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In the Furtherance of Justice, Injustice, or Both? A Multilevel Analysis of Courtroom Context and the Implementation of Three Strikes

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ABSTRACT

A hierarchical logistic model is used to analyze data on Three Strikes-eligible offenders in California and the counties in which they are sentenced. The analysis finds that discretion is widely exercised by elected prosecutors and judges in the administration of Three Strikes. Discretion functions as a “safety valve” and preserves some sentencing proportionality, but may also allow political concerns to influence sentencing decisions. A more conservative political environment is strongly associated with stricter application of the law. Consistent with racial threat theory, eligible felons are more likely to receive Three Strikes sentences in counties with larger Latino populations. However, the size of the black population has no significant effect. Higher unemployment rates are associated with more stringent application of the law. Prosecutorial and judicial discretion benefits offenders unequally. Controlling for legally relevant factors, black offenders are more likely to receive Three Strikes sentences, while younger ones are less likely.

AMERICAN DEMOCRACY AND CRIMINAL JUSTICE POLICY

The drafters of the American Constitution were keenly aware of the potential for “tyranny of the majority” in a democratic society. This understanding led the framers to design a system of federal government in which political powers were carefully divided and balanced, and in which courts were separated from the electoral politics and more insulated than other institutions from the influence of public opinion. In present-day criminal courts, however, the separation of politics and public sentiment from the administration of justice is notably indistinct. An examination of the passage and implementation of “Three Strikes and You’re Out” in the state of California illustrates how blurred the boundary is.

In 1994, at the height of a national movement to “get tough on crime,” California voters took crime policy into their own hands, passing a law known as “Three Strikes and You’re Out” by ballot initiative (Zimring, Hawkins, & Kamin, 2001). California is one of 24 states in which citizens can propose and enact laws through the ballot initiative process (Bowser, 2006), and

direct democracy was instrumental in the law's adoption.¹ Political factors also appear to influence its implementation. Candidates for District Attorney in the state's 58 counties run for election every four years, and Superior Court judges are elected every six years. The manner in which District Attorneys and judges carry out the responsibilities of their offices, which include determining policies regarding how and when Three Strikes charges are filed and prior "strikes" are dismissed, can be expected to reflect the preferences of the voters in their communities (Gordon & Huber, 2002). This paper examines the extent to which this occurs.

Characteristics of a local jurisdiction shape public sentiment regarding many political issues, including criminal justice. The political environment, economic climate, and perceptions about public safety may influence the public's attitudes regarding the punishment of criminals. In addition, racial and ethnic dynamics may manifest themselves in policy outcomes. The analyses in this paper explore a series of theoretically-informed research questions about the effects of jurisdictional context on outcomes associated with the implementation of "Three Strikes and You're Out": (1) Do political pressures influence how District Attorneys and judges exercise discretion as they carry out Three Strikes policy? (2) Does the application of sentencing policy vary with the racial or ethnic composition of the population? If so, does this affect African-American, Latino, and white offenders differently? (3) Are courts more likely to impose Three Strikes sentences where the economy is doing poorly, or where crime rates are high?

Several individual factors are also examined, to determine whether the implementation of Three Strikes is influenced by certain defendant characteristics including legal factors that are not supposed to be considered in Three Strikes sentencing decisions in the absence of prosecutorial or judicial discretion, and extralegal variables like race/ethnicity and age.

¹ Advocates of the law had previously attempted without success to convince the state legislature to adopt "Three Strikes." After the public's overwhelming support for Three Strikes became apparent through the measure's success at the polls, the state legislature approved a law with nearly identical wording (Moore, 1999).

HOW THREE STRIKES WORKS

“Three Strikes and You’re Out” consists of two main components. If a defendant’s criminal record includes a prior conviction for a serious or violent offense (a “strike”) and he or she is convicted of a subsequent felony, the sentence for the current felony conviction is automatically doubled.² If a defendant has two or more prior serious or violent felony convictions, then a conviction for any subsequent felony carries a mandatory “third-strike” sentence of 25 years to life in prison, with no eligibility for parole until 80 percent of the sentence is completed (California Legislative Analyst's Office, 2005; Ricciardulli, 2002). An offender need not commit a serious or violent current offense to receive the “third-strike” sentence (Vitiello, 2004). This distinguishes California’s version of Three Strikes from those in 24 other states and makes California’s law the broadest and, by far, the most frequently applied Three Strikes policy in the nation (Austin, Clark, Hardyman, & Henry, 1999; Chen, 2008).³

DISCRETION AND DISPARITIES IN THE APPLICATION OF THREE STRIKES

While Three Strikes is a “mandatory minimum” sentencing policy, the language of the statute leaves some room for discretion, particularly by prosecutors. California Penal Code Section 667(f)(2) states: “[t]he prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice ... or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.” The identical language is repeated in California Penal Code Section 1170.12(d)(2). Notably, the phrase “in the

² In the implementation of Three Strikes (and throughout this paper), the phrase “serious or violent” specifically refers to the list of approximately 40 offenses and enhancements listed as “serious” in Penal Code Section 1192.7(c) or 23 offenses and enhancements categorized as “violent” in California Penal Code Section 667.5(c). The “serious” list encompasses all of the offenses on the “violent” list, with a few minor differences.

³ Because habitual offender laws vary widely from state to state, there is some disagreement among researchers regarding how many states have “Three Strikes” policies. Counts generally range from 23 to 25.

furtherance of justice” is left open to interpretation. Dismissal of one or more prior convictions can spare a defendant the mandatory third-strike sentence of 25 years to life (California Legislative Analyst's Office, 2005). Initially, the power to “strike strikes” was granted only to prosecutors, but a 1996 decision by the California Supreme Court in *People v. Superior Court (Romero)* ruled that judges could also dismiss prior strikes “in the furtherance of justice” (Vitiello, 1997). In practice, the prosecutor typically exercises this power during the criminal charging process, thus controlling the options available in sentencing (Ricciardulli, 2002).⁴

More broadly, the elected chief District Attorneys in California’s counties retain the legal authority to establish internal guidelines regarding the circumstances under which the prosecutors who work under them will charge eligible cases as third or second strikes or petition the court to waive prior offenses (California Legislative Analyst's Office, 2005). Approaches vary widely between counties, often in apparent accordance with the local political climate. Kings County and Kern County, politically conservative jurisdictions that include large prisons within their borders and are home to sizable populations of correctional officers, are represented by District Attorneys whose policies lead them to file and pursue third strike cases aggressively (Kieso, 2005). Among California’s counties, these two counties demonstrate the highest rates of Three Strikes usage (Kieso, 2005). In contrast, the District Attorneys in San Francisco and Alameda counties, in California’s politically liberal Bay Area, have always been unlikely to file third-strike charges against offenders whose current offenses are not serious or violent (Mesloh, 2006; O'Connor, 2006). Less-than-full application of the Three Strikes law is no secret. During their campaigns, candidates for District Attorney eventually elected in San Francisco and Los

⁴ Prosecutors also possess other discretionary powers, including the authority to decide whether to charge certain offenses known as “wobblers” as either felonies (which trigger Three Strikes) or misdemeanors (which carry a maximum sentence of one year in jail), or charge multiple counts, including strikes, from a single criminal incident (California Legislative Analyst's Office 2005; Ricciardulli 2002; Bjerk 2005).

Angeles counties publicly declared their intentions to refrain from filing third-strike charges against most nonviolent offenders (Van Derbeken, 2004; Whitaker, 2000).

