Does Age Matter? Judicial Decision Making in Age Discrimination Cases*

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Objective. Drawing upon research that suggests that race and gender may shape judicial views about legal issues pertaining to these attributes, this study conducts an investigation of the influence of age on judicial decision making in age discrimination cases. *Methods.* This research analyzed 544 age bias rulings and 1,592 decisions in racial and gender discrimination cases handed down in the federal district courts from 1984 to 1995. Descriptive statistics incorporating cross-product ratios were analyzed, and logit models were developed. Predicted probabilities were utilized to isolate differences in predicted decision-making patterns for different age cohorts. *Results.* The youngest judges were least sympathetic to those who alleged that they were victims of age discrimination while the oldest judges were the most sympathetic to age discrimination claimants. This study also identified a generally more conservative decision-making pattern in age cases compared to cases dealing with racial and gender discrimination. *Conclusions.* The data support the hypothesis that increased age corresponds with increased pro-elderly decision making in age bias cases, though the effects appear at the age extremes among the very oldest and youngest judges. These results provide new evidence to support the social attribute model of judicial decision making, with a clear suggestion that some socioeconomic variables may affect judges' decision making differently over time.

It has been well documented in the popular press that the "baby boom" generation, which came of age during the 1960s and early 1970s, will soon be approaching retirement age. Because this growth in population was followed by a decline in the birthrate, the average age of the American population has increased. This aging of the population has not been lost on policymakers. Issues that have traditionally been of concern to older Americans have taken on new importance as more people approach

retirement age. The politics of aging has included such issues as entitlement programs like Social Security and Medicare, as well as age discrimination in the workplace. Some 41 percent of employees in the United States in 1995 were over the age of 45, and by 2005 it is projected that the percentage of employees 45 or older will rise to 57 percent (Higgins, 1999).

Age discrimination is a rather exceptional civil rights issue. For many, the issue of civil rights conjures visions of racial and ethnic discrimination. Such discrimination is arbitrarily based and unrelated to individual ability. Yet age, unlike race or ethnicity, is frequently related to physical or intellectual aptitude. Age may manifest itself as a valuable commodity such as work experience (Angle and Wissmann, 1983), but in some instances age may also be a liability for workers and employers since physical and mental ability often decline as humans grow older. This raises difficult questions for policymakers. Though the Supreme Court held in *Massachusetts Board of Retirement v. Murgia* (427 U.S. 307, 1976) that some limits on age may be placed on jobs that require intensive physical activities that may be naturally impaired by age, discriminating against individuals simply because they are older is not in keeping with the spirit of fairness and equal protection of the law.

Recognizing that age discrimination is inherently unfair, in 1967 Congress passed the Age Discrimination in Employment Act (ADEA). This law, which opened the door to federal court involvement in the issue of age discrimination, was intended to promote the employment of older persons and to prohibit the practice of discriminating against older people in the workplace. The ADEA of 1967 provided protection for Americans aged 40 to 65 from arbitrary acts by private-sector employers by prohibiting the use of age as a factor in employment and promotion decisions. The law also banned the practice of seeking job applicants of a specific age range. Subsequent amendments, including a thorough overhaul of the ADEA in 1990, have expanded the scope of the original legislation and opened the door to a greater number of federal legal challenges (Bessey and Ananda, 1991; Gitt, 1981). The development of age discrimination law has occurred during a time in which there is heightened awareness of the issue and its importance to a maturing workforce, and the growing number of older workers has made age bias claims increasingly common in the federal courts.

These suits have presented instances where judges may turn to their own perceptions for guidance in evaluating age bias claims. For example, a key issue that has been presented to jurists has been the question of how the courts should treat employment policies that are facially neutral but have a disparate impact on older workers. In race and gender claims, if an employer's rule affects minorities or women disproportionately, the employer must show an important business necessity for it (Higgins, 1999). However, the ADEA does not follow the lead of the 1964 Civil Rights Act on this point. Congress endorsed disparate impact analysis of race and gender claims in the Civil Rights Act of 1991, but it did not resolve the

issue on age claims. Nor have the federal courts reached a definitive conclusion on this issue. Appellate circuits have inconsistently addressed the question of whether the disparate impact test applies to ADEA claims.[1] Given the mixed signals from the courts of appeals and the absence of a Supreme Court ruling on the issue, it seems natural to expect that federal district judges may turn elsewhere for cues on how to resolve the issue. In short, extra-legal variables like judges' age may provide significant explanations for federal trial judge decision making.

Although this issue has now been on the national agenda for a few decades, no research has directly investigated the influence of age on judicial decision making in age discrimination cases. That is not to say, however, that the influence of age in the judicial decision-making process has not gone unnoticed by scholars. In fact, some earlier studies proposed models that included judicial age as a predictive variable. Goldman (1975), for example, found that as court of appeals judges aged, their decision making became increasingly conservative. In their studies of Supreme Court decision making, Ulmer (1973) and Tate (1981) also found age to be a significant predictor of judicial outcomes. These studies are part of a larger body of research that has explored the extent to which social attributes influence judicial behavior.

