

How Viable is Resolving Hispanic Employment Discrimination Through Litigation?

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ABSTRACT

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The purpose of this research is to discern how individuals of Hispanic origin fare in litigation of employment discrimination disputes. In addition, a model is developed to predict case outcomes in future litigation by individual of Hispanic origin against their employers. A 10 percent random sample of all litigated cases in 2011 and 2012 was drawn. There were 941 cases in the population, of which 10% were included. A logit model to predict when an individual plaintiff will prevail contains the following independent variables: national origin, and discipline, multiple plaintiffs, and harassment.

Recent cases were purposely sampled, to enable a conclusion of what the current situation is, additional analysis of a longer period might allow other insights. From the perspective of individuals being discriminated against, other mechanisms for resolutions should be sought, since most of the cases did not survive summary judgment – i.e. the employer prevailed. While not significantly related to case outcome, hostile environment and retaliation were prevalent in many cases.

The value of this study lies in in the frequencies of the case characteristics involved in employment discrimination against Hispanics as well as the development of a model to predict case outcome in favor of the employee. It is an example of how grounded theory methodology can be used in the understanding of employment discrimination.

Resolving Hispanic Employment Discrimination Through Litigation

INTRODUCTION

The Hispanic Work Force

The number of Hispanics in the workforce is growing and is expected to continue to grow. However, there are a lot of direct and indirect evidence that they are being discriminated against in terms and conditions of employment. They have a higher rate of unemployment and they have lower accumulated household assets (Orrenius et al., 2011).

The latest round of BLS projections for the U.S. labor force, covering 2010-2020, which indicate that growth will slow overall. These projections show that the labor force will increase by 10.5 million in this decade, growing to 164.4 million in 2020 from 153.9 million in 2010. That is less than the increase of 11.3 million from 2000 to 2010, and substantially less than the 16.7 million increase from 1990 to 2000. The projected average annual increase in the labor force from 2010 to 2020—0.7%—is also less than the annual growth of 0.8% from 2000 to 2010 and only about half the 1.3% annual rate of growth from 1990 to 2000 (Orrenius et al., 2011)

Hispanics will account for three-quarters of the growth in the nation's labor force from 2010 to 2020, according to new projections from the Bureau of Labor Statistics (BLS). Birth and migration account for the Hispanic population grows. Additionally, the non-Hispanic white population is aging, thus reducing their numbers in the labor force.

A second important factor is that Hispanics have a higher labor force participation rate than other groups. The nation's labor force participation rate—that is, the share of the population ages 16 and older, either employed or looking for work, was 64.7% in 2010. Among Hispanics, the rate was 67.5%. There are two main explanations for this gap: Hispanics are a younger

population than other groups, and include a higher share of immigrants. Hispanics, especially Hispanic women, have experienced increases in poverty within this decade, necessitating longer labor force participation (Moinifar & Hamidi, 2011). They argue that Hispanic women are poor because of both structural factors and individual factors. Since they are increasing in numbers and increasing in labor force participation rates, it can be expected that individuals of Hispanic origins will pursue their rights when their employers have discriminated against them.

Overview of Legalities

The following is a brief discussion of the legal protections against discrimination: Title VII of the Civil Rights Act of 1964 that prohibits employment discrimination based on race, color, religion, sex (including pregnancy), national origin, and genetic information (<http://www.eeoc.gov/laws/statutes/titlevii.cfm>) . The Age Discrimination in Employment Act, or ADEA is the primary federal law that prohibits employers from discriminating against employees and applicants who are at least 40 years old based on age (<http://www.eeoc.gov/laws/statutes/adea.cfm>) . The Family and Medical Leave Act (FMLA) typically requires employers of over 50 workers provide eligible employees up to 12 weeks of unpaid FMLA leave during any 12-month period (<http://www.dol.gov/whd/fmla/>). The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

