretion over filing charges, bargaining, calling cases for trial, and assigning a judge to preside over pleas or trials for a given week. Prosecutors can also "game the system" by holding out the opportunity to be sentenced by a plea judge as a carrot and the threat to call the

8. To ensure the confidentiality of the interviews and protect the identity of the judges interviewed, pseudonyms are used for all judge names.



case for trial in front of a hanging judge as a stick. The phenomenon of the plea judge, and the concomitant sentencing norms, seem to represent the organic development of sentences that are acceptable to both prosecutors and defense attorneys, optimal going rates that facilitate the pleading out of more than 98 percent of felony offenders in an acutely overburdened criminal justice system.

Judge shopping and plea routing not only affect sentencing by getting more cases pled in front of the most lenient judges; some nonplea judges also adjust their sentencing preferences in light of the reality of shopping for plea judges. These pragmatic sentencers soften their preferences or accept more negotiated or recommended sentences to continue to hear cases and keep the docket moving. Judge Darnell, who described his reputation as “I don’t want to say severe, but . . . severe,” stated, “Straight up pleas don’t happen. I take negotiated or recommended sentences in 80 or 90 percent of cases. Some judges won’t, but I’m pragmatic about it. We need to move cases.” Judge Frank similarly expounded:

It’s necessary to take recommendations within a range everybody can live with. There are a few judges who won’t take recommendations or negotiations—these hanging judges or Maximum Bobs or what have you. But defendants won’t plead before them unless they have some idea of what the sentence will be. And the solicitors don’t want it either because plea courts will shut down. By Tuesday nobody’s pleading. So judges who hear pleas are all on the same page as far as acceptable ranges.

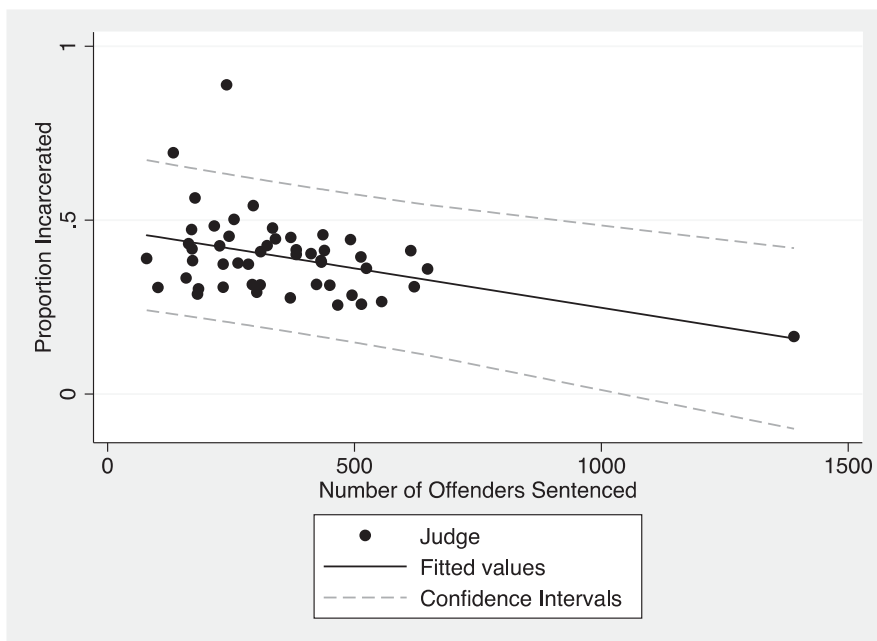
For judges like Judge Frank, defendants are reluctant to plead “straight up” with no recommendation, and prosecutors, ever mindful of the need to move cases, accommodate through recommendations acceptable to the defense. Although some judges stated a recommendation was made in at least most cases, Judge Matthews, a plea judge, indicated there was no recommendation or negotiated sentence in at least 90 percent of his cases because “they [the attorneys] know me and know what to expect.” Apparently, interjudge differences in the mode of plea accepted (straight, recommended, or negotiated) were in part a product of whether the attorneys felt the need for assurances a sentence would comply with the going rate norms of the plea judges.<sup>9</sup>

A third group of judges was often referred to as “hanging judges.” These judges were at the opposite end of the punishment severity spectrum from the plea judges and, unlike the pragmatic nonplea judges, resisted the influence of plea-judge norms that contradicted their own estimations of appropriate punishment. Often these punitive nonplea judges faced one of two quite different consequences for resisting plea-judge norms: They were either more likely to be assigned to trials rather than plea weeks, or they simply sentenced fewer cases during plea weeks. Judge Iredell, a harsh sentencer who refused to accept negotiated pleas, reflectively wondered whether his “old school” approach was the right one. After talking it through, he assured himself, “the legislature elected me to impose the sentence, not the solicitor or defense attorney. Bottom line is, that is up to me. I guess for that reason I’ve ended up being a trial judge in a lot of cases.” He was then asked,

9. One judge suggested that recommendations were becoming more and more common in recent years because of the use of a standard sentencing sheet that indicates whether a recommendation had been made. According to this interviewee, many judges feel that a recommendation gives them some cover from later criticism.