We offer a new contribution to the social attribute model through a study of age and judicial decision making that is distinct in two ways. First, we propose a study that uses the relatively new issue of age discrimination to examine the effect of age from a dynamic perspective. We seek to determine whether there is any association between a judge's age and the likelihood of his or her support for age discrimination claims. Although it is true that past studies have sought to determine whether older judges are generally more liberal or conservative than younger jurists, our study seeks to determine the degree to which the personal attribute of age might affect judges' decision making in an analogous issue area.

Furthermore, the aforementioned studies have generally sought to determine if older judges might be more or less supportive of litigants in a wide range of issue areas. This has included, for example, cases involving such wide-ranging and disparate issues as labor union disputes and racial discrimination cases. However, federal jurists have overwhelmingly not been members of labor unions or of racial minority groups. Our study touches on

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[1]The Third, Seventh, and Tenth Circuits rejected disparate impact claims under the ADEA in *DiBase v. Smith-Kline Beecham*, 48 F.3d 719 (1995), *EEOC v. Francis W. Parker School*, 41 F.3d 1073 (1994), and *Ellis v. United Airlines*, 73 F.3d 999 (1996), respectively. Conversely, the Second, Eighth, and Ninth Circuits endorsed the application of disparate impact in ADEA cases in *Markham v. Geller*, 635 F.2d 1027 (1980), *Smith v. City of Des Moines*, 99 F.3d 1466 (1996), and *Mangold v. California Public Utilities Commission*, 67 F.3d 1470 (1995). And, as Higgins (1999) notes, the Supreme Court "specifically withheld judgement on the disparate impact theory" in *Hazen Paper Co. v. Biggins*, 507 U.S. 604 (1993). Thus, both the courts of appeals and the Supreme Court have failed to provide clear guidance to the lower courts on this issue.

a concern that, at some time or another, may directly affect all judges. Age, unlike most other social attributes, cuts across all racial, gender, and socioeconomic lines. As judges age, they may be affected by changes in perspectives and behavior that the aging process might bring about. Thus, by seeking to determine whether there is any association between judicial age and support for plaintiffs in age discrimination cases, we hope to add a new dynamic element to the traditional social attribute model of judicial decision making.

We hypothesize that older judges will exhibit a decision-making pattern that is more supportive of plaintiffs in age discrimination cases when compared to younger jurists. This hypothesis is drawn from a large body of scholarship that has identified instances in which social attributes such as race or gender shape general views about legal issues pertaining to these attributes. For example, Davis, Haire, and Songer (1993), Gryski, Main, and Dixon (1986), and Allen and Wall (1993) have shown that women judges are the strongest supporters of women's claims in gender discrimination cases. Walker and Barrow (1985) identified comparable gender effects in district court decision making, and Songer, Davis, and Haire (1994) identified a different decision-making pattern by women in employment discrimination cases. Other studies have identified similar influences in the area of race. Welch, Combs, and Gruhl (1988) and Mustard (1998) found that while white jurists tend to impose harsher sentences on African-American than on white defendants, African-American judges tend to be more lenient toward African-American defendants. Although the literature in this area is hardly conclusive, a number of studies have suggested that gender and/or race may influence judicial perspectives on legal issues pertaining to these characteristics.

Since studies have suggested that judges who are members of a socioeconomic group may exhibit decision-making behavior that is more supportive of litigants who are fellow members of the group, we posit that the effects will be similar in the area of age and age discrimination cases. We anticipate that older judges will be more sympathetic to people who claim to be the victims of age bias. Drawing on their own life experiences, older judges may exhibit more favorable behavior toward plaintiffs who are approaching their later years. Conversely, younger judges may have very different views on the issue of age discrimination, leading them to be less sympathetic toward plaintiffs in age cases. Older judges may be more likely to embrace viewpoints that lead them to be sensitive to the plight faced by aging workers, and these jurists may thus be more supportive of suits brought by older workers. In particular, we would expect to identify these differences among the very youngest and oldest judges.

We focus our attention on the decision-making behavior of U.S. district court judges. Because these tribunals are the courts of original jurisdiction for virtually all federal cases, the district courts are the primary judicial battleground for federal age discrimination litigation in the United States.

As trial courts, the district courts also play critical roles as factfinders. This function is especially important in discrimination cases, where activities that might be construed as discriminatory can be subject to very different interpretations.