These examples suggest that local political views influence how Three Strikes is implemented. Researchers have noted that the law's application and effects vary widely among California's counties (Bowers, 2001; Greenwood, et al., 1998; Harris & Jesilow, 2000). Some critics argue that substantial geographic disparities in Three Strikes sentencing practices are unfair and even constitutionally questionable (Bowers, 2001; Schultz, 2000). Yet, the extent to which characteristics of political and socioeconomic contexts affect the exercise of discretion in the implementation of Three Strikes, or any mandatory minimum sentencing policy, has not been examined empirically. The present investigation seeks to fill this gap in the literature.

This paper contributes to the ongoing conversation in several disciplines, including law, political science, and sociology, regarding the influence of political opinion and electoral incentives on criminal justice policy and outcomes. The findings provide further evidence that the criminal justice system has strayed quite far from the notion that the courts should remain independent from the influence of electoral politics. In addition, while critics of Three Strikes have argued that racial and ethnic disproportionalities are prevalent in the application and outcomes of the law (Ardaiz, 2000; Zimring, et al., 2001), empirical support has been scarce in the literature. This paper's findings highlight the complexity of the effects of race and ethnicity on sentencing outcomes. Specifically, the effects of an individual's own ethnic or racial identity are examined separately from the effects of the ethnic and racial composition of the surrounding community, and these two effects are examined separately for blacks and Latinos.

JURISDICTIONAL CONTEXT AND SENTENCE OUTCOMES

Numerous scholarly works have examined the influence of contextual factors on sentencing outcomes. Attention has been given to several aspects of courtroom context, including characteristics of the social, demographic, political, economic, and organizational environments (Britt, 2000; Johnson, 2005, 2006; Kautt, 2001-2002). Using hierarchical linear or logistic models, Britt (2000) and Kautt (2002) found strong statistical evidence of interjurisdictional variation in sentencing outcomes, even in the presence of presumptive sentencing guidelines that were intended to increase uniformity. While each of these studies identified numerous individual-level characteristics that significantly influenced sentencing outcomes and found that the effects of race and other individual-level variables vary by context, neither of these early multilevel analyses isolated specific county-level factors that contribute to the variation in outcomes.

The next wave of research on contextual effects did identify a number of relevant jurisdictional variables. In the past few years, research using data from Pennsylvania has examined the influence of contextual factors on the decision to incarcerate and on sentence length (Johnson, 2006; Ulmer & Johnson, 2004), judicial departures from sentencing guidelines recommendations (Johnson, 2005), and imposition of mandatory minimum sentences for drug offenders and habitual offenders (Ulmer, Kurlychek, & Kramer, 2007). Contextual variables with statistically significant effects in these analyses include administrative factors such as court size and caseload (Johnson, 2005; Ulmer & Johnson, 2004), jail space (Johnson, 2005), overall rates of guidelines departures (Johnson, 2005, 2006), and characteristics of judges (Johnson, 2006), along with some cross-level interactions and numerous individual-level variables. These studies also find effects related to the racial composition of the jurisdictions in which courts are located (Johnson, 2005, 2006; Ulmer & Johnson, 2004). Another recent study, using federal

district court data, finds that administrative factors and racial composition of the district influence the likelihood of downward departures from federal sentencing guidelines (Johnson, Ulmer, & Kramer, 2008).

This paper seeks to build on this body of literature by using multilevel models to analyze the effects of contextual and individual factors on outcomes for a far-reaching and controversial mandatory minimum sentencing policy in a state with a very different political and socioeconomic environment than the jurisdictions that have been studied before, and with particular attention to the effect of local political context.

POLITICAL RESPONSIVENESS AND ELECTORAL ACCOUNTABILITY

Political scientists have found evidence that electoral incentives influence the judicial decisions of elected state Supreme Court justices (Hall, 1995). This paper examines whether political context affects the administration of justice at the local level, where most criminal cases are handled, as well. As discussed above, most of the discretion in the implementation of California's Three Strikes law is exercised by prosecutors. According to Worden (1989), prosecutors are susceptible to political influences and incentives because their elections are "likely to be contested, and contested over matters of job performance ... and the job of a prosecutor, in the eyes of the public, is fighting crime" (p. 337). Therefore, prosecutors are likely to adopt policies with "perceived needs and expectations of the community" in mind (Worden, 1989, p. 337). This phenomenon, if it exists, is troubling because it contradicts the notions of uniformity in the application of statewide laws and the separation of the justice system from electoral pressures. Thus far, the influence of the political environment on prosecutorial decision-making has been the subject of limited research. Research on the links between politics and prosecution have focused primarily on theory-building (Gordon & Huber, 2002) and

qualitative observations (Bandes, 2006; Davis, 2007; Eisenstein, Flemming, & Nardulli, 1988; Flemming, Nardulli, & Eisenstein, 1992), with less emphasis on multivariate statistical and multilevel analysis.

Since at least the 1964 Presidential election, the Republican party has been associated with “law and order,” as reflected in campaign rhetoric, spending priorities, and policy outcomes such as incarceration rates (Jacobs & Helms, 2001; Scheingold, 1991). One might expect political officeholders to adopt “tougher” approaches to criminal justice policy when their constituencies include more Republican voters. Actually, research findings regarding the influence of the political environment on sentencing outcomes have been mixed. Several scholars have found links between incarceration rates and measures of political conservatism such as Republican voter registration, the proportion of a state legislature that is Democratic or Republican, or percentage voting Republican in a presidential election (Helms & Jacobs, 2002; Huang, Finn, Ruback, & Friedmann, 1996; Jacobs & Carmichael, 2001; Smith, 2004). Other studies, including some that adopt multilevel approaches, have not found that the percentage voting Republican has a significant effect on either the odds of incarceration or sentence length (Johnson, 2005; Ulmer & Johnson, 2004; Weidner, Frase, & Schultz, 2005).⁵ One possible explanation may be that toughness on crime has become such a universally popular campaign theme that Democrats and Republicans are no longer clearly differentiated on this position (Moore, 1999; Ulmer & Johnson, 2004).

Three Strikes has remained politically salient in California far longer than most other criminal justice. Proposition 184, the Three Strikes ballot initiative, received strong support

⁵ Using non-hierarchical models, Huang, et al (1996) did find that the proportion of the population voting for the Republican presidential candidate appeared to influence sentence lengths handed down by judges in Georgia, both directly and in interaction with the offender’s number of prior convictions. However, the lack of correction for correlated standard errors for offenders clustered within circuits may have resulted in an overestimation of the significance of the contextual variables.

from across the political spectrum when it was initially proposed in 1994, and passed with 72 percent of the popular vote (Moore, 1999). Over time, support for the law has declined (Field Poll, 2004) and the law has been revisited. In November 2004, voters were presented with Proposition 66, which would dramatically reduce the breadth of Three Strikes by requiring all three offenses to be serious or violent. Proposition 66 was endorsed by the California Democratic Party and opposed by the Republican Party (Institute of Governmental Studies, 2004). The measure was ultimately defeated, 52.7 percent to 47.3 percent (Walters, 2004). As California faces severe budget shortfalls in a period of economic recession, criminal justice costs have become subject to scrutiny, and Three Strikes has emerged again as a topic of discussion in political circles and the media (Lagos, 2011). Because the law has been the focus of ongoing attention, I hypothesize that political effects will be observed in the application of Three Strikes even though they are sometimes not found for broader sentencing outcomes in other states.

A variable representing the proportion of voters registered Republican by county is used here to test the hypothesis that elected officials demonstrate responsiveness to their constituents' views through their implementation of Three Strikes.

Hypothesis 1: All else equal, District Attorneys and judges in counties with more registered Republicans will be more likely to charge and sentence offenders under Three Strikes and less likely to exercise leniency in the application of the law.

