Survey of Legal Literature on Women Offenders

Sharon Livesey

PREFACE

The survey of the legal literature was prepared by staff of Entropy Limited as part of their work under a Manpower Administration Grant. A major activity of the Phase I effort of this grant was to review the literature between 1965-1975 on the Woman Offender in the criminal justice system, setting forth the myths, stereotypes and gaps in available information. Because of the growing number of issues that have legal relevance, the decision was made to give these sources separate attention.

The material in this project was prepared under Grant No. 21-25-75-11 from the Manpower Administration, U.S. Department of Labor, under the authority of Title III, Part B of the Comprehensive Employment and Training Act of 1973. Researchers undertaking such projects under Government sponsorship are encouraged to express freely their professional judgment. Therefore, points of view or opinions reached in this document do not necessarily represent the official position or policy of the Department of Labor.

All annotations and the survey of the legal literature were written by Sharon Livesey. The library research was conducted by Nancy Hillard and the cover design was by B.L. Henry and Jane Walsh.

Laurel L. Rans
Ronald A. Christensen
Project Co-Directors

Linda Adams
Project Assistant

Fall 1975

ENTROPY LIMITED
215 Tennyson Avenue
Pittsburgh, Pennsylvania

ERRATUM

FRANKEL, Lois J. "Note: sex discrimination in the criminal law: the effect of the equal rights amendment." The American criminal law review. vol. 11, no. 2, Winter 1973. pp. 469-510.
This article anticipates the impact of ERA on various areas of the criminal law including crimes of seductions, non-support and abandonment, carnal knowledge, rape, statutory rape, "male only crimes" (eg. refusal to assist a law officer), and "female victim crimes" (eg. laws prohibiting use of profanity in the presence of a female, false impugning of a woman's reputation), abduction, and pandering. Also discusses the female criminal (female only crimes) and differential statutory treatment of females which result from laws embodying "sex-plus distinctions" (sex-plus age of sex-plus marital/parental status), discriminatory penalties, and discriminatory classifications (example here is jury selection). The argument here is: "Much of the criminal law today reflects attitudes which are sex-based and outdated. The Equal Rights Amendment presents legislatures with the motivation and opportunity to revise their criminal codes and eliminate antiquated laws as well as revise necessary laws which fail to treat men and women equally." A bit optimistic.

INTRODUCTION

PURPOSE AND SCOPE OF REVIEW

This review of the literature of the last decade on women and the law is an offshoot of a longer work, "An Annotated Bibliography on the Woman Offender." In that bibliography, as here, the purpose has been to review articles of general interest in order to make important information in the field available to users. Users may range from women inmates, or those otherwise involved with the criminal law, to the larger community from which those women come and to which they eventually return.

Women in the larger community are often confronted with many of the same issues–discrimination, paternalism, etc.–facing women offenders. In preparing the "Annotated Bibliography," we found that it is sometimes arbitrary to isolate the problems of the woman offender from the problems of women in general. This was particularly true with respect to many of the law-related issues, for the law in part embodies the attitudes a society holds towards its members. In very many instances, the attitudes held towards a woman offender are simply an extension of conventional female stereotypes.

In this review, therefore, we have re-established the larger legal/social context for the specific problems of women offenders. We have included not only articles specifically concerning women and the criminal law, but those covering legal issues of general concern to all women. On the other hand, this review does not intend to be finite; the field is obviously too large to be encompassed by anything of this scope. Rather, the review is designed to serve as a beginning, a sourcebook for many of the articles of the of the last decade which contribute significantly to the field. Thus, it is hoped that this work may provide the basis for a continuing larger effort.

ORGANIZATION

The articles reviewed here range from general discussions of women's status in the law–including arguments for and against ERA–to specific analyses of the problems affecting women offenders. Also included are articles on prostitution and rape, two areas of the law in which the sexual functions of women are explicitly treated and which are, as a result, loaded with moral overtones. (In this context, we should point out that abortion, another aspect of women's sexual behavior regulated by law, although a critical issue, has been considered beyond the scope of this study.)

The annotations in the body of this review have been arranged in the following categories:

- Women's Legal Status Reviewed
- Examining the Criminal Law

- What Happens to the Female Offender?
- The Law on Prostitution and Rape Assessed.

Below follows a brief introductory discussion highlighting articles annotated in each of these four areas.

WOMEN'S LEGAL STATUS REVIEWED

The majority of the articles covered in this section focus on the debate over ERA—the Equal Rights Amendment (see especially the *Harvard Civil Law-Civil Liberties Law Review*, 1971). The polemical slant of a number of these articles results in summary presentations of complex problem areas of the law; the conclusions could be presented with more qualification, if an issue were not being fought. Some of the concreteness which is present in articles to be discussed below is absent here.