Once any plaintiff seeks resolution in court, the defendant (usually the organization) may move for Summary Judgment. This is a procedural device used during civil litigation to dispose of a case without a trial. It is used when there is no dispute as to the material facts of the case and

a party is entitled to judgment as a matter of law. In discrimination lawsuits, in order for a plaintiff to survive summary judgment under the direct method, the plaintiff needs to present either direct evidence of discriminatory intent (such as an admission) or enough circumstantial evidence to allow a rational jury to infer that discriminatory intent motivated the decision. To survive summary judgment under the indirect method, the plaintiff must show: (1) he is a member of a protected class, (2) his work performance met defendant's legitimate expectations, (3) he suffered an adverse employment action, and (4) similarly situated employees outside of his protected class received treatment that is more favorable.

There are certainly other dispute resolution mechanisms, which an individual can pursue or may be required to pursue to resolve claims of discrimination. These include the union grievance process if available, EEOC, civil litigation, settlement through internal mechanisms, or withdrawal of the complaint by the plaintiff.

One point regarding the distinction between discrimination, harassment, and retaliation needs to be made. Discrimination is an adverse treatment of an individual based on his or her protected status. This usually would involve not being promoted or being disciplined or discharged. There can be harassment, which is a psychosocial condition, without the employer's explicit knowledge. In other contexts, this might be known bullying. There can also be retaliation, which is adverse treatment or harassment when someone exercises legal rights.

State of Research on Employment Discrimination in General

In the past few years, researchers have more intensively examined the current state of research on employment discrimination in general. Ruggs and his colleagues examined research on discrimination in top management journals, and concluded that there is a paucity of such research (Ruggs et al., 2013). They made a persuasive call for such research on marginalized

employees. King, Dunleavy, D. Dunleavy, E., Jaffer, Morgan, Elder, and Graebner, (2011), whose work predates Ruggs, utilized empirical legal scholarship (the analysis of employment discrimination litigated cases). However, their research and that of others do not appear in Ruggs, et al. analysis, because Ruggs' selection of only the top journals. This limitation was noted by other researchers (Diaz & Bergman, 2013; Joseph & Rousis, 2013; Thompson, Bergman, Culbertson, & Huffman, 2013).

Ruggs et al. and Thompson et al. note that there is another problem in that the incidents of employment discrimination, though numerous as they are, may not be discernible if research is conducted in one organizational setting. Furthermore, they note a preference for field research, of which empirical legal scholarship (using a litigated cases the unit of analysis is one method), can be categorized as field setting research. This is the methodology was used by King at al. Joseph and Rousis (2013) note that management researchers should be casting a wider net and look at journals outside of the specific domain of management, such as communication and social psychology. And although it is recognized that there are multiple bases for discrimination possessed by many marginalized employees, the call for intersectionality in this research seems to be explicitly absent in the management literature (Best, Edelman, Krieger, & Eliason, 2011; Roth, 2010; Sawyer, Salter, & Thoroughgood, 2013), although Riggs et al. (2010) does implicitly call for this.

Complexity of the Issue of Hispanic Employment Discrimination

Insert Figure 1 Here

The purpose of this model is to display complexity involved in understanding employment discrimination. It is intended that it portray some of the complexities including various legal bases, the demographics that are the basis for the legal protection, the areas of human resource management that can be viewed as discriminatory, the individual consequences, and the intergroup consequences. No single analyses could include all of these.

Gaining an understanding of issues related to employment discrimination faced by Hispanics in the US work force requires a multi-faceted approach. There are issues relating to the fact that Hispanics are not a homogeneous entity, and this impacts on our understanding of how they face discrimination. Moreover, many of the demographics that could be the basis for discrimination do not exist in isolation. The compounding of the complexity regarding the possible multiple bases, referred to as intersectionality and its impact on case outcome, has been recently noted (Best et al., 2011). For example, Hispanic employment discrimination can be based on accent (Hosoda, Nguyen, & Stone-Romero, 2012). That language and accent is such an integral part of employment discrimination experienced by Hispanics is well-established (Barker et al., 2001; Bergman, Watrous-Rodriguez, & Chalkley, 2008; Dailey, Giles, & Jansma, 2005; Gluszek & Dovidio, 2010; Megumi Hosoda & Stone-Romero, 2010; Lass, Atkins, & Squires, 2002).