RACIAL AND ETHNIC THREAT

Racial threat theory proposes that social and political outcomes will vary depending on the racial or ethnic composition of the population (Blalock, 1967). In areas where few nonwhites live, whites' political and social power may seem secure, but as the minority proportion increases, the perceived threat to existing arrangements may grow, resulting in more concerted efforts to exert control over minority groups (Blalock, 1967). This effect may not increase

monotonically with growth in the minority population. The oppositional effect may decline when the nonwhite population reaches a critical mass or even becomes a plurality or majority (Blalock, 1967; Britt, 2000; Taylor, 1998). Researchers have found that the proportion of a local population that is African-American is associated with greater use of prisons (Britt, 2000; Jacobs & Carmichael, 2001; Myers & Talarico, 1987; Weidner, et al., 2005). This effect may be due to the adoption of “law and order”-oriented policies to maintain social control (Jacobs & Carmichael, 2001). Other studies have concluded that a racial threat effect is absent (Eitle, D'Alessio, & Stolzenberg, 2002; Stolzenberg, D'Alessio, & Eitle, 2004).

Hypothesis 2a: In areas where the black population is larger, Three Strikes will be applied more frequently. 2b: This effect may diminish, however, in areas where the black share of the population is very high.

Hypothesis 3a: In areas where the Latino population is larger, Three Strikes will be applied more frequently. 3b: This effect will diminish, however, in areas where the Latino share of the population is very high.

ECONOMIC AND CRIME THREATS

Several other contextual characteristics may influence the degree to which Three Strikes is implemented. Parallel to the racial threat hypothesis, the economic threat hypothesis posits that the criminal justice system may be used to control the threat to the existing order posed by economically disadvantaged populations (Britt, 2000). Research has found that individuals who are unemployed face increased chances of incarceration (Chiricos & Bales, 1991). Some studies have found elevated rates of incarceration in areas with higher rates of unemployment (Box & Hale, 1982, 1985; Chiricos & Delone, 1992), though other research has concluded that links between unemployment and incarceration are weak (Jacobs & Helms, 1996). I hypothesize that higher rates of Three Strikes usage will occur in counties where the unemployment rate is higher.

Hypothesis 4: Economic threat: Three Strikes sentences will be administered at a higher rate in areas where the unemployment rate is higher.

Similarly, a “crime threat” hypothesis suggests that severe punishments, such as mandatory minimum sentences, may be employed more aggressively in areas where crime is a greater problem (Crow & Johnson, 2008; Ulmer, et al., 2007). Fear of crime has been cited as one of the reasons for the initial passage of Three Strikes in California (Simon, 2007); it is worth examining whether this fear also affects the law’s implementation. High violent crime rates may be associated with increased Three Strikes usage as prosecutors and judges seek to demonstrate to the public that they are working hard to lower elevated crime rates.

Hypothesis 5: Crime threat: Three Strikes sentences will be administered at a higher rate in areas where the violent crime rate is higher.

The analyses discussed below provide statistical evidence to support the claim that substantial prosecutorial discretion is exercised in the application of the Three Strikes law. They also find evidence that greater political conservatism in the courtroom environment is associated with more stringent application of the Three Strikes law, a relationship that has been observed in journalistic and qualitative investigations but not proven empirically. The effects of both African-American race and Latino ethnicity are tested at the county level to determine the extent to which racial or ethnic threat influences Three Strikes sentencing, and at the individual level to examine whether racial or ethnic discrimination appears to be present in the application of the law. The effects of other important county and individual characteristics on the likelihood of receiving a Three Strikes sentence are also tested. These analyses and the resulting findings contribute to the growing literature on jurisdictional effects on sentencing outcomes, using data from California, a state that has received relatively little scholarly attention in this body of literature, despite its enormous size and national political influence.

DATA AND METHODS

The analyses are conducted using data provided by the California Department of Corrections and Rehabilitation (CDCR). The dataset includes 9,153 inmates from 56 of California's 58 counties.⁶ It includes the entire population of inmates who were housed in CDCR adult correctional institutions on August 31, 2006 and satisfied the following conditions: male; had two or more serious or violent prior convictions, making him eligible for a sentence of 25 years to life under California's Three Strikes law; current conviction was for any felony and may have been obtained through trial, plea bargain, or guilty plea⁷; entered prison for the current conviction from 2002 through August 2006;⁸ and was either not on parole or, if on parole, sentenced for a new felony (i.e. those entering on a parole revocation or with a parole status labeled "pending" were not included).

The fact that all of the individuals in the dataset were prison inmates may raise concerns about selection bias. The ideal dataset for an analysis of discretion in the application of Three Strikes would include all potentially Three Strikes-eligible arrestees along with information on their initial charges, any and all decisions to add, drop, enhance, or reduce charges, and their final adjudication outcomes, so researchers could obtain a full picture of courtroom decisionmaking processes. However, due to a culture of secrecy in many prosecutorial offices (Davis, 2007) and a lack of complete statistical records, these data are notoriously difficult to obtain, especially in California, which does not have a sentencing commission tasked with criminal justice policymaking, oversight and reporting. Analysis of the available data can produce substantively meaningful and methodologically sound findings about many aspects of

⁶ Two small counties were not represented by any inmates meeting the criteria for inclusion in the data sample.

⁷ Although plea bargains are prohibited under the Three Strikes law after a third strike charge has been filed, prosecutors may use the threat of Three Strikes earlier in the process to induce defendants to accept a plea offer.

⁸ The sample is limited to inmates who entered from 2002 to 2006 for two primary reasons. The first is to limit the variation in county-level variables measuring characteristics of the political and socioeconomic environment, and the second is to reduce the effects of changes in the implementation of Three Strikes that have occurred over time in response to California Supreme Court decisions and other factors including political and economic trends.

the Three Strikes implementation process, but it is useful to keep in mind limitations due to the patterns of over- and under-representation that result from the use of inmate data.

Not included in the dataset were inmates who entered between 2002 and 2006 but were released before August 31, 2006 (i.e. who served between one and four years in prison, depending on when they entered). These would most likely be offenders convicted of less serious felonies who had one or more priors dismissed. It would have been preferable to include these inmates, but that was not possible because the data comprised a “snapshot” of individuals behind bars on August 31, 2006. The CDCR could not provide data on inmates who were not incarcerated at that specific point in time. Thus, the dataset underrepresents the population serving the shortest sentences. Because the sample consists of inmates, individuals omitted from the dataset include defendants who were charged with, but not convicted of, three-strikes-eligible felonies, whether they received a not guilty verdict, pled guilty to a lesser offense, or had their felony charges dropped before adjudication. To the extent that conviction rates vary significantly for different groups of offenders, this may be reflected in the composition of the sample. Thus, observed variation in Three Strikes outcomes among the inmates in this sample could result from prosecutorial discretion in the charging process, judicial discretion, differences in willingness to plead guilty, or conviction rates in bench or jury trials.⁹ Finally, defendants from jurisdictions with the most lenient policies regarding Three Strikes charging may be underrepresented. Therefore, the analysis of inmate data probably produces low estimates of the extent to which discretion is exercised to dismiss prior strikes.

The likely effect of these forms of selection bias is to undersample the offenders who received the greatest leniency in the courtroom. This might lead to overestimates of the odds of

⁹ Unfortunately, for the reasons described above, comprehensive data on plea bargain and charge reduction decisions are not available, so it is not possible to pinpoint the source of this variation.