**Figure 1. Relationship Between Judges' Incarceration Rate and Number of Offenders Sentenced**



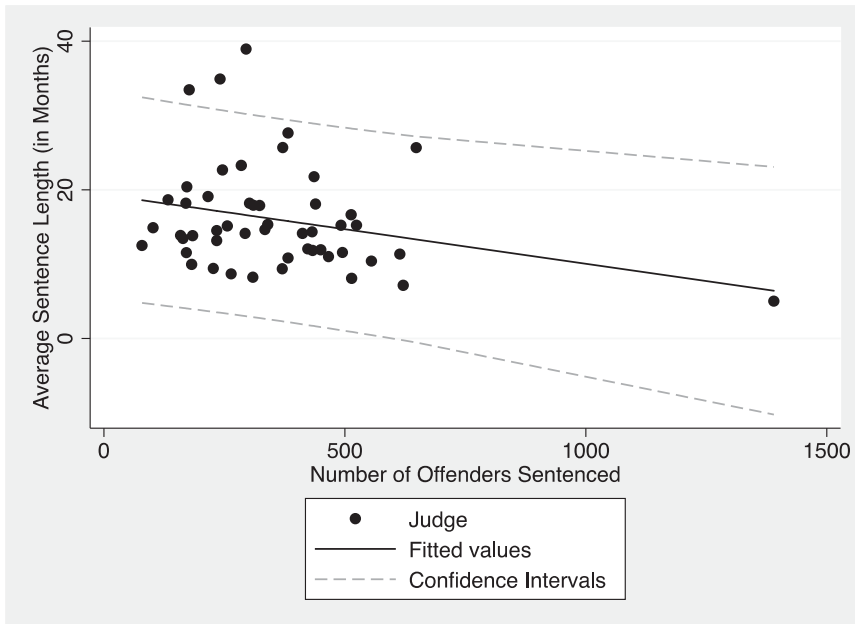
NOTES: The y axis represents the raw percentage of offenders imprisoned by the judge in 2001; the x axis indicates the number of offenders sentenced by that judge for the year. The figure was derived by conducting a simple regression in which the number of offenders sentenced was used to predict the incarceration percentage (model  $p = .003$ ).

**“Why? Solicitors assign you to a trial and let more lenient judges take plea weeks?” He answered, “I guess, a lot of times.”**

On occasion, “hanging judges” seemed to be marginalized to boredom when defendants refused to plead in front of them. At first I thought the stories of the hanging judge sitting around in an empty courtroom were apocryphal, but over the course of the interviews, several judges gave firsthand accounts of this phenomenon. Judge Eliot recounted, “You’ll go to another jurisdiction and you’ll only be there a week and—it’s frustrating and it may even be unethical—but the lawyers will shut down on you.” Judge Coleman volunteered, “This one circuit told me all the cases would be negotiated pleas because they didn’t like my sentences. So I said we might as well just stop now then.” Judge Andrews also conveyed experiences of court weeks in which no one would plead in front of him, and the concern was great enough that Judge Hall noted he was more deferential to recommendations when out of his home circuit because “if you don’t play ball they’ll shut down on you.” Thus, defendants and defense counsel “shutting down” on an inflexible judge seemed to be a real possibility.