Race (Hirsh & Lyons, 2010; Jones, 2009), skin color (Hernandez, 2010; Hersch, 2011, 2012; Roth, 2010; Schaerer, 2010), immigration status, and national origin are all possible other bases for discrimination. In addition to an individual's Hispanic identity, there can be discrimination based on personal demographics such as age, sex, or residency requirements and/or housing discrimination (Blasi & Doherty, 2010; Dickerson vonLockette & Johnson, 2010). Hispanic individuals also vary by type of employer and type of profession (Payne-Pikus, Hagan, & Nelson, 2010). Professional public sector employees have civil service protections

against discrimination, which is a different type of protection than would be experienced by nonprofessionals or by private sector employees (Ortega, Plagens, Stephens, & Berry-James, 2012; Payne-Pikus, Hagan, & Nelson, 2010).

All of the aforementioned certainly can be the bases for discrimination. The impetus in part for initiating the charge that an employer engaged in discriminatory practices is perceptual in that there needs to be perception that these discriminatory practices exist (Gallegos, 2010; Hirsh & Lyons, 2010). While they did not study Hispanics specifically, Lewis, Yand, Jacobs, and Fitchett (2012) have evidence that different racial and ethnic groups respond differently to everyday situations of discrimination. McLaughlin, Hatzenbuehler and Keyes (2010) and note these differences as well. Moreover, there are variations in the extent to which Hispanic individuals are acculturated (Alamilla, Kim, & Lam, 2010; Velcoff, Hernandez, & Keys, 2010) or self-identify as being of Hispanic origin (Barron, Hebl, & King, 2011; Booth, Leigh, & Varganova, 2010; Otiniano & Gee, 2012; Stokes-Brown, 2012). This acculturation and/or self-identity can affect upon discernment of discrimination.

Psychological Factors

Other characteristics that might affect their being discriminated include psychological stress (Baldwin, Marcus, & De Simone, 2010; Chae et al., 2008; Tran, Lee, & Burgess, 2010). With respect to the psychological stress, there is no doubt that the process of immigrating can precipitate or confound the psychological stress (Coffman & Norton, 2010; DelCampo, Jacobson, Van Buren, & Blancero, 2011). The experience of stress that can arise in a variety of contexts can also influence the experiencing of employment discrimination. Individuals can have psychological problems that they bring to the workplace. Situations of change in the work

environment, such as a job reassignment or negative performance evaluation can also contribute to the experiencing of stress. This, in turn can lead to a further diminishment of performance.

There can also be a hostile work environment or retaliation for exercising one's legal rights. This can result in a stressful work environment. Moreover, it may be that Hispanics experience stress differently. Cervantes and others have developed indices that suggest what might be contributing to stress in an individuals of Hispanic origin (Cervantes, Goldbach, & Padilla, 2012; Cervantes, Padilla, & Salgado de Snyder, 1991).

Intergroup Issues

Power and intergroup conflict are arising, as Hispanics become the dominant minority group in the United States (Markert, 2010; Shihadeh & Barranco, 2010). Markert (2010) found the changing demographics would alter existing majority/minority relations when Hispanics become the largest minority, replacing African Americans. He suggests that animosity towards Latinos by both white and minority black populations will be more intense than those that currently exist with respect to white/black relations. Two factors explain this hostility towards Hispanics: their perceived illegal status and their reluctance to learn English. Shihadeh and Barranco (2010) found that when examining the consequences of immigration of Latinos. They conclude that Latino immigration is positively linked to urban black violence. The link is most prevalent where blacks have lost ground to Latinos in low skilled markets. Additionally, Latino immigration raises black violence by first increasing black unemployment. This could contribute to protected individuals of non-Hispanic origin claiming discrimination.