Data and Methodology

To test our hypothesis, we collected data from decisions of U.S. district court judges published in the *Federal Supplement*. Our study analyzes final case rulings in 544 age discrimination cases handed down by 287 judges over a 12-year span, from 1984 to 1995.[2] This represents all age discrimination cases with a clear win-loss decision outcome published in the *Supplement* during the period of observation. These cases were heard in 42 states, plus the District of Columbia and Puerto Rico, within all 11 federal judicial circuits. Using textual analysis, the published opinions were evaluated for the direction of the decision outcome. Rulings that favored a party who alleged age discrimination by an employer or other actor were coded pro-plaintiff. Court decisions that favored employers and other defendants in age discrimination cases were recorded as a pro-defendant outcome. Judicial age data were calculated using the published birthdate of district judges, made available in the biographical information reported by the Federal Judicial Center. The mean age of judges in the age discrimination case sample is 58.12, with a standard deviation of 9.01. Judicial age was calculated for each jurist as the age in years at the time of the decision. The mean number of decisions per judge was 1.9 (standard deviation = 1.7). The decisions were from bench trials; no jury decisions were included.

The coding standards and use of published decisions are well established in the literature, and the data used in this study have been utilized in some of the most extensive and respected studies on the federal district courts (Rowland and Carp, 1996; Carp and Rowland, 1983). Similar ideological coding methodology has also been used in comprehensive decision data sets on the U.S. Supreme Court (Spaeth, 1999) and U.S. courts of appeals (Songer, 1998).

In addition to age discrimination cases, we also analyzed 1,592 decisions in racial and gender discrimination cases. This was in done in order to

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[2]Some may wonder why we did not begin our period of analysis in the late 1960s or 1970s. Although we recognize that such an analysis might be helpful, it is limited by data availability. The fact is that there were relatively few age discrimination suits and, consequently, very few published district court decisions, filed during the early years of the ADEA. We identified a scant number of published age bias rulings extending to the early 1970s, but began our analysis at 1984 because this was the earliest time for which adequate numbers of published age discrimination decisions were available. We have thus included the greatest time period possible given the available data. It is also worth noting that a longitudinal analysis of same-judge decision making was not possible given the low number of decisions per judge.

evaluate decision making in age discrimination cases vis-à-vis court rulings in other discrimination areas. For proper comparison, the racial and gender discrimination cases were handed down during the same time period and in the same cities and states as those of the age case sample. This second case sample employed similar pro-plaintiff/pro-defendant coding methodology.

To analyze the data, we utilized descriptive statistics incorporating cross-product ratios[3] in addition to logit analysis.[4] Predicted probabilities were utilized to isolate differences in predicted decision-making patterns for each age cohort. Descriptive statistics were generated to identify general differences in the decision-making outcomes between judges, and cross-product ratios were calculated to measure the likelihood of a pro-plaintiff decision by judges of differing ages and partisanship. Logit analysis was employed to properly estimate the influence of age on a dichotomous dependent variable: pro-plaintiff (1) or pro-defendant (0) decision outcome. Predicted probabilities were then drawn from the logit model to specifically analyze the change in estimated probability in relation to changes in the independent variables (Alvarez and Nagler, 1995). We incorporated judicial age in the logit model as *Age Cohort*. We consolidated judges into three differing age groups that corresponded approximately with the distribution of ages in our sample: 45 years and younger, 46–64 years, and 65+ years.

The age cutoff for the oldest cohort was set at the traditional retirement age (i.e., 65 years). The cut-off age for the youngest cohort was admittedly a bit more arbitrary. Goldman and Slotnick (1997) identified the mean age at appointment of district court judges by the last four administrations (Clinton, Bush, Reagan, and Carter) to be approximately 48.7 years of age. Based on this fact, we classified the youngest judges as those who were somewhat younger than typical incoming jurists; thus, our selection of age 45 as the cut-off age for the youngest cohort. To verify proper decision distributions within each cohort, we analyzed the data distribution and identified no single judge (or small number of judges) skewing the data. The mean number of decisions per judge in each cohort (from youngest to oldest) was: cohort 1, 1.75 ($SD = 1.64$); cohort 2, 1.69 ($SD = 1.41$); cohort 3, 1.81 ($SD = 1.73$). Since our unit of analysis is the individual judicial decision, arrangement into age cohort was based on a judge's age at the time

[3]The cross-product ratio, frequently called the odds ratio, is a measure of the relationship between two dichotomous variables. Interpretation of the odds ratio is fairly straightforward. If a variable has no effect on pro-plaintiff propensity, the probability will be the same for both groups of judges, and the odds ratio would be 1.0, indicating independence or no relationship. Departures from 1.0 in either direction indicate association. An odds ratio of 2.0 would mean that respondents from the designated category of the independent variable are twice as likely to respond in the predicted direction on the dependent variable than are respondents from the other category.