Three Strikes sentences, especially for those who are most likely to receive charge or sentence reductions (because those who did not receive prison sentences are not observed). Therefore, the analyses are likely to err on the side of *not* observing differences between groups in Three Strikes outcomes. In other words, sentencing disparities may exist that are not readily observed using these data, and actual disparities may be greater than those found here.

Descriptive statistics for both offender-level and county-level variables are displayed in Table 1. The dichotomous dependent variable is coded “1” if the offender is serving a 25-to-life third strike sentence. Individual-level control variables in the model include factors usually considered “legally relevant” in sentencing: the primary offense for which each inmate was incarcerated (coded as dummies for 26 separate offense categories), the total number of prior serious and violent prior convictions, and a dummy variable coded 1 if the offender was on parole at the time of his or her current arrest. As seen in Table 1, many different conviction offenses are represented; the most prevalent were possession of controlled substances and possession for sale, robbery, assault, and burglary. The number of prior offenses varied widely, from two (the minimum to be included in this dataset) to 94, with a mean value of about three. About half of the inmates were parolees at the time of their conviction for a new offense.

*** Table 1 about here ***

Extralegal individual-level variables include five dummy variables for year of admission (2002-2006), the inmate’s race/ethnicity (dummy variables for African-American, Latino, Asian, American Indian, and white), and age (dummy variables for the 14 to 24, 25 to 54, and 55 and up age groups). The dataset includes more inmates from the later part of this period than the earlier part, probably due to the release of some inmates admitted earlier in the period.¹⁰ Among the

¹⁰ The breakdown by year was as follows: 13% from 2002, 16% from 2003, 20% from 2004, 29% from 2005, and 23% from January to August 2006 (numbers do not add up to 100% due to rounding).

inmates in the dataset, 42 percent are African-American, 30 percent are Latino, and 25 percent are non-Hispanic white. About one percent are American Indian, half of one percent are Asian, and about two percent identify as another race or ethnicity. The vast majority (93 percent) are between the ages of 25 and 54; about three percent are under 25, and four percent are 55 or over.

The county in which the inmate's current conviction was adjudicated serves as the link between the individual- and contextual-level data. As a measurement of political conservatism, the county-level dataset includes the percentage of Republican registered voters in 2005.¹¹ The racial threat hypothesis is operationalized using the percentages of each county's population who identify as African-American and Latino/Hispanic, from the 2000 Census. Centered and squared values of the percent African-American and Latino terms are included to test whether the racial threat effect has a curvilinear form, declining where the black or Latino share of the population is high.¹² The county unemployment rate from the year 2002 is included to capture the economic threat effect, and the violent crime rate from the year 2002 represents the crime threat.¹³ A correlation matrix of the county-level variables found no correlations that were statistically significant at the $p < 0.05$ level. While many other measures are available to represent several of the theoretical concepts discussed above, such as the political and economic environments, single

¹¹ Political party registration data are collected from the California Secretary of State, Voter Registration Statistics (Report of Registration as of February 10, 2005, Registration by County).

¹² The source for the race and ethnicity data is the United States Census Bureau, GCT-PL (Race and Hispanic or Latino: 2000, California by County). To reduce collinearity between the linear and quadratic county-level African-American and Latino population variables, centered and squared race/ethnicity variables were calculated by subtracting the mean value of each of these variables from the value corresponding to each case, and then squaring the resulting term.

¹³ The data source for County Employment Rate is the United States Department of Commerce, Bureau of Labor Statistics, Local Area Unemployment Statistics (Labor Force Data by County, 2002 Annual Averages). Violent crime rate data are from the California Department of Justice, Office of the Attorney General, Crime in California (California Crime Index, 2002).

variables are used in the model in an effort to limit multicollinearity and ensure adequate degrees of freedom (based on the number of observations at the county level) to conduct the analysis.¹⁴

Political, economic, demographic, and public safety contexts vary widely among California's counties. The proportion of voters registered Republican ranges from 11.5 to 51.8 percent. Unemployment rate varies from 4.6 to 15 percent. The black share of the population ranges from 0.16 percent to 14.9 percent, while Latinos make up 4 to 72 percent of the population in different counties. The violent crime rate ranges from a low of 182 per 100,000 residents to 913 per 100,000.

EVIDENCE OF WIDESPREAD DISCRETION

In California and elsewhere, prosecutors and judges freely exercise discretion to avoid charging and sentencing every eligible offender under mandatory minimum sentencing laws (Bjerk, 2005), and the data reflect this fact. Only 13.8 percent of the offenders included in the dataset (1,264 out of 9,153) were serving a sentence of 25 years to life.¹⁵ At first glance, this seems startling, considering that each of these offenders had two or more serious or violent prior convictions and was convicted of a subsequent felony, and therefore could have received a third-strike sentence in the absence of prosecutorial or judicial leniency. However, the observation that the vast majority of eligible offenders did not receive the "mandatory minimum" sentence is consistent with findings from prior studies of habitual offender sentencing. Crawford, Chiricos, and Kleck (1998) found that only about 20 percent of eligible offenders were sentenced under a far narrower Florida habitual offender statute. A subsequent study found that only nine percent

¹⁴ Variables corresponding to hypotheses regarding the influence of administrative context, including some that have been found to be significant in other studies (e.g. court caseload and court size), were initially included but dropped from the final version of the model in the interest of parsimony after their effects were not found to be significant.

¹⁵ This percentage varied from county to county. For example, 27 percent of inmates sentenced in Kings County and 20 percent of those sentenced in Kern County had third strike sentences, in contrast with 6 percent of those sentenced in San Francisco County and 11 percent of offenders from Los Angeles County. As discussed above, these estimates probably err on the high side.

of Florida offenders eligible for habitual offender sentencing were sentenced as such (Crow & Johnson, 2008). At the federal level, mandatory minimum sentences are imposed on only about half of eligible offenders (Ulmer, et al., 2007).

HIERARCHICAL LOGISTIC MODEL

The analyses were conducted using a multilevel logistic model.¹⁶ For situations where the data include cases nested within groups (such as offenders within counties), hierarchical models allow researchers to assess case-level and group-level variables concurrently, while avoiding misspecification of standard errors due to ignored correlation between error terms for clustered cases (Luke, 2004; Raudenbush & Bryk, 2002). This misspecification usually leads to an overstatement of the statistical significance of Level 2 (contextual) variables (Johnson, 2006; Raudenbush & Bryk, 2002). Also, rather than requiring the assumption that the effects of certain variables are constant from context to context (as a regression approach would do), multilevel analysis allows the sources of contextual differences to be incorporated directly into models (Luke, 2004; Raudenbush & Bryk, 2002).

FINDINGS AND DISCUSSION

UNCONDITIONAL MODEL

The analysis begins with an unconditional hierarchical logistic model, which includes Three Strikes sentence as a dependent variable, and no covariates at either level 1 (offender level) or level 2 (county level). The level 2 variance term is somewhat significant ($\tau = 0.194$, standard error of $\tau = 0.068$) lending empirical support to the widely-accepted idea that the likelihood of receiving a Three Strikes sentence varies significantly between counties.

INDIVIDUAL-LEVEL EFFECTS

¹⁶ All hierarchical analyses were done using the HLM 6.06 software program (Scientific Software International, Inc., 2008).

When individual-level covariates corresponding to legal factors (number of prior serious or violent convictions, offense categories, and a dummy for parole violators sentenced to new prison terms), and extralegal offender characteristics (year admitted, race, ethnicity, and age categories) are added to the model, the model fit improves significantly ($\chi^2 = 1467.37$; 37 degrees of freedom; $p < 0.001$ in comparison to the unconditional model).¹⁷ Several variables have statistically significant coefficients.