Organizational/HR Issues

Employment discrimination has its bases in part in organizations. Thus, it is fitting those organizational processes, including but not limited to HR processes, be examined for a greater

understanding (Goldman, Gutek, Stein, & Lewis, 2006). First there needs to be an understanding on the part of the employer on what it means to manage an ethnically diverse workforce (Hernandez, 2010; Triana, Garcia, & Colella, 2010). As early as the mid 1990's, employers were questioning about the role of encouraging diversity in the workplace (Sanchez & Brock, 1996). It was thought that strategies need to be engaged in in order to assure that when attracting a diverse workforce is a goal, quality of the hires is retained (Lieber, 2012). It has also been noted that there can be unintentional bias in decisions in organizations that result in bias in litigation (Lee, 2005). Discrimination in organizations can be overt or subtle. Discrimination in organizations can be overt or subtle. An overt form of discrimination manifests itself in compensation decisions in organizations (Martin, 2009; Tienda, Hotz, Ahituv, & Frost, 2010). This overt form is more easily provable, either in court or within organizational justice processes. (Goldman et al., 2006) note that there a variety of individual and organizational factors that lead to individuals claiming that they have been discriminated against. Some authors have noted that there a variety of individual and organizational factors that lead to individuals claiming that they have been discriminated against (Nielson & Nelson, 2005). There could also be differences in how cases are handled in the public versus private sectors.

Nature of the Justice System Problems

Also warranted is an examination of the litigation process as it relates directly to litigation of employment discrimination (Berrey, Hoffman, & Nielsen, 2012; Chew, 2010; K. M. Clermont & Schwab, 2009; Kormanyos, 2009; Nielsen, Nelson, & Lancaster, 2010; Schneider, 2009). One researcher examined host civil rights employment discrimination, which is certainly too long a time to aid in our current understanding Specifically, there are studies that examined

cases in only one state court system (Denny, 2012). There is also evidence that court rulings have encouraged litigation in the resolution of employment discrimination suits (Kormanyos, 2009).

METHODOLOGY

Methodological Issues

There have been methodological issues when researching employment discrimination against individuals of Hispanic origin in the past. These include segmenting the Hispanic population by national origin, often of one occupational grouping. Additionally taking too long of a time perspective in the analysis can diminish the changing nature of the Hispanic population in the US and changing social and legal dimensions (Nielsen et al., 2010). Some of this research involved experimental designs or attitudinal studies. Some involved only one or a few organizations. Some of these studies examined only Hispanics of one national origin and/or occupational grouping (Dawson, 2009; De Castro, Gee, & Takeuchi, 2008; Oropesa & Jensen, 2010; Pager, Western, & Pedulla, 2009). For example, the discrimination faced by day laborers is certainly distinctive from that faced by Hispanic professionals (Negi, 2012; Pager, Western, & Pedulla, 2009). The approach in this study is to consider extremes of discrimination, which led to litigation, and to do this analysis in a shorter timeframe.

Use of Empirical Legal Analysis

A promising but underutilized approach to researching employment discrimination in a field setting is through the use of empirical legal studies, as discussed above. One sub-methodology is doing a content analysis of litigated cases. This is a relatively new approach to the study of law, legal procedure, and legal theory by empirical research. While some prominent earlier researchers used this technique (Cascio & Bernardin, 1981; Feild & Holley, 1982; LaVan, 1983; Miller, Kaspin, & Schuster, 1990), they primarily, with the exception of LaVan (1983) did

not direct their attention to employment discrimination against Hispanics. The research methodology came into the forefront of management scholarship in the early part of the decade of the 2000's (Clermont & Schwab, 2004; Eisenberg, 2004; Mitchell, 2004). More recently, this methodology has been reviewed and determined to be efficacious in contributing to understanding of legal/societal phenomena such as, but not limited to employment discrimination (Eisenberg, 2011; Heise, 2011; Nielsen et al., 2010).