Mary Eastwood's "The Double Standard of Justice: Women's Rights under the Constitution" is, however, the outstanding exception. Her article treats in detail a number of women's rights cases and shows that ERA is the only way to answer women's frustrations with the courts. So far, it appears, the courts have failed to interpret the equal protection and due process guarantees of the Fifth and Fourteenth Amendments as prohibiting discrimination against women.

An article with a unique approach to ERA is "The Negro Woman's Stake in the Equal Rights Amendment" by Pauli Murray. Analogy is made between treatment of and attitudes towards blacks and towards women. It is pointed out that the negro woman is the subject of double discrimination.

In most of the other articles, legal discrimination against women and the significance of ERA and other possible legal remedies to discrimination are discussed primarily in terms of women's employment situations. The inference, both stated and tacit, is that by undermining women's economic position in a work-oriented society where social status is linked to independent financial status, the system (run by men) keeps women from making a legitimate claim for equal rights. Of course, the myth of inequality is contradicted by the social realities—the fact that women make up 51% of the population; that large numbers of women work (39% of the U.S. labor force is women); and that many women, especially in poor families, not only work but are a critical, if not the main, source of support for their children.

Two Sides of the ERA Debate

The two sides of the debate over ERA run as follows. On the one hand, the advocates for ERA say that its passage would be an unequivocal and clear policy statement that women are equals before the law. The opponents of ERA, however, say that it is

an inflexible instrument that could and would be used against disadvantaged classes of women to deprive them of the benefits they now enjoy, and that there is a more flexible means of changing the current biases in the law. They see the Fourteenth Amendment and the Civil Rights Act of 1964 as generally providing adequate protection of women's rights.

ERA advocates answer this argument by saying that the Supreme Court has not taken a firm stand on the status of women in any of the Fourteenth Amendment cases that have reached that court so far. The decision most favorable to women has been *Frontiero v. Richardson*, a case in which a female member of the military claimed benefits for her husband equal to those granted to the wives of male military personnel. In this case, a plurality of the court—not as good as a majority, but a step in the right direction—agreed that women must be defined as a "suspect classification." This means that, like blacks, women as a group are assumed to have certain broad rights. In order for legislation regulating those rights to stand, the state has the burden of proving its "compelling interest" as embodied in that legislation.

The burden of the state in showing its proof is substantial. On the other hand, it must be remembered that there has been no majority decision by the Supreme Court that women are indeed a "suspect classification."

The more usual way for women's rights cases to be treated both by the Supreme Court and in other jurisdictions is to question whether the classification of women as shown by the statute in question shows a "rational relationship" to the purpose of that statute. The purpose does not have to be stated explicitly either in the law or in the recorded legislative debate leading up to the passage of the law. On the other hand, most courts have shown reluctance to decide by inference what the legislative purpose might have been.

In these cases, the heaviest burden of proof falls on the plaintiff litigant; as a rule, they do not win. Even where there have been victories, and statutes have been overturned, these victories in individual federal jurisdictions are not a forceful precedent. A decision in one jurisdiction is not necessarily binding on courts in another. Only a Supreme Court decision has binding power over other courts, and as yet the Supreme Court has not taken a stand.

Thus, new legislation can be continually produced to circumvent the grounds on which decisions favorable to women have been based. These decisions, in any case, are likely to be narrowly addressed to specific issues. Efforts so far have still not secured an acceptable position for women.

A Third Position

There is a third position on ERA which says that its main disadvantage is that there has been so little legislative debate on this very complex subject that efforts at

its interpretation, if it does become law, will be foiled. Even ERA proponents are divided on the meaning of the amendment. One group indicates that ERA will mean "unisex" treatment for women; that is, treating women the same as men. The other group advocates treating women as a group needing protection under ERA. (In the language of the debate, this is the argument for identity vs. parity of treatment.)

EXAMINING THE CRIMINAL LAW

The legal literature on female criminality, much of which has been written by feminist lawyers, has had particularly significant influence in the field. As the result of an increasing number of well-written articles, the conventional ahistoric and sexist concept of female offenders has yielded to a more historical, socioeconomic and political viewpoint. An individual woman's criminal acts tend now to be interpreted in the context of her surrounding socioeconomic conditions rather than, as formerly, in psychological terms. Recognition of the social and economic factors which contribute to female criminality is a critical step in changing a system established to punish—or at the least, curb—criminal behavior. Furthermore, by identifying specific instances of discrimination against women, the legal literature may ultimately pave the way for changes in the laws, as well as the administration of criminal justice.