One central finding from the interviews was the account of the less-severe plea judges sentencing more offenders as a result of the opportunity to judge shop created by judicial rotation. I used the 2001 South Carolina sentencing data to examine that proposition quantitatively. Figures 1 and 2 provide empirical corroboration of the judges’ accounts

**Figure 2. Relationship Between Judges' Mean Expected Minimum Prison Length Imposed and Number of Offenders Sentenced**



NOTES: The y axis represents the mean expected minimum prison length (in months) of offenders imprisoned by the judge in 2001; the x axis indicates the number of offenders sentenced by that judge for the year. The figure was derived by conducting a simple regression in which the number of offenders sentenced was used to predict the mean prison sentence imposed (model  $p = .056$ ).

of the relationship between leniency and the number of offenders sentenced.<sup>10</sup> Figure 1 shows a scatterplot of the percentage of offenders incarcerated (the in/out decision) by the total number of offenders sentenced for each of the 50 judges represented in the 2001 data. Figure 2 provides the same for the average prison sentence imposed (in months) by the number of offenders sentenced. Both figures also include a predicted or fitted values line that was derived by regressing the number of offenders sentenced on the outcome measure. The downsloping fitted values line in each figure confirms the interview accounts of plea judges—as punitiveness decreases, the number of offenders sentenced increases.

Table 1 is also instructive. It lists each judge interviewed and provides his or her rank according to incarceration percentage, average months of prison imposed, and number of offenders sentenced. Judges Andrews and Iredell were in the top three for the punitiveness measures and were the top two in fewest offenders sentenced. At the other extreme, judges Keates, Matthews, and Hall were the bottom three for each punitiveness measure and were the bottom three for fewest offenders sentenced.

10. The analyses were performed with STATA v.13 (StataCorp, College Station, TX). The incarceration percentage model was significant at  $p = .003$ . The average sentence-length model was significant at  $p = .056$ .

**Table 1. Judge Rank by Punitiveness and Offenders Sentenced; Representative Statements of Sentencing Philosophy**

Judge Pseudonym	Incarceration Rank	Prison Length Rank	Offenders Sentenced Rank	Representative Statements of Sentencing Philosophy and Punitiveness
Andrews	1	1	2	"I'm probably considered ... harsh is probably too strong a word, but I guess harsh"; claimed to be lenient on low-level drug offenses
Iredell	2	3	1	Self-described as "tough"; refused to accept negotiated pleas; assumed he heard more trials as a result
Darnell	3	2	7	Self-described as "severe"; 80% to 90% of sentences negotiated or recommended: "some judges won't [take negotiated pleas], but I'm pragmatic about it. We need them to move cases"; mentioned offender age and influence of victims and their families
Garland	4	5	6	Did not mention extralegal characteristics; often takes quasi-recommendations from prosecution in the form of "we're not opposed to a sentence of ..."
Frank	5	4	5	Influenced by offender age, education, employment, family and community support; often preferred a fine to probation for certain low-level offenses
Jenkins	6	7	8	Mentioned defendant's "support system"; takes negotiated or recommended plea "probably 1/3 of the time"; sees role of traveling judge as maintaining some uniformity in outcomes across counties
Coleman	7	6	9	Stated "sentencing is the hardest part about being a judge"; "I'm not a big fan of LWOP—it's like a sledge hammer"
Lyndon	8	9	10	Estimated he takes recommended pleas in 70% of cases, negotiated sentences in 5%, and straight pleas 25% of the time; did not mention any extralegal characteristics
Eliot	9	8	3	Discussed the importance of job, social stability, who the offender lives with, their work history and attitude; stressed the need for rehabilitation and restitution; wished for more funding for halfway houses
Bates	10	10	4	Will not accept negotiated pleas but looks to recommendations from prosecution and defense; conscience of prison and jail overcrowding; did not mention extralegal characteristics
Keates	11	12	12	"You try to consider everything made known to you"; straight up pleas in 90% of cases: "they know me and what to expect"
Matthews	12	11	11	Self-described as "lenient unless it's aggravated or something"; stressed importance of keeping offender in the community and "leveraging the family and community"
Hall	13	13	13	"I was much more flexible out of town; if you don't play ball they'll shut down on you"; stressed the appropriateness of first and second chance for most offenders

*NOTES:* Incarceration and prison length ranks are in order of descending punitiveness (i.e., 1 = highest rate of incarceration and longest average length imposed). Number of offenders sentenced rank is in increasing order (i.e., 1 = fewest offenders sentenced).

## CROSS-POLLINATION AND IDEA SHARING

A second set of mechanisms—again enabled by rotation—consists of cross-pollination and idea sharing, which also work to pull practices away from localizations and toward a more uniform, statewide legal culture. Rotation increases the interaction among attorneys and judges throughout the state—a factor that Nardulli and colleagues hinted might lead to “structures that one may not otherwise expect to find” (Nardulli, Eisentstein, and Flemming, 1988: 164–5). Judge Coleman explained that rotating into a large county where multiple judges sat during the same term allowed the judges to share ideas and philosophies. “When you go to [a particular large county] there’ll be 5 judges from all different places. We have a chance to talk about sentencing policies. We might eat together, stay at the same motel, and really get to know each other. It’s a bench that really gets to know each other.” Participants also noted that judges meet together several times a year at judicial meetings and that overall with the small bench and frequent interaction, it was a bench of well-acquainted judges.