The technique is utilitarian for use in studies where there is an intersection between psychology and law and has been used with increasing frequency since the 1990s (Eisenberg, 2004). The rationale for their use as the unit of analysis in the study is as follows: Problems with access and informed consent are eliminated. It permits transparency in the collection and coding of the data. Behavior in a variety of different settings can be included. Since the transcripts of court proceedings are reviewed by multiple parties, interviewer bias is reduced. It is recognized that not every case contains identical information. The use of empirical analysis of litigated cases eliminates the problems of conducting experimental design. It is well accepted by grounded theorist that using observations to develop theory allows for major contributions to subsequent theory (Glaser & Strauss, 1967).

The merits of using a field experiment as a way of overcoming methodological shortcomings existing in the field of employment discrimination research (Clermont & Schwab, 2004; Eisenberg, 2004; Mitchell, 2004; Pager & Western, 2012; Pager, Western, & Bonikowski, 2009). It would seem that grounded theory development would be applicable to this research, in that it has the following characteristics: simultaneous analysis of data, creation of analytical codes in categories developed from the data, discovery of basic social processes in the data, construction of abstract categories, theoretical sampling and the integration of categories to

a theoretical framework (Birks & Mills, 2011; Charmaz, 2002). Grounded theory has been developed as an approach to theory development over the past 50 years, but has had little if any application to employment discrimination research (Glaser & Strauss, 1967).

Hypothesis

The hypothesis to be tested is as follows:

Hoping to develop theory from the data, the following hypotheses related to case outcome for proposed:

There is a relationship between legal bases, demographics, other discrimination bases, other case characteristics, HR processes, individual consequences, intergroup consequences, and case outcomes.

Sample

The data for this study was acquired by randomizing of cases retrieved from the years 2011 and 2012 from a database of all litigated cases called FastCase. The search terms were (Hispanic or Latino or Latina) AND (Employment AND discrimination). There were a total of 511 cases in 2011 and 425 cases to date in 2012. Hence, the sample size for a 10% sample is 93. A power analysis indicated that this sample size was appropriate for the number of independent variables. How the variables were coded appears in Table 1.

Insert Table 1 Here

FINDINGS

In Table 2 are portrayed the results of the frequencies of all case characteristics and case characteristics in which plaintiff was Hispanic.

Insert Table 2 Here

As can be seen in the table, most of the cases were at the district court level. As expected, federal law, especially Title VII was used as the basis on which to litigate. State law was the basis of more litigation in cases in which the plaintiff was Hispanic. Some of the case characteristics are similar in both analyses including EEO involvement, private employer, and being a professional employee. Union involvement was a slightly greater proportion in all cases than it was in those cases in which the plaintiff was Hispanic. Third-party involvement and cases in which there were multiple plaintiffs are similar for both analyses. Race and color as a basis for discrimination were similar in both groups, but as expected national origin discrimination was significantly higher when the plaintiff was Hispanic. Whether there was additional bases for harassment such as age, sex, or disability was comparable in both groups, as were language or accent, residency requirement, immigration status, whether drugs or alcohol were involved, health status, and housing discrimination.

It should be noted that the following characteristics were of lower than expected frequencies: language or accent, residency requirement, immigration status, drugs or alcohol involved, health status, and housing. While intergroup conflict, retaliation, and hostile environment were prevalent, there does not appear to be a difference in frequency. The prevalence of a formal charge of hostile work environment and an informal expression of harassment occurred in a similar proportion of the cases--namely approximately 50%. The major difference existed with respect to their being multiple bases for a discrimination charge, with Hispanics plaintiffs having multiple bases in 67% of cases, in comparison to 46% in all cases. When examining what HR practices were alleged as discriminatory the most noted statistic

would be a high proportion of dismissal cases -- over 50%. However, there was no difference in the two groups. With respect for the outcome for the employee, Hispanic plaintiffs prevailed 44% of the time which is slightly more than all plaintiffs -- 38%. However, it should be noted that the company more typically prevailed.