*** Table 2 about here ***

The significant effects include those associated with several variables that are normally considered “legally relevant,” but should not affect Three Strikes sentencing in the absence of prosecutorial or judicial discretion. Defendants with a greater number of serious and violent prior convictions and those convicted of more severe crimes face a higher likelihood of being charged under Three Strikes. With each additional serious and/or violent prior conviction beyond the minimum of two required to trigger a third strike sentence, the odds of a third-strike sentence increase by about 11 percent. Of the twenty-five felony offense categories included in the model, nine are designated in the California Penal Code as serious or violent offenses and count as strikes. These offenses and their corresponding statistics are listed in italics in Table 2. The reference group is assault with a deadly weapon, a violent offense that has the mean sentence closest to the average sentence for all offenders in the dataset. Eight of the nine serious or violent offenses have positive coefficients, meaning that the likelihood of a Three Strikes sentence is higher than that for assault with a deadly weapon, and seven of those eight coefficients are statistically significant at $p < 0.05$ or less. Fifteen of the sixteen non-strike offenses in the analysis have negative coefficients, indicating that the chance of a Three Strikes

¹⁷ Model fit is compared in HLM using a multi-parameter test for variance-covariance components based on a comparison of deviance statistics from two model specifications (Raudenbush and Bryk, 2002).

sentence is lower than that for assault with a deadly weapon, with thirteen of those fifteen coefficients statistically significant at $p < 0.05$ or less. The most violent offenses (e.g. murder, rape, and kidnapping) have the largest positive coefficients, while those that are less serious, such as drug possession and forgery/fraud, have the largest negative coefficients. These findings provide strong evidence that prosecutors and judges exercise discretion “in the furtherance of justice,” to correct for perceived disproportionalities associated with charging every eligible felony offender with a third strike and subjecting all felons to the same punishment of twenty-five years to life in prison.

Several extralegal variables are also associated with variation in the likelihood of a Three Strikes sentence. The year in which the inmate was admitted has a significant negative coefficient, indicating that the likelihood of a Three Strikes sentence declined from year to year during the period from 2002 to August 2006. This is consistent with news accounts describing a marked decline over time in the application of Three Strikes in California. While over 1,700 inmates were sentenced under the law in California in 1996, fewer than 200 inmates a year received the maximum Three Strikes sentence from 2008 to 2010 (Furillo, 2011). Various explanations exist for the declining rate of strict Three Strikes sentencing, including depletion over time of the supply of eligible offenders and evolution in prosecutors’ views regarding “which offenders truly deserve the harshest measure of the law” (Furillo, 2011).¹⁸

Compared to whites, African-Americans face more than 40 percent higher odds of a Three Strikes sentence, even when offense, prior criminal history, and parole status are controlled. This effect is highly statistically significant ($p < 0.001$) and consistent with the

¹⁸ On the other hand, some of the apparent observed decline in Three Strikes inmates from 2002 through 2006 probably results from selection bias in the panel data used in this study. Offenders who entered prison earlier in the 2002-2006 time period with sentences of 5 years or less are more likely to have completed their terms and exited the system before August 31, 2006. Therefore, inmates with longer sentences (including third-strikers) make up a larger proportion of the more recent inmate cohorts.

findings of other studies that find evidence of racial discrimination against African-Americans in the implementation of habitual offender statutes (Crawford, 2000; Crawford, et al., 1998; Crow & Johnson, 2008). In the absence of complete information, racial stereotypes may influence courtroom decision makers' assessments of offenders' dangerousness, blameworthiness, and other "focal concerns" that enter into decisions regarding how and when to exercise discretion (Albonetti, 1987, 1991; Steffensmeier, Ulmer, & Kramer, 1998).

In contrast, no comparable disparity appears to exist between Latinos and whites (the coefficient is positive but not significant), suggesting that Latino defendants may be subject to less discriminatory treatment in the courtroom than blacks with regard to Three Strikes sentencing in California. This differs from findings of studies conducted on mandatory minimum sentencing in Pennsylvania (Ulmer, et al., 2007) sentencing guidelines departures in Pennsylvania (Johnson, 2005), and habitual-offender sentencing in Florida (Crow & Johnson, 2008), all of which found that Hispanic/Latino ethnicity was associated with more severe sentencing outcomes. Divergent demographic compositions may contribute to racial and ethnic effects that differ from one state to another. No significant differences in Three Strikes sentencing were found between whites and Asians, American Indians, or members of other races. These groups made up only a very small proportion of the incarcerated population.

Compared to those in the reference age group (ages 25 to 54), the youngest offenders (ages 14-24) are least likely to be serving third-strike sentences. The oldest group did not differ significantly from the reference group. This finding may be due to the perception that younger offenders are amenable to rehabilitation, while other habitual offenders may be viewed as relatively incorrigible.

FULLY CONDITIONAL MODEL (COUNTY-LEVEL AND INDIVIDUAL-LEVEL EFFECTS)

The fully conditional hierarchical logistic model includes all of the individual-level covariates from the previous version of the model, along with several county-level covariates discussed above: proportion of Republican registered voters, African-American and Latino populations in linear and quadratic forms, unemployment rate, and violent crime rate.¹⁹ Parameter estimates for the individual-level and county-level effects are displayed in Table 3. With the addition of county-level predictors, the level-2 variance component shrinks by 72 percent (τ declines from 0.501 to 0.141), and the model fit improves further in comparison with the previous version of the model, which included only the individual-level covariates ($\chi^2 = 27.5$, 6 degrees of freedom; $p < 0.001$). When the contextual variables are added, the coefficients associated with the individual-level variables do not change much from the previous model, while the coefficients for many of the county-level variables are statistically significant.

*** Table 3 about here ***

ELECTORAL ACCOUNTABILITY AND POLITICAL RESPONSIVENESS EFFECTS

The findings support the first hypothesis, regarding electoral accountability and political responsiveness. The coefficient on the variable representing Republican voter registration is positive, with a corresponding odds ratio of 1.032, and this result is statistically significant at the $p < 0.01$ level. Political conservatism appears to influence the extent to which the law is implemented, with each percentage increase in Republican voter registration above the mean associated with a 3.2 percent increase in the odds of a Three Strikes sentence for the average convicted offender. A separate analysis (not shown) using Democratic instead of Republican

¹⁹ For ease of interpretation, values for all of the continuous county-level variables except for the squared terms are entered into the model in grand-mean centered form.

voter registration found a significant opposite effect associated with Democratic percentage of registered voters that was slightly larger. These findings confirm the findings of prior studies that observed a positive association between conservative political climate and punitiveness in sentencing (Jacobs & Carmichael, 2001; Smith, 2004). Differences between these findings and those from recent studies that have not found such an association may stem from differences in the extent of permissible charging and sentencing discretion in different states. For example, several studies that find no political context effect use data from Pennsylvania (e.g. Johnson, 2005; Ulmer & Johnson, 2004), which, unlike California, has a sentencing commission and presumptive sentencing guidelines. These characteristics of the criminal justice system may help insulate sentencing processes from politicization. These findings illustrate why it is important to conduct comparable studies in different sentencing environments.