In addition to the interactions and idea sharing among judges, rotation engenders a high degree of familiarity between judges and attorneys throughout the state. Judge Garland observed the implications of this interaction: “You get to see how solicitors do things in different places and trade ideas. It’s a good way to trade ideas.” Similarly, Judge Hall suggested that “lawyers get a sense of variety with different judges—not for their entertainment or pleasure, but to see new ideas, new people. It’s refreshing and uplifting.” If a new case processing procedure or technology were to emerge and be effective, the traveling judges would transport the idea to other counties. Through this cross-pollination, new ideas spread across the state rather than remaining localized.

Furthermore, several judges noted that, as Judge Andrews put it, rotation prevented “disparity in customs and practices from county to county.” Judge Jenkins suggested that were a different practice to emerge in a particular location and threaten to create a discrepancy based on location, “that’s where you come in as the judge.” In this judge’s view, one role of the traveling trial judge was to apply sentencing uniformly throughout the state and to adjust for these procedural differences of place.

Finally, Judge Andrews also suggested that rotation serves to keep some judicial idiosyncrasies in check. He suggested that without rotation, “after 10 years the courthouse becomes the judge’s fiefdom. The judge may or may not follow the rules of court, may or may not properly apply the rules of evidence, may or may not recognize hearsay objections, he or she may or may not suppress evidence when it’s called for.” Because attorneys are assured a different judge at some point, they have the opportunity for informal sanctions against such a judge (such as shutting down on them) that might not exist if the judge always sat in the county. By ensuring that attorneys see many judges, rotation provides a safety valve for the entrenched judge problem.

## COUNTY DIFFERENCES

Although circuit rotation provides a gravitational force for sentencing culture norms, rotation does not extirpate all traces of unique county contributions to sentencing patterns. There are stark differences between counties in terms of wealth, politics, culture, urbanization, and prosecutorial personalities. Because judges travel, they have a unique opportunity to observe contrasts between counties. The judges were asked whether there were any divergent practices or norms between counties. The general consensus was that

even though there were pronounced differences in social characteristics between counties across the state, overall they did not translate into divergences in sentencing patterns. Several judges noted that some procedural variations existed, particularly in how negotiations or recommendations were handled. In some jurisdictions, prosecutors rely more heavily on negotiated sentences or recommendations; in one jurisdiction, assistant solicitors have been instructed to make no recommendations. Judge Darnell gave the following example of differences in count bargaining: “Some will have five charges and just sentence one or two and others want to keep three or four of the five.” But judges seemed to agree that these procedural variations made little difference in outcomes.

Procedural nuances aside, the judges identified three examples of meaningful county differences in sentencing norms. These were increased prosecutorial power in wealthier counties; cultural norms reflected in jury verdict patterns (which in turn affected pleas); and different priorities in drug cases. As to the first, several judges pointed out a different pattern in rural versus more populated counties, and all made the same point that prosecutors in more urban areas sought more punitive sentences. The differences were driven by resources. According to Judge Lyndon, “More wealthy areas up the ante on time. Solicitors have to rely on county funding. In rural places they just don’t have the resources.” Judge Iredell offered a similar assessment: “In the more populous and—I don’t want to call them more sophisticated counties, but the ones with more money and more resources—the differences come out. The solicitor in [a large county] has many, many assistant solicitors and so does the PD’s [public defender’s] office. Compared to [a rural county] where you might have one PD or a half a person hired part time under contract . . . In larger counties solicitors want more influence in helping you determine the sentence.” Judge Hall concurred, “In [a larger county] they are stricter than in the smaller courts. Smaller counties tend to do a lot more [give up a lot more ground on sentences].” In the words of Judge Darnell, prosecutors in rural counties with fewer resources “need to wholesale a lot of cases” and, therefore, “different offers are made.”

Judges also said pleas in some counties were a reflection of the different jury verdicts typically entered in those counties. According to Judge Andrews, “What might be a slam dunk conviction in one county might be a slam dunk not guilty verdict in another county. That has to affect plea negotiations.” Judge Lyndon offered a similar observation: “In [one circuit] you might not have a single verdict of not guilty over the course of six months. Here [in the judge’s home circuit], you might not get one conviction in six months . . . It’s about the background of your jury, the more wealthy, more educated juries [are more likely to convict].”