[4]To test the maximum likelihood estimation assumption that individuals with a probability of 0.5 will be exaggerated by the independent variables, an alternative scobit model was analyzed. Based on the chi-square of 0.47 with 541 degrees of freedom, the hypothesis that $\alpha = 1$ could not be rejected at any conventional level of significance affirmed that logit is a proper tool for this analysis (Nagler, 1994).

of the decision, including some instances in which judges handed down different decisions at different age points (i.e., a judge would be considered a middle-aged judge for a decision she handed down when she was 50, but the same judge would be considered part of the older cohort later on when she decided another case at the age of 68).[5]

We created two sets of logit models. Our first models tested our hypothesis that age influences judicial decision making in age discrimination cases. The second set of models was created as a means of clarifying the results of the first. In this second analysis, we estimated the extent to which age influenced jurists' rulings in race and gender discrimination cases. If we were to find that age was a statistically significant predictor of case outcomes in race and gender cases, this could raise serious questions about the extent to which age shapes judicial attitudes toward the issue of age discrimination. Indeed, such a finding would suggest increasing liberalism by judges in all cases as they age, rather than a specific tendency to support age discrimination claimants. Conversely, a finding that age was not a significant predictor of outcomes in gender and racial bias cases would lead us to have greater confidence in a positive finding in the first model.

The logit models included important control variables. The *Party* variable estimates the influence of judicial partisanship on decision outcomes. *Party* values of 1 were assigned to judges who were identified as Democrats, while 0 was assigned to Republicans. Although partisanship is an admittedly imperfect measure of judicial ideology, Pinello (1999) notes that between 1959 and 1998 at least 140 books, articles, dissertations, and papers in the legal and political science literatures have reported empirical research identifying a link between judges' party affiliation and judicial ideology in the United States. Similarly, research on the district courts has found that Democratic and Republican jurists exhibit markedly different decision-making patterns in discrimination cases, with Democrats generally being more supportive of those who argue that they have been victims of discrimination (Carp and Stidham, 1998; Rowland and Carp, 1996). Consequently, we expect that Democrats will be more pro-plaintiff in their age discrimination case decision making, while Republicans will tend to be pro-defendant.

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[5]Some may wonder why we didn't divide the age cohorts into narrower categories, or even treat age as a continuous variable. The consolidation of judges into age cohort is consistent with our hypothesis that we would identify differences among the very youngest and oldest judges. Since a large number of federal judges fall within a fairly narrow range of age, the use of smaller age cohort groups was problematic as it produced sharply inconsistent *n*s across cohorts, making for improper comparison. Furthermore, we don't anticipate that the effect of age will be perfectly linear along the age spectrum. There is no theoretical justification to believe that as a judge ages by one year we would anticipate that they would exhibit a correspondingly incremental increase in support for older litigants. We anticipate that differences will emerge among the very oldest and youngest jurists. Given this, we felt that a more intuitive and theoretically justifiable approach was to categorize the age groups into three divisions for the purposes of the logit analysis. This provides for larger, and thus more representative, groups while still allowing for meaningful comparisons across cohorts.

It is especially important to consider judicial partisanship when trying to understand decision making by federal trial judges. Although trial jurists are expected to follow the legal precedents established by the courts of appeals and the Supreme Court, they may first have to interpret what the precedents mean. This becomes especially important when "ambiguous or vague statements, multiple opinions, inconsistent precedents, and the like make the task of interpretation difficult and leave more room for discretion" (Johnson and Canon, 1999). Partisan identification often provides a framework for guiding these different interpretations, and is thus an important control variable.

We also included a variable in the age discrimination logit model to control for a major change in age discrimination law. *ADEA Change* was coded 1 for years 1984 to 1990; 0 for years 1991 to 1995. This measure was added as a means of controlling for the previously mentioned revisions in age discrimination law as a result of the U.S. Supreme Court's ruling in *Public Retirement System of Ohio v. Betts,* and Congress's subsequent overhaul of the ADEA.

Finally, to determine if "nontraditional" (i.e., women and/or minority judges) were inclined to act favorably to claimants of age bias, we included two variables to estimate any influence that judicial gender and/or race might play in predicting case outcomes. The *Gender* variable was dichotomously coded, with a value of 1 for women. Judges who were members of a racial or ethnic minority group were assigned a *Minority* value of 1, while white judges were designated 0.

## Age Discrimination in the Federal District Courts

We begin our analysis with a general review of district court decision making in age discrimination cases compared to other discrimination issues. Figure 1 reports the direction of district court decisions in three case type areas: age, race, and gender discrimination. The data indicate that the civil rights issue of age discrimination was treated differently from racial and gender discrimination. Indeed, two key distinctions appear.