RACIAL DISPARITIES AND ETHNIC THREAT

At the county level, there is no apparent minority group threat effect associated with the size of the black population, contradicting Hypothesis 2. The coefficient on the linear term representing African-American population is not significant. The quadratic term was originally included, and then dropped, from the model, because the African-American population in California is so small that it is unlikely to reach the “tipping point” where the effect of population size on odds of a third-strike sentence might change from a positive to a negative effect. In contrast, consistent with Hypothesis 3, a positive and curvilinear “ethnic threat” effect is observed with regard to the size of the Latino population. With each percentage increase above the mean in the county Latino population, the average eligible offender’s odds of receiving a Three Strikes sentence increases by 3.9 percent. The coefficient on the squared Latino population term is small but negative and highly significant, indicating a slight decline in

this effect where the Latino proportion of the population is high. Another notable aspect of the ethnicity effect is that the increased sentencing severity associated with “Latino threat” impacts all offenders, rather than only Latinos.²⁰ To the extent that Three Strikes is used more aggressively in response to a perceived ethnic threat, the effects of such a response are experienced beyond the specific group that represents the threat.

When we consider California’s demographic composition, the apparent presence of a “Latino threat” effect and absence of a “black threat” effect makes sense. African-Americans constitute a small proportion (6.7 percent) of California’s population. There is no county in which the black population exceeds 15 percent. Thus, the black population may not have reached the “tipping point” required to represent a serious socio-political threat to whites in California. On the other hand, Latinos make up over 36 percent of California’s population (U.S. Census Bureau, 2010), and over 40 percent of the population in ten counties (U.S. Census Bureau, 2004). Non-Hispanic whites comprise about 42 percent of the state’s population (U.S. Census Bureau, 2010). As a group, Latinos may be perceived as more “threatening” than blacks, in terms of competition with whites for economic resources and political and social power.

This explanation seems especially compelling when the findings presented above are examined together with those from a recent study of discretion in mandatory drug sentencing in Pennsylvania. Ulmer, Kurlychek, and Kramer (2007) found a racial threat effect associated with the size of the black population, but Hispanic population was not included in their county-level analysis (Ulmer, et al., 2007). In Pennsylvania, African-Americans make up 10.8 percent of the population, while Hispanics comprise 5.7 percent of the population (U.S. Census Bureau, 2011), including many who moved to the state in recent years (Steffensmeier & Demuth, 2001). Racial

²⁰ An earlier version of the model included “percent African-American” and “percent Latino” linear and quadratic terms as cross-level interactions with the individual African-American and Latino variables, but neither of these cross-level effects was significant, so these terms were dropped from the final model in the interest of parsimony.

and ethnic threat effects appear to vary from state to state depending on the composition of the population, and these effects are likely to change over time as the populations of different racial and ethnic groups ebb and flow. Further research is needed to develop a clearer understanding of the complex dynamics of racial and ethnic threat in diverse and changing demographic environments.

ECONOMIC AND CRIME THREAT

Along with an apparent “ethnic threat” effect for Latino population, an economic threat effect is also found, confirming Hypothesis 4. For the average offender, a one percent increase in the local unemployment rate is associated with 11.1 percent greater odds of a Three Strikes sentence. In contrast, Hypothesis 5 was not confirmed. The coefficient on the violent crime rate variable is significant but small, with a sign in the opposite direction than expected ($\beta = -0.003$, $p < 0.001$). Increased violent crime rates are actually associated with slightly reduced odds of a Three Strikes sentence. Prosecutors, juries, and judges may be more likely to respond to crimes committed by repeat offenders with harsh sentences in environments where violent crime is less common and therefore more alarming.

CONCLUSIONS

“Three Strikes and You’re Out” exemplifies how closely politics and criminal justice are intertwined. Direct democracy in California helped create and pass the law, and representative democracy influences its implementation. Discretion in the implementation of Three Strikes is exercised widely, but not uniformly. The analyses here find strong evidence that the likelihood of either strict or lenient treatment for strikes-eligible offenders varies in accordance with the political, social, and economic environment. Table 4 summarizes the hypotheses tested,

predicted effects corresponding to the hypotheses, and whether the results of the analyses were consistent with the predicted effects.

*** Table 4 about here ***

This paper's title posed a question: is discretion exercised in the implementation of Three Strikes "in the furtherance of justice, injustice, or both?" The findings indicate that the answer is "both." The exercise of discretion in the application of Three Strikes is not intrinsically problematic. Permission to "strike strikes" has enabled prosecutors and judges to "correct" disproportionalities between less severe offenses and seemingly draconian mandatory penalties (Bjerk, 2005). This form of discretion has served as a "safety valve," without which there would have been several times more inmates sent to prison for 25 years to life, many for felonies that are neither violent nor serious as defined in California's penal code. The frequent invocation of this clause has mitigated some of the law's more burdensome predicted effects, including excessive increases in trial caseloads and even more extreme prison overcrowding than the state has already experienced, with their corresponding monetary, human, and social costs (see Greenwood, et al., 1994 for early predictions of the effects that might have resulted from full implementation). At the same time, the findings include evidence that prosecutorial and judicial discretion in Three Strikes implementation may also have resulted in outcomes that are less beneficial and fair. Concerns about geographic disparities in the likelihood of receiving third strike sentences are confirmed. Offenders with similar criminal records, who commit the same offense, receive dramatically different sentences depending on the environments in which they are adjudicated.

Three Strikes offers a clear example of the politicization inherent in a criminal justice system in which important decision makers – District Attorneys and Superior Court judges, in

California – also operate as elected politicians who must answer to constituents and consider electoral incentives if they seek to obtain and keep their jobs. Those who serve more conservative constituencies appear to be significantly less prone to exercise leniency in their administration of the Three Strikes law. This may simply indicate that District Attorneys and Superior Court judges take seriously their responsibilities as their constituents’ political representatives, or that voters tend to elect officials who closely reflect their policy views. In a representative democracy, evidence that elected officials are accountable to the public would not normally evoke surprise or disapproval. But evidence of wide interjurisdictional variation in the implementation of a statewide law raises concerns regarding equal protection. This study’s findings also highlight the potential for “tyranny of the majority,” where decisions affecting the treatment in court and freedom of some citizens can be swayed by political incentives and mass public opinion. Three Strikes punishments are also used more in areas where the public may be looking to elected officials for responses to other socioeconomic woes, such as high unemployment.

This study’s findings regarding race and ethnicity are noteworthy and troubling. African-American offenders are less likely than whites to have had prior convictions dismissed so as to avoid being sentenced as third strikers. It is uncertain whether this is due to overt or unconscious discrimination, institutional bias, defendants’ willingness to negotiate with prosecutors, or other reasons. The possibility that racial disparity may emerge from the exercise of prosecutorial or judicial discretion is disturbing, especially in combination with the lack of transparency in the Three Strikes charging process (Davis, 2007). Little is known about the sources of racial disparity in the criminal charging and sentencing processes, and more data and research are sorely needed this area.

Racial threat theory proposes that public policy can be used as a tool of social control in response to perceived threats to existing power structures by racial and ethnic minority groups. Past studies have found support for the racial threat hypothesis in the form of a linear or curvilinear relationship between the African-American population and the use of incarceration (Britt, 2000; Jacobs & Carmichael, 2001; Weidner, et al., 2005). Crow and Johnson (2008) found an ethnic threat effect for Latino population in Florida. The results from the data analyses here lend support to the theory with regard to the Latino population in California. Three Strikes sentences are handed down at a higher rate in areas with larger Latino populations, but this trend seems to diminish as the Latino population becomes very large. No corresponding relationship is found between the state's much smaller black population and Three Strikes sentencing. Together, the findings in California and elsewhere serve to confirm Blalock's (1967) theory that relationships between minority and majority groups vary according to their relative population shares. Small minority populations are not viewed as threatening; moderate-sized populations evoke reactions of fear and opposition; and when racial or ethnic groups grow to constitute a substantial share of the population, they may amass enough political power to counteract the effects of discrimination.