The second group of articles annotated in this review include two general discussions of women and the criminal law. Unequal administration of laws (implicit in, and following from, the legal female stereotype) is examined, as well as individual laws with peculiar effects on women. Further, in an introduction to the *American Criminal Law Review* issue devoted to women, Barbara Babcock justifies the interest that has recently been taken in the woman offender. Her argument is that the feminist perspective lends new insights to some of the standard problems within the entire criminal justice system. Further, issues surrounding the woman offender reflect, in any case, society's current conceptions and prejudices about groups within it and, thus, provide critique for that society.

WHAT HAPPENS TO THE FEMALE OFFENDER?

A substantial part of the literature here under review is devoted to special areas of the criminal law and the correctional system where there are problems resulting from discrimination against women. The areas covered include discriminatory sentencing, arrest statistics, discrimination against women in prison, especially juveniles, and denial of work release for female offenders. The value of ERA is discussed in the context of these issues. In fact, some of the most recent assessments of the Supreme Court (as well as jurisdictional courts) position on the status of women are found here since ERA is of ongoing critical concern to this group.

The articles collected here would be useful for anyone who contemplated bringing a suit in one of the relevant areas, but they also serve the more general purpose of

documenting conditions of women forced to deal with the criminal system and prisons. Two articles are outstanding for their vividness and interest: that of Kristine Rogers, "For Her Own Protection: Conditions of Incarceration for Female Juvenile Offenders in the State of Connecticut;" and Katherine Krause's "Denial of Work Release Programs to Women: A Violation of Equal Protection." These studies are based on state (Connecticut and California, respectively) statistics, but the problems are viewed within the national perspective, and the conclusions drawn have general significance. Krause, for example, does a very comprehensive review of equal protection cases which provide a basis for a claim to equal rights for women offenders.

Marilyn Haft's article, "Women in Prison: Discriminatory Practices and Some Legal Solutions," while only an overview of discrimination against women at all stages of the legal, enforcement, and correctional processes, gives a good picture of conditions, and highlights the little-considered fact that women suffer additional hardships because there are so few women's institutions that they are often placed far from their home communities or, in some cases, out of state (see also on this point, "The Sexual Segregation of American Prisons," *Yale Law Journal*, Vol. 82, 1973, pp. 1229-1273).

THE LAW ON PROSTITUTION AND RAPE ASSESSED

In 1973 and 1974, the literature gave special emphasis to the issues of prostitution and rape—two areas of the law where aspects of women's sexual behavior are explicitly confronted. In this context, it is observed how puritanical distortions of values are imposed upon women, whether hustlers or victims. Some of the myths about women that are evident in certain laws (that, for example, prohibit profanity in front of a female) can be compared to the peculiar notions that result in callous treatment by police and court authorities of a woman who has been raped (see Pamela Wood's "Note: The Victim in a Forcible Rape Case: A Feminist View").

An early article by Faith Seidenberg points out that the law essentially recognizes two kinds of women: "good" and "bad." "Bad" women are defined strictly in terms of their sexuality.

"Hustling for Rights," by Marilyn Haft, chronicles the history of the prostitution laws, describing—and applauding—the efforts of such groups as COYOTE to expose the hypocrisy of the lawmakers and to have prostitution decriminalized. Barbara Pariente and Charles Rosenbleet, writing on the same subject, take the pragmatic view that decriminalizing prostitution is too "ideal" a solution. Their article is meant to assist attorneys who wish to attack the present laws.

SUMMARY

In characterizing the nature of the literature, it is probably fair to note that some of the articles on women and the law can be quite abstract. Various aspects of the laws

which jeopardize women's rights in areas of employment, marriage, divorce, child support, property, education, crime and prison benefits are discussed in very broad terms.

The conclusion drawn by most authors reviewed here is that the old common law concepts of a woman's status, role and function are relics among present-day statutes which need to be revised. Women must be seen as independent and equal before the law. The underlying theme is that a conception of women as inferior and dependent contradicts the principle of law itself, for it is in essence irrational.

The means of change, however, are disputed. Litigation and legislative reform do not show concrete results overnight; cases begun years ago are still being litigated in the courts. Changes in existing procedures have been slow to develop. The push for actions under the Equal Protection Clause of the Fourteenth Amendment seems nonetheless to be on the rise.

In general, the issue of the status of women has been dealt with evasively by all parties in positions to take decisive actions. Congress has failed to define adequately its intentions with respect to the meaning of ERA. State legislatures have been slow to respond on ratification. And the Supreme Court has in essence said, "Why should we do anything while the legislature can?"