When judges were asked about variations in going rates across counties, most indicated there were “not really” strong differences associated with county location and could not offer any examples. Two judges did provide concrete examples of substantive differences, both of which dealt with drug distribution. Judge Hall gave the following account:

For example, in [County A] the sheriff took a hard stance on crack and cocaine and the solicitor followed. So distribution of crack, 1st offense, might be 0–15 years and there might be a small mandatory minimum with no suspended sentence allowed. In [County B] it’d be difficult to give two, three, four years on a distribution of crack first offense. (You know those cases are called distribution but they aren’t as bad as they sound. It’s usually some crack head selling a rock to another crack head to get

some for himself. It's not like major trafficking.) Well, anyway, in [County A] they are recommending 12 years and the defense lawyers are begging the judge to take the 12.

**Judge Lyndon gave a similar example:** “In [County C, which is a rural county] if you're charged with distribution of crack cocaine you may get a recommendation of 18 months to 3 years. You go to [County D, a larger and wealthier county] on the same offense and the recommendation is 8 years.” Apparently these differences were isolated enough that they did not recast the more general statewide culture uncovered here into the characteristic local court communities typically found reported on in the literature.

Nevertheless, it is worth noting, with reference back to the coefficients of variation in the supplemental analysis discussed earlier, that the county-level, sentence-length descriptive statistics revealed greater variation among drug offenses for South Carolina when compared with that in the other states. **It is possible that state norms related to drug offending are less established or are changing, allowing more pronounced differences to emerge.** Judge Coleman, for example, stated: “I came up on the bench when drugs became an issue. Nowadays, younger judges aren't as surprised by drugs. They grew up in an era where things were different. Some of the older judges really had a different reaction to drugs because of the way things were socially when they were growing up. You're seeing that change now as the older judges retire and are replaced by younger judges.”

**Judge Andrews, who described himself as “harsh” (and who was among the most punitive according to the 2001 data—see table 1), proudly qualified that for drug possession offenses, he was lenient. He explained:**

On things like drug possession I am a light sentencer. I'll give you an example. The first time I ever went to [a particular county] my reputation preceded me. I got down there and everyone was afraid to plead in front of me. But finally they got going a little bit and we ended up holding court until 7:00 Friday night because all of these drug offenders wanted to plead in front of me. **They got word that I was a lenient sentencer for these drug crimes** . . . These people get arrested in these poor, minority areas, not a pot to piss in, a 9th grade education, and they get brought up on these distribution charges. The solicitor acts like they've got this big drug sting. Well, that drug sting is some poor person who gets arrested and the police send them back to their neighborhood and they convince all their friends to sell some drugs to them. So they're buying small amounts from their neighbors and what have you. Then here come the police on the news announcing a big bust of 30 or 40 “drug dealers.” I mean, come on, everybody knows what's going on there. So for those cases a lot of times I'll just give credit for time served.

**Yet, Judge Andrews was quick to qualify that, “for true drug trafficking—where somebody is driving through on our interstates with a trunk full of drugs—now, I can't wait to sentence that person for as long as I can put them away for.”**

## DISCUSSION AND CONCLUSION

In this article, I used qualitative interviews with South Carolina trial judges to analyze the sentencing practices and legal culture of the state's court communities. The findings

offer several contributions to the sentencing field: They advance the court communities literature by exploring system features that pull courts toward greater uniformity rather than diffusion, and they demonstrate the importance of a structural characteristic, judicial rotation, which has defining sentencing policy implications. Scholars have called both for a renewal of studies aimed at engaging in qualitative analysis to supplement quantitative findings and for studies aimed at a broader variety of jurisdictional contexts (e.g., Baumer, 2012; Engen, 2009; Reitz, 1998, 2010). Through the current study, I answer both of these calls and provide a clearer understanding of sentencing practices in this nonguidelines state.

As a starting point, the findings published in courts literature establish an expectation of large levels of variation in sentencing patterns among counties across a state. Courts as communities offers a theoretical paradigm for these divergent practices, norms, going rates, and outcomes (Eisenstein, Nardulli, and Flemming, 1988; Flemming, Nardulli, and Eisenstein, 1992; Nardulli, Eisenstein, and Flemming, 1998). Although sentencing guidelines could potentially affect these practices, even in guidelines jurisdictions, ground-level practitioners frequently find ways to circumvent new policy change to perpetuate the settled ways of doing things in that location (Engen and Steen, 2000; Johnson, Ulmer, and Kramer, 2008). Where no guidelines are present to constrain, one would expect the intercounty differences to be even more drastic. Nevertheless, South Carolina sentencing seems to exhibit notably less county variation in sentencing than has been observed in other jurisdictions.