First, the difference between Democrats and Republicans was less pronounced in age discrimination cases than it was in other areas. The distinction was especially stark when compared to rulings in racial discrimination disputes. As indicated by the racial discrimination cross-product ratio (α) of 3.29 seen in Figure 1, there were sharply divergent decision-making patterns along partisan lines in race suits. Republicans exhibited the most pro-defendant decision-making behavior in race bias cases, while Democrats tended to be most supportive of defendants in age discrimination suits. Interestingly, GOP jurists ruled for plaintiffs in gender cases 42.4 percent of the time, a rate almost equal to the 42 percent pro-plaintiff pattern of Democratic jurists in age cases. The data indicate that

FIGURE 1

Percentage Pro-Plaintiff Decisions by Democratic and Republican Judges in Three Discrimination Case Types, 1984–1995
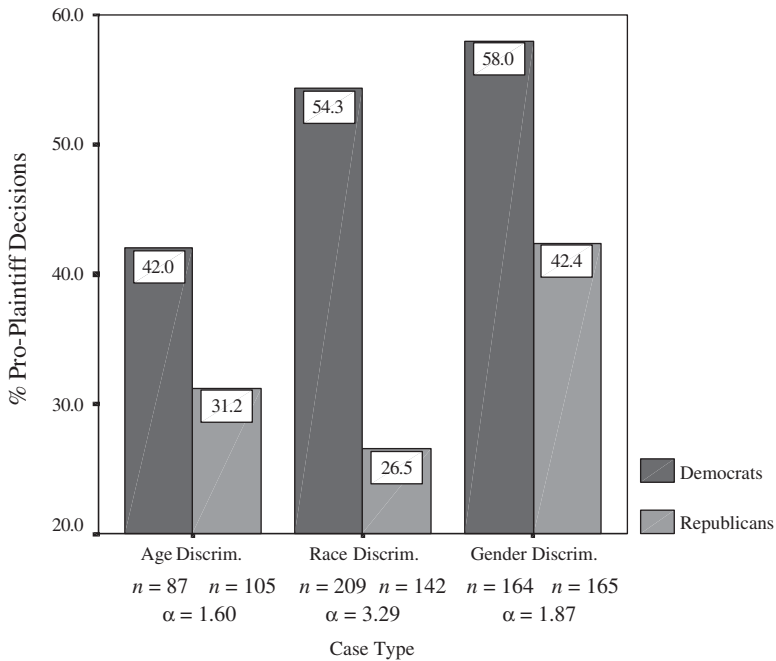
both Democrats and Republicans were more sympathetic to claims of discrimination based on gender, rather than age or race.

The second notable trend revealed in Figure 1 concerns the overall decision-making pattern in age discrimination cases. Although solid partisan differences existed, it is interesting to note that neither Democratic nor Republican jurists exhibited behavior in age discrimination cases that could be classified in the aggregate as overwhelmingly pro-plaintiff. The data show that Democrats ruled in favor of age discrimination claimants in approximately four of every ten cases. Among Republican jurists, the elderly succeeded in only three of every ten cases. When compared to the decision-making pattern identified in racial and gender discrimination cases, it is clear that jurists of both parties were more inclined to support defendants in age discrimination suits. This is most likely due to the fact that different legal standards apply in age bias cases. Age—unlike race or gender—is not considered a suspect classification under the law.

The data presented in Table 1 reveal that Democratic judges were more supportive of those who brought age bias claims compared to Republican

TABLE 1

Judicial Partisanship and the Decision Outcome of Age Discrimination Cases,
1984–1995

	Democrats	Republicans
Pro-Plaintiff	42.0%	31.2%
n =	87	105
Pro-Defendant	58.0%	68.8%
n =	120	232

$\alpha = 1.60$.
$\chi^2 = 6.64$; $df = 1$; $p = 0.01$.

jurists. Democratic judges decided 42 percent of their age discrimination decisions in a pro-plaintiff fashion. Republicans, however, ruled for the elderly only 31.2 percent of the time. The cross-product ratio of 1.60 indicates that Democratic judges were 60 percent more likely than Republicans to cast a pro-plaintiff decision in age discrimination cases. Although this is not an enormous difference between the parties—as just seen in racial discrimination cases, odds ratios of 2.0 or greater can be identified in some case types—it is not an insignificant difference, either. The data indicate that there was a tendency for Democratic judges to rule in a more pro-plaintiff fashion vis-à-vis their Republican counterparts. The implication of this is clear: partisanship was an influential factor in predicting age discrimination rulings.

Figure 2 reports the ideology of age discrimination decision making among judges in three different age cohorts. The data indicate that the youngest judges were least sympathetic to those who alleged that they had been victims of age discrimination. Younger Democrats were supportive of age bias plaintiffs in 22.2 percent of their cases, while the youngest Republican jurists ruled in favor of age discrimination claimants 19.4 percent of the time. Conversely, the pro-plaintiff rate for Republican judges 65+ was 33.9 percent. The oldest Democrats ruled for age discrimination claimants 46.8 percent of the time, the highest among the observed groups. The overall pro-plaintiff decision rate for the youngest, middle, and oldest cohorts was 20.4 percent, 35.3 percent, and 41.1 percent, respectively.