Insert Table 3 Here

The reader's attention is directed to Table 3, in which is portrayed the results of the integrated chi-square analyses with respect to case outcome. They are arranged in descending order of significance. For example, the chi-square value and probability for experiencing national origin discrimination and verdict for the employee is 4.098, $p= 0.043$. Additionally, for example, the chi-square is 3.04 and the $p= .062$ with respect to disciplining the employee in a discriminatory way. Hence, the following directional hypotheses were accepted: national origin, discipline, multiple plaintiffs, and harassment. With respect to confirming hypotheses, it was not possible to accept most of the sub-hypotheses.

Development of the Logit Model

To examine the effects of the independent variables, while controlling for its common variation, a logit analysis was performed. Logit was chosen because the decision was coded dichotomously, namely in favor of the employee or not. Logit models predict the likelihood for a particular category of the dichotomous variables. Based on the univariate Chi-squares, as portrayed in Table 3, it was decided that the model would be built containing the following variables, national origin, discipline, multiple plaintiffs, and harassment. These are the variables with

the highest univariate relationship to the outcome in favor of the employee variable. The equation is:

$$Y = -0.549 + 1.055 * \text{NationalOrigin} - 0.550 * \text{Discipline} + 0.579 * \text{MultiplePlaintiffs} - 0.738 * \text{Harassment}.$$

There are four iterations. Estimation terminated at iteration number four because parameter estimates changed by less than .001).

It should be noted that discipline and harassment negatively entered into the model, meaning that when these were absent a finding in favor of individual could be predicted. Multiple plaintiffs and national origin discrimination entered into the model positively, meaning that when they were present a finding in favor of the individual could be predicted. National origin and multiple plaintiffs are more objectively determinable variables, and harassment and unfair discipline could be more subjectively discerned. It should be noted that this sample contains Hispanic and non-Hispanic plaintiffs (the latter being included since they alleged discrimination vis-à-vis Hispanic employees). In some cases, black individuals of US origin alleged national origin discrimination. In other cases, white Hispanic individuals considered themselves to be discriminated against based on race. Both of these confirm the concept that there is a component of perception in the discrimination process and component of intergroup conflict as well.

The omnibus test of the model coefficients is indicative that the model is performing well. The model has chi-square of 11.487, with the significance of .022.

The -2 log likelihood 113.628. The Cox and Snell R^2 and Nagelkerke R^2 allow the conclusion that the model accounts from 11.5% to 15.6% of the variance. The Hosmer and Lemeshow Chi Square is 9.443 with 8 degrees of freedom and a significance of .306. It should be noted that this test gives a measure of the agreement between the observed outcomes and the

predicted outcomes. It is a test of the null hypothesis that the model is good. A good model is indicated by a high p value, which in this case is .306. This model correctly predicts 87.9% of cases when the outcome is not in favor of the employee and 44.4% when the outcome is in favor of the employee. The overall percentage of correct classification of the cases is 71.3%

CONTRIBUTIONS

This study makes a few unique contributions with respect to both its methodology and its contribution to management practice. No systematic analyses of litigated employment discrimination cases have been made for 30 years LaVan (1983). In addition, at that time, there was no attempt to develop a regression model to predict case outcome. This study also contributes in that it is not in experimental design relying on the researcher to construct the experiment or a field survey relying on the researcher to interview subjects who have been discriminated against, who may not be that easy to identify. It should be noted, however, that the use of previously validated indices/instruments might reduce some of the interviewer bias. It uses grounded theory is to contribute new theory from the data collected. As previously stated, grounded theory has not been used too extensively in employee relations. However, it recognizes that the methodology is not without its limitations, not the least of which is inconsistency in reporting of what transpires in a given case.