The qualitative judge interview data I used in this study allows for exploration of a more statewide sentencing norm that pervades in South Carolina. The results indicate that although some county-to-county differences certainly exist, the practice of judicial rotation exerts a normalizing force—a gravitational pull toward a more uniform state legal culture. The structural feature of rotation propagates this statewide culture through two distinct channels. First, rotation makes plea routing and judge shopping almost inevitable. Second, rotation augments the interactions, networks, and what Eisenstein and colleagues called “grapevines”; judges have increased opportunities to interact with each other and with prosecutors and defense attorneys throughout the state, nurturing statewide legal culture.

As to the first mechanism, rotation creates options and opportunity for offenders. Scholars including Eisenstein and associates (1988) and Ulmer (1997) have previously highlighted the significance of judge shopping in the criminal court context. In other states, a local calendaring system might allow a savvy attorney on occasion to slip a case from one presiding judge to a more favorable one. In South Carolina, rotation invites defense counsel to judge shop in a monumental way by simply indicating a willingness to enter a plea at a strategic time (i.e., when a lenient judge is presiding), or by using typical continuance and delay tactics to avoid a plea when a hanging judge is presiding. Judge shopping gives rise to the phenomenon of the plea judge, and plea-judge norms influence the sentencing tendencies of some (although perhaps not all) of the other judges. Many judges become pragmatic sentencers; they are not predisposed as lenient plea judges, but neither do they become entrenched hanging judges. Instead, the pragmatic judges exhibit a willingness to take recommendations or negotiations in accordance to the plea-judge norms that offenders might otherwise hold out for. These typologies are illustrated by differences in willingness to accept recommended and negotiated pleas. For instance, attorneys apparently could trust that the plea judge, Judge Matthews, would



impose an acceptable sentence; he indicated that he took straight pleas (i.e., pleas with no recommended sentence) at least 90 percent of the time. By stark contrast, Judge Darnell stated that straight pleas did not occur in front of him. He was “pragmatic,” recognizing that “[w]e need to move cases” and, as a result, accepted recommended or negotiated pleas in 80 percent to 90 percent of his cases.

As in all U.S. jurisdictions, cases in this state are predominantly disposed of through plea bargaining, although the small yet steady supply of trials takes up considerable court time. The rotation system allows prosecutors to maximize efficiency for everyone by assigning hanging judges to trial weeks and nonhanging judges to plea weeks. This tactic, which was frequently referred to in the interviews, fits in with the well-documented interdependent play among workgroup personnel (e.g., Eisenstein and Jacob, 1977; Eisenstein, Flemming, and Nardulli, 1988). Workgroup members are often said to engage in an informal sanctioning of a member who violates norms—for instance, “the defense attorney who violates routine cooperative norms may be punished by having to wait until the end of the day to argue his motion; he may be given less time than he wishes for a lunch break in the middle of a trial; he may be kept beyond usual court hours for bench conferences” (Eisenstein and Jacob, 1977: 27). In South Carolina, for the most entrenched hanging judges, the “sanctions” are either having defense counsel shut down on them or else having prosecutors assign the judges to trial weeks. All told, rotation, as an exaggerated example of a master calendaring system, leaves an indelible mark on sentencing practices.

In addition to the structural issues related to judge shopping, these findings reveal that rotation leads to norm spreading. As Judge Coleman noted, when several judges are holding court in one of the larger counties, they frequently spend time together socially and talk about the work of judging. In addition, judges experience interactions with a variety of attorneys from all parts of the state, which allows the judges and attorneys to see differences, “trade ideas,” and “get a sense of variety.” Nardulli, Eisenstein, and Flemming (1988) suggested that increased interactions might affect outcomes in dramatic ways; the South Carolina experience confirms their prediction (see also Eisenstein, Nardulli, and Flemming, 1988: 50–1). Yet, this gravitational pull toward homogenization is one of relative degree. South Carolina exhibits fewer intercounty variations than would be expected from a nonguidelines state, but some differences persist.