Comparing the youngest and oldest cohorts, we identified an odds ratio of 2.66. This indicates that the oldest judges were over twice as likely as their youngest colleagues to render a pro-plaintiff verdict in age discrimination cases, suggesting that age was an influential determinant of decisions in age cases. The rate of success for those who brought age bias suits before judges in the middle-aged cohort fell between the rates for the very youngest and oldest. The pro-plaintiff success rate among the middle cohort was 42.3

FIGURE 2

Percentage of Pro-Plaintiff Age Discrimination Decisions by Judicial Partisanship
and Age Cohort, 1984–1995
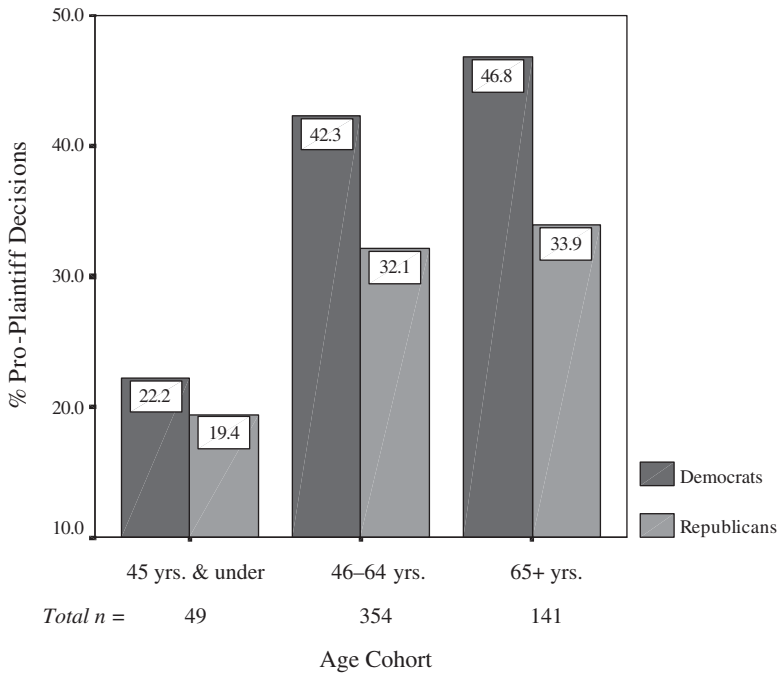
percent by Democratic judges and 32.1 percent by Republicans. In sum, the
data support the premise that as one examines jurists in the various cohorts,
the level of support for claimants in age discrimination cases rises as one
moves from the young through the older cohorts. However, in order to
estimate the impact that both political party and age may play in impacting
court decisions, we turned to multivariate logit analysis to fully test our
hypotheses.

The logit results presented in Table 2 provide confirmation of the trends
revealed in the descriptive statistics. As seen in the simple Model A, the *Age
Cohort* coefficient of 0.389 is statistically significant at the 0.05 level.
Consequently, age cohort had some impact on decision making in age
discrimination cases. Model A indicates that partisanship, as expected, was a
predictor of judicial behavior as well. The *Party* coefficient is statistically
significant in its ability to predict age discrimination case outcomes. The
ADEA Reform control variable is also significant, indicating that judicial
decision making in age cases was altered as a result of the changes made to
age discrimination law. The data indicate that plaintiff success rates

TABLE 2

Logit Coefficients for the Likelihood of a Pro-Plaintiff Decision by District Court Judges in Age Discrimination Cases, 1984–1995

	Models	
	A	B
Independent Variables	MLE (*SE*)	MLE (*SE*)
Age cohort	0.389*	0.402*
	(0.167)	(0.170)
Party	0.364*	0.345[+]
	(0.189)	(0.191)
ADEA change	0.420*	0.415*
	(0.197)	(0.197)
Gender		0.279
		(0.316)
Minority		0.038
		(0.319)
Intercept	− 1.867***	− 1.913***
	(0.416)	(0.426)
	% Categorized correctly = 66.0	% Categorized correctly = 66.0
	Reduction in error = 4.22%	Reduction in error = 4.22%
	− 2 × LLR = 692.075	− 2 × LLR = 691.289
	Model chi-square = 15.51	Model chi-square = 16.298
	df = 3; *p* = 0.002	*df* = 5, *p* = 0.006

N = 544.

Mean of dependent variable = 0.355.

[+]Significant at 0.10; *significant at 0.05; **significant at 0.01; ***significant at 0.001.

decreased after the ADEA changes of 1990.[6] When controls for judicial race and gender were included, as seen in Model B, the influence of partisanship dipped slightly below the 95 percent confidence level but there was no significant model change overall. It is clear that neither race nor gender were predictors of judicial decision making in age bias claims.