It suggests that organizational development interventions, especially related to conflict resolution, might have to be put in place to reduce the intergroup problems relating to perceptions of relative discriminatory treatment. Communications that are more open would also eliminate some of the perception about what a protected individual might have done, reducing the possibility of the conclusion that he or she is being treated in a discriminatory manner. Of

course, there would be a delicate balance between maintaining confidentiality and maintaining transparency.

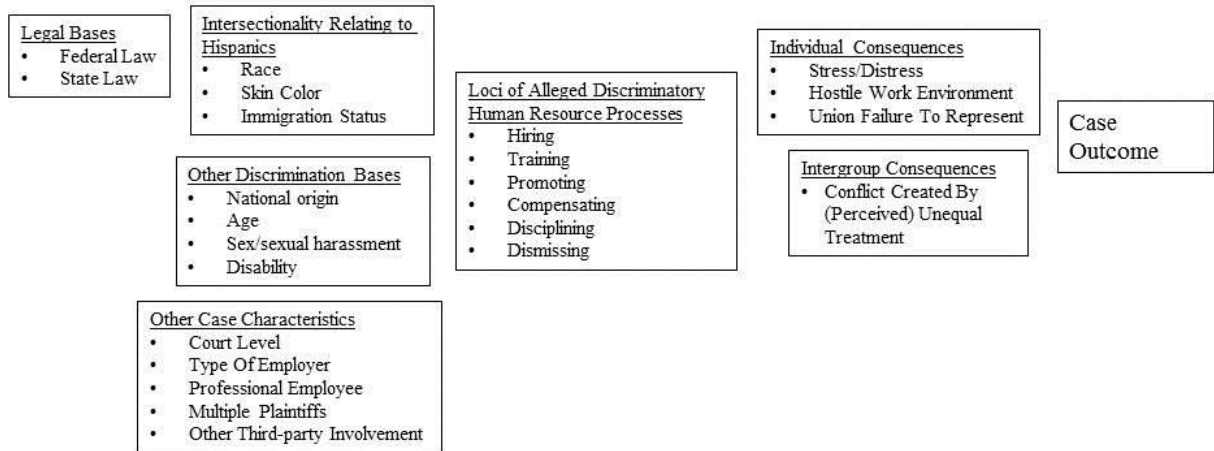
Even though there is a statistically significant relationship in the chi-square portrayed in Table 3, the employer wins 49% of national origin cases, 71% of discipline cases, 45% of multiple plaintiffs' cases, and 69% of harassment cases. The overall win rate for the plaintiff is 44.2%. This does not seem like an effective resolution mechanism for Hispanic plaintiffs.

SUGGESTIONS FOR FUTURE RESEARCH:

Although intersectionality of the bases of discrimination was analyzed, subsequent research on Hispanic employment discrimination should perhaps identify cases differently: identify by country of origin and other demographic characteristics that might not have been retrieved by using the term such as Hispanic and/or Latino. The issue of language such as English only rules or accent could identify other cases related to Hispanic employment discrimination. It is also suggested that an experimental design, perhaps using media/video, and using hiring managers as subject may also contribute to our understanding. This study did not intentionally begin with the idea of focusing on the theme of the Academy conference, but the use of accent as an independent variable may also highlight the conference theme.

Figure 1

Figure1--Complexities in Understanding Employment Discrimination Against Hispanics*



*Figure is meant to portray possible complexities rather than be a statistical model.