Looking at the individual- and county-level effects of race and ethnicity together, one can conclude that African-Americans as a group do not represent enough of the population in California to constitute a racial threat to the social order, but on an individual basis they may be subject to racial discrimination. The effects for Latino ethnicity are more difficult to explain. If California's large and rapidly-growing Latino population represents enough of an ethnic threat that policy makers have responded to it with more stringent application of Three Strikes, why is there no clear evidence of discrimination against Latino offenders at the individual level? One

possible explanation may be that the observed county-level effects are heavily influenced by several smaller, politically conservative counties in the state, whose large Latino populations are associated with the presence of agricultural industries (and are therefore more transient and less politically powerful), while the individual-level results are driven by the sheer number of Latino residents from urban areas (especially Los Angeles County), where Latinos are more well-established and yield more political and social power. More research will be needed to determine whether other explanations exist for these findings and similarly perplexing observations in other states, such as Ulmer, et al.'s (2007) finding of individual-level effects for Latinos and county-level effects for black population in Pennsylvania.

These findings draw attention to the complex and evolving nature of the relationships between race, ethnicity, and sentencing disparities (for more thorough discussion, see, e.g., Spohn, 2000; Zatz, 1987). They also highlight why it is necessary to look beyond the racial categories of black and white in research on sentencing disparities.

Older offenders are more likely than younger ones to receive Three Strikes sentences. The fact that the Three Strikes law tends to apply mainly to older offenders has been pointed out for its cost-ineffectiveness. While life course theory predicts that the rate of criminal offending usually declines dramatically as individuals age (Blumstein, Cohen, Roth, & Visher, 1986), Three Strikes policy requires many offenders to serve lengthy prison sentences, at an average cost of approximately \$47,000 per year (Archibold, 2010), over a time period during which they would have been likely to “retire” from their criminal careers. Concerns about these costs have led to calls for the law’s reform.

It seems risky to leave the decision to “strike strikes” (or not) up to individuals who may be influenced by political incentives, public or personal sentiments toward certain racial or ethnic

groups, or other extralegal considerations. The discretion that is exercised ostensibly “in the furtherance of justice” should not also exacerbate injustice and inequality under the law. When the exercise of discretion systematically disadvantages of some defendants on the basis of factors such as race, the ethnic makeup of a community, or their neighbors’ political views, harm is inflicted not only to the affected individuals, but also to the communities from which they come, and ultimately to the integrity of the criminal justice process.

Policy efforts to address these issues should include improved oversight over the use of prosecutorial discretion, which tends to occur behind closed doors and is virtually unreviewable (Bandes, 2006; Davis, 2007). Increased transparency regarding courtroom decisionmaking, better data collection, and further research are needed to develop a more thorough understanding of the factors that influence the decisions of elected prosecutors (Misner, 1996), who must balance multiple objectives, including political success, protection of their communities, and the preservation of equal rights and due process while making choices based on incomplete information (Albonetti, 1987). The establishment of a California sentencing guidelines commission has been proposed by some scholars and public officials; this might help advance these objectives (Steinhauer, 2006).

More broadly, states should consider whether to reform the process of selecting District Attorneys and judges. Converting these offices from elected to appointed positions or extending term lengths might not insulate these decision makers entirely from political expectations and pressures, but such changes would reduce their need to campaign for office and might create greater distance between mass public opinion and decisions in the courtroom. These ideas are not new; in Federalist Paper 78, Alexander Hamilton wrote: “though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be

endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the Executive” (Hamilton, 1961).

In California, severe budget constraints have recently led policymakers to consider previously unthinkable criminal justice reforms, such as the early release of about 6,500 prison inmates in a single year (Archibold, 2010) and new efforts to reform the Three Strikes, including proposals that resemble the way the law is already being carried out in the most lenient jurisdictions (Bazelon, 2010). A fairer, more effective, and potentially less costly approach to sentencing would consider more seriously the individual characteristics of offenders and their crimes, rather than persisting with costly policies that emphasize the management of aggregate populations based on broad and imprecise assessments of their potential dangerousness (Feeley & Simon, 1992) while continuing to grant elected prosecutors and judges extensive powers to decide whether and when to circumvent the law “in the furtherance of justice” or otherwise.

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Table 1. Descriptive Statistics

	Min	Max	Mean	S.D.
Individual-level (Level 1) Variables (N=9,153)				
Received third-strike sentence (25 years to life in prison)	0	1	0.14	0.35
Year admitted: 2002	0	1	0.13	0.34
Year admitted: 2003	0	1	0.16	0.36
Year admitted: 2004	0	1	0.20	0.40
Year admitted: 2005	0	1	0.29	0.45
Year admitted: 2006	0	1	0.23	0.42
Black/African-American	0	1	0.42	0.49
Hispanic/Latino	0	1	0.30	0.46
White	0	1	0.25	0.43
Asian	0	1	0.00	0.07
American Indian	0	1	0.01	0.10
Other race	0	1	0.02	0.14
Age 14-24	0	1	0.03	0.16
Age 25-54	0	1	0.93	0.25
Age 55 and up	0	1	0.04	0.20
Number of prior serious and violent convictions	2	94	3.17	2.65
New prison admission (not on parole)	0	1	0.50	0.50
Parole violator w/new prison term	0	1	0.50	0.50
Offense Categories:				
1st degree murder	0	1	0.01	0.11
2nd degree murder	0	1	0.01	0.09
Manslaughter and Vehicular Manslaughter	0	1	0.01	0.08
Robbery	0	1	0.11	0.31
Assault/battery	0	1	0.09	0.29
Assault with a deadly weapon	0	1	0.06	0.24
Rape	0	1	0.01	0.09
Lewd act with a child	0	1	0.02	0.14
Kidnapping	0	1	0.00	0.07
Burglary - 1st degree	0	1	0.06	0.24
Burglary - 2nd degree	0	1	0.06	0.24
Grand theft	0	1	0.02	0.15
Petty theft with a prior	0	1	0.06	0.24
Receiving stolen property	0	1	0.03	0.16
Vehicle theft	0	1	0.03	0.18
Forgery or fraud	0	1	0.02	0.14
Possession of controlled substances	0	1	0.17	0.38
Possession of controlled substances for sale	0	1	0.08	0.27
Sale of controlled substances	0	1	0.04	0.21
Manufacture of controlled substances	0	1	0.00	0.06
Possession of marijuana for sale	0	1	0.01	0.09
Marijuana sales	0	1	0.01	0.07
Escape	0	1	0.00	0.03
Driving under the influence	0	1	0.01	0.10
Arson	0	1	0.00	0.05
Possession of a weapon	0	1	0.06	0.24
County-level (Level 2) variables (N=56)				
% of Voters registered Republican, 2005	11.54	51.80	38.77	9.47
Unemployment rate, 2002	4.60	15.00	7.63	2.43
% of pop. Black/African-American (one race) in 2000	0.16	14.93	3.50	3.57
% of population Hispanic/Latino in 2000	3.97	72.22	23.52	15.20
Violent Crime rate, 2002	182.40	912.90	425.23	171.42

Table 2. Hierarchical Logistic Model, Individual-Level Variables Only

	Coefficient	Standard Error	Odds Ratio		P-value
Intercept	-1.228	-0.189	0.293	***	0.000
Extralegal Variables					