Our third and fourth logit models support the hypothesis that a jurist's age may influence decision making in age bias claims. As seen in Table 3, we tested the influence of judicial age in suits alleging racial and gender discrimination. Unlike the findings presented in Table 1, analysis of judicial

[6]This discovery, which is consistent among both Democrats and Republicans, is puzzling. One of the key changes made in 1990 to the ADEA was to overturn the Supreme Court's ruling in *Public Employees Retirement System of Ohio v. Betts*, 109 S. Ct. 2854 (1989). The Court ruled in *Betts* that the ADEA did not apply to benefit plans, and it thus allowed employers to deny benefits to older and retiring employees (Flaxman, 1991). Congress subsequently acted in 1990 to protect workers' benefits. Although not the subject of our analysis, a legal study of the ADEA might shed some light on this intriguing finding.

TABLE 3

Logit Coefficients for the Likelihood of a Pro-Plaintiff Decision by District Court
Judges in Racial and Gender Discrimination Cases, 1984–1995

Independent Variables	Racial Discrimination MLE (*SE*)	Gender Discrimination MLE (*SE*)
Age cohort	− 0.058	0.136
	(0.125)	(0.143)
Party	1.191***	0.611***
	(0.143)	(0.159)
Intercept	− 0.886**	− 0.596
	(0.280)	(0.323)
	% Categorized correctly = 65.4	% Categorized correctly = 57.7
	Reduction in error = 9.42%	Reduction in error = 13.67%
	− 2 × LLR = 1149.068	− 2 × LLR = 914.516
	Model chi-square = 72.247	Model chi-square = 16.782
	df = 2; *p* < 0.001	*df* = 2; *p* < 0.001
	N = 918	*N* = 672
	Mean of dependent variable = 0.382	Mean of dependent variable = 0.490

*Significant at 0.05; **significant at 0.01; ***significant at 0.001.

rulings in other discrimination areas reveals that age did not predict decisions in these cases. Judicial partisanship, on the other hand, was particularly influential. Together, the findings of the logit models provide a strong suggestion that there is a dynamic relationship between jurists' age and their rulings in age bias suits. Age cohort appears to be a significant predictor of judicial decision making in age discrimination cases.[7]

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[7]Although the findings are not presented, we also constructed models with political context variables that other judicial behavior studies have tested. These context variables included measures of national public opinion, Supreme Court ideology, region, and a Reagan years dummy variable. The results revealed these factors to be surprisingly ineffective. Indeed, none were statistically significant and they provided negligible increases in the model's explanatory power. However, these context variables also did not generally alter the relative influence of partisanship and age. Consequently, we report a simple logit model with a high level of confidence that these results are quite robust. We also ran the model using Tate and Handberg's (1991) appointing president variable rather than judicial partisanship, and this likewise did not change the results. Furthermore, out of curiosity, we created a logit model that included the actual age of the judge, rather than age cohort. The results of this model revealed that actual age was not significant, providing no indication that a direct, linear relationship across all age levels exists between judicial age and rulings in age bias cases. Coupled with the results identified in Figure 2, our findings indicate that the impact of age on judicial decision making appears to be most significant at the margins—among the very youngest and oldest jurists. This is consistent with our hypothesis and also not especially surprising. Most district court research has typically identified general directional trends, rather than overwhelming differences, among different groups of judges (see Carp and Rowland, 1983; Rowland and Carp, 1996).

The predicted probabilities in Tables 4 and 5 show that across the three age cohorts, one can see a distinguished change in decision making. Specifically, Table 4 displays the probabilities for the age cohorts delineated by partisanship for decisions made prior to the passage of the 1990 ADEA reforms. The data show that there was a consistent and distinct rise in probability for a liberal outcome across age cohorts. The rise in the probability of a liberal decision began with 0.30 for the young cohort to 0.41 for the middle cohort followed by 0.48 for the oldest cohort. Thus, the predicted probability for a liberal decision in the young cohort was 30 out of 100 claimants while claimants before jurists in the older cohort had a 48 out of 100 probability of receiving a liberal decision.

Further, this result held true across party lines. The data reveal that within each age cohort Republicans displayed less probability of rendering a liberal decision than Democrats in the same cohort. However, even within each party, the probability for a liberal decision increased as one looked to the older cohorts.

Table 5 displays the probabilities for the age cohorts delineated by partisanship for decisions that were made after the ADEA revisions of 1990.