The judges identified a few county-specific characteristics that they did believe constituted meaningful distinctions among counties. These highlight the important point that rotation contributes to a more uniform statewide culture but not to a completely uniform statewide culture. One example was in the way drug cases are handled, as well as the pattern of prosecutorial influence toward more punitive sentences in the larger, more populous counties. Although suggestive of county-level differences, these perceived variances from a few counties in their approach to specific drug issues is not so pronounced as to translate into wide variations when all county outcomes are pooled together. As noted from the prior multilevel findings and from the comparisons provided in table 1, even though outcomes are certainly not perfectly uniform across counties, the variation is minimal.

The pattern of more punitive treatment in the larger counties is also interesting as it seems at odds with the findings from other court communities research, which reveal that courts in the largest jurisdictions impose more lenient sentences on offenders [see, e.g., Ulmer and Johnson’s (2004) multilevel examination of court communities in

Pennsylvania]. One possible explanation for this discrepancy involves an intersection between the dominance of metropolitan centers and a critical mass of population in medium-sized jurisdictions. South Carolina's largest cities of Columbia and Charleston are small compared with large urban centers like Philadelphia and Pittsburgh. Big city mechanisms that influence leniency include things like desensitization to violent crime and high levels of bureaucratization in the face of exponentially larger case flows (e.g., Dixon, 1995). In contrast, South Carolina's most populous cities are big enough to create more powerful prosecutorial offices but not so substantial as to trigger the desensitization of bureaucracy reactions of America's largest cities.

Given the significant differences that exist among judges, it is noteworthy that these judge-level differences failed to translate into larger levels of county-level variation. In part, this is explained by the strong influence of plea-judge norms and the ability of prosecutors to route judges to terms of plea court or trials. Nevertheless, rotation is nonsystematic, and not every offender will be presented with the opportunity to defer a plea in front of a hanging judge one week for a plea judge the next. Yet even when judge-level differences manifest, rotation again plays the role of equalizer, distributing these judge-level differences across the counties as the judges travel.

Judge-level variation also raises the larger point that although increased interactions reportedly affected norms, it is not possible to determine the extent to which judge preferences were changed as a result of the interactions with other judges. There was some indication that judges did influence each other, for instance, in Judge Coleman's comments that judges might discuss sentencing policies while interacting socially when on assignment in the same county. Certainly any influence toward a more uniform set of sentencing norms was not so extensive as to wash out all meaningful differences in the judges' approaches and sentencing philosophies. Eisenstein and colleagues (1988) theorized that such interactions would affect shared norms, and perhaps this is true in South Carolina. But substantial differences persist, giving rise to the plea judges, and the instrumental role of the prosecutor and his or her decisions related to assigning judges to plea and trial sessions.

Increasingly scholars have noted the importance of analyzing the role of prosecutors (e.g., Baumer, 2012; Engen and Steen, 2000; Kim, Spohn, and Hedberg, 2015; Ulmer, Light, and Kramer, 2011; Wright and Levine, 2014). Prosecutors were reported to embrace the plea-judge system for its ability to facilitate case processing efficiency—one primary goal of all workgroup actors (see Eisenstein and Jacob, 1977). The solicitors were also said to use the rotation system strategically to their advantage at times, for instance, by emphasizing that a lenient judge was presiding if the defendant would plead now, but that a harsher judge might preside over a plea or trial at a later date. Furthermore, prosecutors played an instrumental mediating role for the judge-shopping mechanism wherein the defense would shut down on harsh judges. Consistent with the idea that maintaining efficiency is a paramount concern, the data indicated that prosecutors used trial assignments to minimize shutdowns and to maximize the use of trial time resources.

Nonetheless, the prosecutorial role was only indirectly examined through the judges' comments, and the data left many unanswered questions related to prosecutors in this jurisdiction. Interviews with the solicitors and their assistants would be better suited for discerning the degree to which these prosecutors were facilitating the plea routing or merely reacting to it and making the most of it given the reality of rotation. It was also unclear how other prosecutorial tools such as mandatory minimum charging affected the plea

bargaining dynamics here. It would be beneficial to examine how the system of rotation impacted prosecutorial bargaining, dismissals, and other discretionary outcomes. Interviews with prosecutors are crucial for probing these significant questions, and research that pairs quantitative results with qualitative prosecutorial data would be a fruitful avenue for future research.