Table 1--How Variables Were Coded

1. Court: State Court or Federal Court
2. Which State
3. Federal law: Title VII, The Family And Medical Leave Act, Age Discrimination In Employment Act, The Fair Labor Standards Act: 1 if present 0 if not present
4. Plaintiff is Hispanic; 1 if present 0 if not present
5. Union involvement; 1 if present 0 if not present
6. Other third-party involved, such as a Benevolent Association: 1 if present 0 if not present
7. Multiple plaintiffs: 1 if present 0 if not present
8. Race: 1 if present 0 if not present
9. Color: 1 if present 0 if not present
10. National origin
11. Multitude of other bases: age or sexual harassment 1 if present 0 if not present
12. Language or accent requirement: 1 if present 0 if not present
13. Residency requirement: 1 if present 0 if not present
14. Immigration status: 1 if present 0 if not present
15. Gender as a basis for discrimination: 1 if present 0 if not present
16. Professional employee: 1 if present 0 if not present
17. Type of employer: 1 if private or 0 if nonprofit or public
18. HR processes: 1 if present in 0 if not present: hiring, training, promoting, compensating, disciplining, or dismissing
19. Drugs or alcohol involved: 1 if present 0 if not present
20. Health status involved: 1 if present 0 if not present
21. Housing linked to residency requirement for position: 1 if present 0 if not present
22. Psychological issues: 1 if present 0 if not present
23. Conflict involving more than one group: 1 if present 0 if not present
24. Retaliation for filing a complaint: 1 if present 0 if not present
25. Case outcome for employer: 1 if present 0 if not present

Table 2 Frequency of Case Characteristics

	All Cases n = 94	Hispanic Plaintiff n=52
<u>Legal Context</u>		
District Court	87.2	86.5
Court of Appeals	10.6	11.5
Federal Law	93.6	96.2
State Law	43.6	53.8
FMLA	5.3	3.8
Hispanic Plaintiff	55.3	100.0
EEOC Involvement	66.1	65.4
Private Employer	58.5	53.8
Professional Employee	47.9	48.1
Union Involvement	42.6	36.5
Third Party Involvement	6.4	5.8
Multiple Plaintiffs	23.4	26.9
<u>Basis for Discrimination</u>		
Race	76.6	71.2
Color	9.6	9.6
National Origin	47.9	75.0
Age, Sex, Sex Harassment or Disability	34.0	38.5
Language or Accent	7.4	7.7
Residency Requirement	2.1	0
Immigration Status	3.2	1.9
Drugs or Alcohol Involved	2.1	0
Health Status	3.2	3.8
Housing	2.1	0
<u>Nature of Work Environment</u>		
Intergroup Conflict	75.5	69.2
Retaliation	67.0	71.2
Hostile Environment	46.8	51.9
Harassment	52.1	51.9
Stress	11.7	9.6
Multiple Basis	45.8	67.3

Multiple HR	44.7	38.4
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HR Practice Alleged
as Discriminatory

Hire	10.6	5.8
Train	4.3	5.8
Promote	18.1	19.2
Compensate	13.8	15.4
Discipline	44.7	40.4
Dismissal	58.5	53.8
Outcome for Employee	38.3	44.2

Table 3 Univariate Analysis Number of Cases with Verdict

	<u>For Employer</u>	<u>For Individual</u>	Chi-Square	p
National Origin				
No	35	14	4.09	0.04
Yes	23	22		
Disciplining				
No	28	24	3.04	0.06
Yes	30	12		
Multiple Plaintiffs				
No	48	24	3.20	0.06
Yes	10	12		
Harassment				
No	24	21	2.55	0.08
Yes	34	15		
State Law				
No	36	17	1.97	0.11
Yes	22	19		
Hiring				
No	54	30	2.23	0.12
Yes	4	6		
Promoting				
No	45	32	1.91	0.13
Yes	13	4		
Hispanic Plaintiffs				
No	29	13	1.73	0.13
Yes	29	23		
Race				
No	11	11	1.66	0.14
Yes	47	25		
Court				
District	52	30	2.05	0.15
Appeals	4	6		
Multiple HR				
No	28	22	1.47	0.15
Yes	30	15		

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