TABLE 4

Predicted Probabilities of Liberal Versus Conservative Decision Making by Age Cohort and Party During ADEA Years

|	Young Cohort (Under 45 Years)		Middle Cohort (45–64 Years)		Older Cohort (65+Years)	
	Democrat	Republican	Democrat	Republican	Democrat	Republican
ADEA years	0.33	0.26	0.42	0.39	0.52	0.43
Average variant decision making	0.30		0.41		0.48	

TABLE 5

Predicted Probabilities of Liberal Versus Conservative Decision Making by Age Cohort and Party During Non-ADEA Years

	Young Cohort (Under 45 Years)		Middle Cohort (45–64 Years)		Older Cohort (65+Years)	
	Democrat	Republican	Democrat	Republican	Democrat	Republican
Non-ADEA years	0.25	0.19	0.33	0.25	0.42	0.33
Average variant decision making	0.22		0.29		0.38	

FIGURE 3

Plotted Probabilities of Pro-Plaintiff Decisions Prior to and After the 1990 ADEA
Reforms by Democratic and Republican Judges and Age Cohort
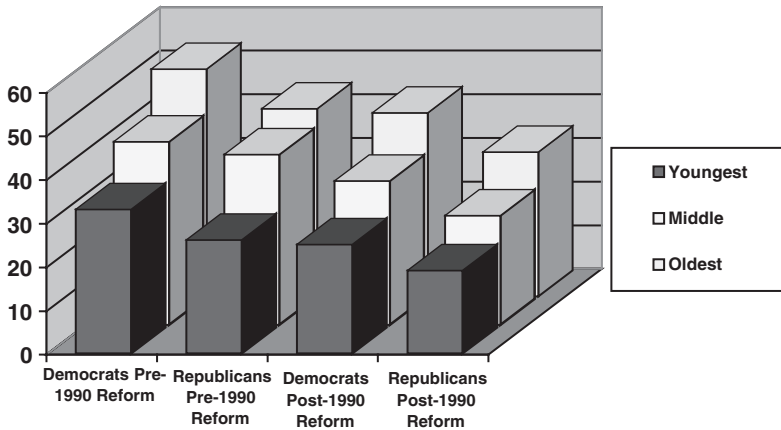
In accordance with results for the pre-reform years, one can see that there is a constant and specific rise in probability for a liberal outcome as a judge ages. Specifically, the data show a rise from 0.22 probability for the young cohort to 0.29 for the middle cohort followed by 0.38 for the oldest cohort. Thus, the predicted probability for a liberal decision varies by 0.16 depending on the age cohort of the judge. The partisan results are also consistent during the pre- and post-reform years. As seen in Figure 3, regardless of partisanship, the probability of a liberal outcome steadily increased across the age cohorts.

Conclusions

Does judicial age matter in age discrimination cases? The data suggest that there is an association between judicial age and rulings in age discrimination cases. This relationship appears to occur among the very youngest and oldest jurists. Our findings reveal that judges in the youngest cohort were least sympathetic toward those who allege that they had been victims of age discrimination. Alternatively, judges in the oldest cohort were generally the most sympathetic toward these complainants. In this manner, the data tend to support our hypothesis that increased age corresponds with increased "pro-elderly" decision making in age cases. However, this finding must be qualified. Our data do not indicate that the likelihood of a pro-plaintiff case outcome increases incrementally with judicial age. The effects appear at the

age extremes among the very oldest and youngest judges. It should also be noted that because we did not look at individual judge's decision making in age bias cases over time, we do not have direct evidence of how individual judges changed their decision making in age bias claims as individual judges incrementally became older. However, we can infer from examining three different age cohorts of judges holding other variables constant that as judges age they become more sympathetic to plaintiffs' claims in age discrimination cases.

These findings also confirm that judicial partisanship has an important influence on age discrimination rulings. However, we found that partisan differences were fewer in the area of age discrimination cases than in other discrimination areas. When compared to rulings in gender and race cases, jurists in age cases exhibited decision-making behavior that was more favorable to defendants.

One of the more intriguing implications of our findings is that judges may change their views as they age. While holding a number of variables constant—partisanship, gender, race, and others—we still found that age was significantly related to decision making in age bias cases. Factors such as race and gender, which do not change through time, are likely to be related to decision making in the same way throughout a judge's career. Age, however, is different. There is a clear suggestion from these findings that some socioeconomic variables may affect judges' decision making differently over time.

In sum, these results provide new evidence to support the social attribute model of judicial decision making. In particular, our findings indicate that the affect of age on judicial decision making in age discrimination cases is similar to the effects of gender and race in cases that touch upon these issues. Just as some previous studies found that women judges may be the strongest supporters of gender bias claims, and African-American jurists may exhibit sentencing behavior that tends to favor African-American criminal defendants, our findings indicate that older judges may show greater affinity to plaintiffs in age bias claims. Furthermore, we have found evidence to suggest increased liberalism in at least one issue area among older judges. Previous studies that have investigated the impact of age generally identified a tendency for more conservative decision making by aging jurists. Our data, however, indicate that there may be an opposite effect when it comes to age bias rulings.

It is hoped that this exploratory investigation into an area of increasing importance in the law has shed some light onto the important issue of age discrimination. Future studies might reinvestigate this issue since this is a relatively new area in the law and the number of age cases heard in the courts continues to expand. As the workforce of the United States ages, we would expect to see more age bias claims brought to the federal courts. But if the results of our analysis hold true, then those who bring age discrimination suits may wish to see an older judge trying their case.

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