In addition, South Carolina's system of judicial selection by the legislature may contribute to the county-to-county uniformity in sentencing outcomes. Recently, scholars have published results suggesting elected judges are more susceptible to political pressures, including the pressure to seem tough on crime. For example, Berdejo and Yuchtman (2013) found that judges in Washington State (where judges are selected through nonpartisan elections) increased sentence lengths of serious offenders by approximately 10 percent as they approached reelection; Huber and Gordon (2004) also found the punitiveness of elected judges increased as judicial elections approached. Lim (2013) reported that reelection incentives were more important for elected judges than for appointed ones, and that elected judges were much more heterogeneous in their sentencing patterns than were appointed judges. Elected judges reflected preferences of their divergent constituent jurisdictions, whereas appointed judges seemed to reflect more tightly the average preferences of their entire state. This evidence suggests that the structural mechanism of gubernatorial appointment might lead to more uniform sentencing norms, which could also hold true in South Carolina's legislative appointment system. Because the judges do not run in local elections and are not directly accountable to the voting public, the system may avoid the influence of county-level politics and local community attitudes. Judicial candidates are not forced into competitions over who will be toughest on crime or held accountable for prior get-tough promises. Although the judicial selection method was not systematically a part of the interviews, it did come up a few times. At the conclusion of the interview with Judge Jenkins, the judge mentioned that proponents of the SC guidelines had claimed there were judge and regional disparities but that no evidence to that effect had been presented to the judge. I indicated that the empirical findings from recent research with the 2001 data suggested uniform patterns across counties. The judicial selection issue immediately came to Judge Jenkins's mind: "The way we elect our judges appears to be working. In general elections you get everyone having to run on being a hanging judge."

"Justice by geography" and the idea that location matters in sentencing have long raised fairness concerns among policy makers and scholars (see, e.g., Feld, 1991; Harries and Lura, 1974; Kramer and Ulmer, 2009). Indeed, the failure of like cases being treated alike across location was one of the several concerns proponents used to justify the implementation of guidelines in many jurisdictions. There is mixed evidence on how successful guidelines have been in meeting their policy goals (compare, e.g., Pfaff, 2006, and Tonry, 1996, 2014, with Bushway and Piehl, 2007, and Harmon, 2013), but one primary macro-level theoretical contribution of courts as communities theory is that the informal decisions of courtroom actors are just as important to shaping policy as are the formal legal changes (such as the implementation of guidelines). I have highlighted underdeveloped theoretical aspects of the communities perspective that show how structural changes can ultimately impact outcomes through indirect avenues of legal culture. While embracing the concept that informal legal culture impacts sentencing, my findings suggest that the informal culture may itself be shaped by policy decisions related to the structure of courts, mechanisms affecting the degree of interaction among judges and other courtroom

actors, and perhaps even the judicial selection system. Policy makers in other jurisdictions could explore these implications through changes as drastic as adopting a system of circuit rotation, or as simple as increasing the frequency and intensity of interactions and networkings of workgroup actors, such as through more frequent judicial conferences and retreats. The results also suggest that new avenues of research might uncover other structures and mechanisms that lead to greater uniformity in legal culture and, consequently, in outcomes across a jurisdiction.

Through this study, I have demonstrated some of the benefits of using qualitative data to enhance our understanding of sentencing processes. Nevertheless, the study does have several limitations. Because South Carolina does not continually maintain statewide sentencing data, it is currently not possible to examine quantitatively how sentencing practices have changed since 2001. This also means the sampling frame for the interviews was anchored by the 2001 findings. More than a decade had passed between the sentences entered for the quantitative data and the interviews, weakening the inferences drawn from the interviews as they relate to the 2001 findings. In addition, as mentioned, access to other members of the workgroup, particularly prosecutors but also defense counsel, would surely reveal enlightening accounts of sentencing practices and nuances of court community norms.

Hopefully scholars will continue to answer the old calls for analysis in a greater range of jurisdictions and contexts. More research from nonguidelines jurisdictions is needed. And for the purposes of further defining the interplay between uniform statewide legal culture and differential local cultures, studies are needed in jurisdictions that might have characteristics that would lead to statewide culture hypotheses. For instance, researchers could consider jurisdictions that varied in terms of the number and frequency of judicial conferences, other informal opportunities for judges to meet together, the geographic size of the state, diversity in law schools and judicial socializations, other states where rotation occurs, other unexplored aspects of calendaring systems (e.g., jurisdictions that might have a universally imposed calendaring system), and so forth.

Sentencing practices are a moving target; new issues constantly give rise to new reform efforts and new laws. Although quantitative analyses are critical to defining our understanding of courts and sentencing, qualitative inquiries are equally important in developing our insight of court processes and outcomes. Remarkable advancements in sentencing research have been made in the past few decades, but many questions are still left unanswered, and the concept of normalizing statewide legal culture—an area ripe with both theoretical and policy importance—is one of many avenues for continued exploration.

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