Year admitted - 2002 (reference group)					
Year admitted - 2003	-0.285	0.103	0.752	**	0.006
Year admitted - 2004	-0.626	0.104	0.535	***	0.000
Year admitted - 2005	-1.061	-0.105	0.346	***	0.000
Year admitted - 2006	-1.079	0.117	0.340	***	0.000
Black/African-American	0.339	0.090	1.404	***	0.000
Hispanic/Latino	0.057	0.095	1.059		0.548
Asian	-0.647	0.539	0.523		0.230
American Indian	-0.300	0.408	0.741		0.462
White (reference group)					
Age 14-24	-0.992	0.270	0.371	***	0.000
Age 25-54 (reference group)					
Age 55 and up	0.217	0.167	1.242		0.196
Legally Relevant Variables					
Number of serious or violent prior convictions	0.109	0.012	1.116	***	0.000
Parole violator with new prison term	-0.193	-0.070	0.825	**	0.006
Offense Categories (<i>italicized = violent/serious</i>):					
<i>1st degree murder</i>	1.169	0.237	3.218	***	0.000
<i>2nd degree murder</i>	0.683	0.269	1.979	*	0.012
<i>Manslaughter and Vehicular Manslaughter</i>	0.037	0.379	1.038		0.922
<i>Robbery</i>	0.906	0.130	2.475	***	0.000
<i>Rape</i>	1.091	0.260	2.978	***	0.000
<i>Lewd act with a child</i>	0.573	0.199	1.774	**	0.004
<i>Kidnapping</i>	1.009	0.344	2.744	**	0.004
<i>Burglary - 1st degree</i>	0.362	0.149	1.436	*	0.015
<i>Arson</i>	-1.117	0.769	0.327	*	0.147
<i>Assault with a deadly weapon (reference group)</i>					
<i>Assault/battery</i>	-0.371	-0.147	0.690	*	0.012
<i>Burglary - 2nd degree</i>	-1.350	0.213	0.259	***	0.000
<i>Grand theft</i>	-1.023	0.283	0.359	***	0.001
<i>Petty theft with a prior</i>	-1.787	0.246	0.167	***	0.000
<i>Receiving stolen property</i>	-0.943	0.259	0.389	***	0.001
<i>Vehicle theft</i>	-1.043	0.252	0.353	***	0.000
<i>Forgery or fraud</i>	-2.297	0.472	0.101	***	0.000
<i>Possession of controlled substances</i>	-1.983	-0.185	0.138	***	0.000
<i>Possession of controlled substances for sale</i>	-1.635	0.211	0.195	***	0.000
<i>Sale of controlled substances</i>	-2.109	0.318	0.121	***	0.000
<i>Manufacture of controlled substances</i>	-1.312	0.757	0.269		0.083
<i>Possession of marijuana for sale</i>	-1.968	0.730	0.140	**	0.007
<i>Marijuana sales</i>	-1.579	0.690	0.206	*	0.022
<i>Escape</i>	0.459	0.737	1.583		0.533
<i>Driving under the influence</i>	-0.753	0.396	0.471		0.057
<i>Possession of a weapon</i>	-0.568	0.175	0.566	**	0.002

*p < 0.05, **p < 0.01; ***p < 0.001

Table 3. Hierarchical Logistic Model, Individual- and County-level Variables

	Coef.	S.E.	Odds Ratio		P-value
Intercept	-0.791	-0.179	0.453	***	0.000
County-level Variables					
% of voters registered Republican, 2005	0.032	0.010	1.032	**	0.002
Unemployment rate, 2002	0.106	0.043	1.111	*	0.017
% of population Black/African-American in 2000	-0.032	-0.024	0.969		0.188
% of population Hispanic/Latino in 2000	0.038	0.009	1.039	***	0.000
Square of % of population Hispanic in 2000	-0.001	0.000	0.999	***	0.000
Violent Crime rate, 2002	-0.003	-0.001	0.997	***	0.000
Individual-level Variables (Extralegal)					
Year admitted - 2002 (reference group)					
Year admitted - 2003	-0.288	0.103	0.750	**	0.006
Year admitted - 2004	-0.624	0.104	0.536	***	0.000
Year admitted - 2005	-1.062	-0.105	0.346	***	0.000
Year admitted - 2006	-1.072	0.117	0.342	***	0.000
Black/African-American	0.355	0.090	1.427	***	0.000
Hispanic/Latino	0.063	0.095	1.065		0.507
Asian	-0.607	0.538	0.545		0.259
American Indian	-0.337	0.408	0.714		0.409
White (reference group)					
Age 14-24	-1.000	0.270	0.368	***	0.000
Age 25-54 (reference group)					
Age 55 and up	0.225	0.167	1.252		0.179
Individual-level Variables (Legally Relevant)					
Number of serious or violent prior convictions	0.111	0.012	1.117	***	0.000
Parole violator with new prison term	-0.198	-0.070	0.820	**	0.005
Offense Categories (<i>italicized = violent/serious</i>):					
<i>1st degree murder</i>	1.176	0.236	3.240	***	0.000
<i>2nd degree murder</i>	0.708	0.270	2.029	**	0.009
<i>Manslaughter and Vehicular Manslaughter</i>	0.049	0.379	1.050		0.897
<i>Robbery</i>	0.918	0.130	2.505	***	0.000
<i>Rape</i>	1.137	0.261	3.116	***	0.000
<i>Lewd act with a child</i>	0.564	0.199	1.758	**	0.005
<i>Kidnapping</i>	1.010	0.344	2.747	**	0.004
<i>Burglary - 1st degree</i>	0.373	0.149	1.453	*	0.012
<i>Arson</i>	-1.138	0.767	0.320		0.138
Assault with a deadly weapon (reference)					
Assault/battery	-0.372	-0.147	0.689	**	0.012
Burglary - 2nd degree	-1.342	0.213	0.261	***	0.000
Grand theft	-1.016	0.283	0.362	***	0.001
Petty theft with a prior	-1.787	0.246	0.167	***	0.000
Receiving stolen property	-0.947	0.259	0.388	***	0.000
Vehicle theft	-1.030	0.251	0.357	***	0.000
Forgery or fraud	-2.288	0.472	0.101	***	0.000
Possession of controlled substances	-1.971	-0.185	0.139	***	0.000
Possession of controlled substances for sale	-1.626	0.211	0.197	***	0.000
Sale of controlled substances	-2.103	0.318	0.122	***	0.000
Manufacture of controlled substances	-1.289	0.753	0.276		0.087
Possession of marijuana for sale	-1.972	0.730	0.139	**	0.007
Marijuana sales	-1.565	0.692	0.209	**	0.024
Escape	0.494	0.732	1.639		0.499
Driving under the influence	-0.751	0.395	0.472		0.057
Possession of a weapon	-0.561	0.175	0.571	**	0.002

*p < 0.05, **p < 0.01; ***p < 0.001

Table 4. Summary of Hypotheses and Findings

	Hypothesis	Prediction	Confirmed?
1	Political responsiveness/electoral accountability: District Attorneys and judges with more conservative constituents will be more likely to charge and sentence offenders under Three Strikes.	Positive effect for % registered Republican	Yes
2a	Racial threat: in areas where the black population is larger, Three Strikes will be applied more frequently.	Positive effect for % Black in population	No
2b	Racial threat effect may diminish in areas where black share of the population is high.	Negative effect for (% Black) ²	No (dropped)
3a	Ethnic threat: In areas where the Latino population is larger, Three Strikes will be applied more frequently.	Positive effect for % Latino in population	Yes
3b	Ethnic threat effect will diminish in areas where Latino share of the population is high.	Negative effect for (% Latino) ²	Yes
4	Economic threat: Three Strikes sentences will be administered at a higher rate where unemployment is higher.	Positive effect for unemployment rate	Yes
5	Crime threat: Three Strikes sentences will be administered at a higher rate where crime is worse.	Positive effect for violent crime rate	No – Small but sig. opposite effect