WOMEN'S LEGAL STATUS REVIEWED

DORSEN, Norman and Susan Deller Ross. "The necessity of a constitutional amendment." Harvard civil rights – civil liberties law review. vol. 6, no. 2, March 1971. pp. 216-224.
Noting the discrimination against women in schools, universities, federal and state criminal law (especially juvenile law), family law, military and labor law, these authors conclude that the problems of discrimination "may prove too vast, too intractable for a long-term solution on a piece-meal basis." The need for the "constitutionally mandated change" that ERA would bring for women is argued by examining what progress in this area has been made by federal and state courts and legislatures and by answering some of the contentions of critics that ERA will "act in impredictable ways, cause confusion, and foster excessive litigation." "Adoption of the amendment . . . would be a final resolution of the fundamental policy question in favor of strict equality of the sexes. Debate then could concentrate on the more fruitful (and difficult) question of the means best suited to realize this goal." Written as part of the ongoing polemic over ERA, this article presents the core issues but does not really go into some of the refined points of the argument.

EASTWOOD, Mary. "The double standard of justice: women's rights under the constitution." Valparaiso law review. vol. 5, no. 2, Symposium issue 1971. pp. 281-317.
"The failure of the courts to interpret the equal protection and due process guarantees of the fifth and fourteenth amendments as prohibiting discrimination against women in the law has caused women to seek adoption of the Equal Rights Amendment. . . The single purpose of the proposed Amendment is to require the equal treatment of men and women under the law and to restrain the courts from applying different rules to women under the Constitution." A thorough review of the cases affecting women's status in the law and discussion of judicial assumptions about women that have been used to justify unequal treatment of women by the law. Author soundly reasons: "Even if it were possible to balance out the discriminations against men and women by sex, giving benefits to one sex in one area and to the other in a different area, there is no certainty that the perfect balance between the classes of men and women would result in individual justice which presumably is the goal." Particularly in discussion of Mengelkoch v. Industrial Welfare Commission, a California case brought under the fourteenth amendment and Title VII of the Civil Rights Act of 1964, shows some of the practical obstacles of fighting the women's equality issue on a case by case basis. Gives history of ERA and full analysis of the Citizens' Advisory Council's proposals for the implementation of ERA. Indicates where rights granted to women under some laws should be extended to men, where limitations on or denials of women's freedom or rights should be ended by rendering statutes in question unconstitutional, where laws making age distinctions on the basis of sex should be equalized up or down, where laws which involve difference in sexual or reproductive capacity should be strictly interpreted so as not to extend "to spheres other than the reproductive difference between men and women (e.g., employment)," and where laws dealing with the separation of sexes (as in public institutions) should be forbidden except where necessary to preserve individual rights to privacy. A very good article, if dated. Should be read for background.

EMERSON, Thomas I. "In support of the equal rights amendment." Harvard civil rights –civil liberties law review. vol. 6, no. 2, March 1971. pp. 225-233.
Discussion of "sex [as] an impermissible category by which to determine the right to minimum wage, the custody of children, the obligation to refrain from taking a life of another, and so on" and systematic consideration of the three basic methods by which discrimination against women can be eliminated from our legal system": 1) The legislative method ("repeal or revision of each separate piece of existing legislation through action by the federal, state and local legislatures

having jurisdiction"); 2) "court action under the equal protection clause of the fourteenth amendment and the comparable provision of the fifth"; and 3) a constitutional amendment. Disadvantages of first two methods discussed. If the legislative approach is accepted, "There would be no protection against future discriminatory legislation and practices." Litigation under the fourteenth amendment may meet obstacles in the form of adverse decisions of both the Supreme Court and Lower courts and "a certain amount of legal deadwood" which could impede if not prevent decisive and unambivalent action by the courts; possible reluctance of the Supreme Court to take an innovative stand in yet another area of social reform; and fourteenth amendment doctrines and constitutional tests which are not appropriate in cases where differential treatment is based on sex (the problem is that women have not yet been unequivocally defined as a group characterized by the Court as a "suspect classification."). The basic proposition here is that "the establishment of equal rights for women poses questions that are in important ways sui generis. An effective solution demands a separate constitutional doctrine that will be geared to the special character of the problem" Article also attempts some interpretation of ERA. Persuasive, thorough and logically set out.

FREUND, Paul A. "The Equal Rights Amendment is not the way." Harvard civil rights–civil liberties law review. vol. 6, no. 2, March 1971. pp. 234-242.
Argues against ERA on the basis that ERA has remedial effect only in the public sphere while Congress, legislatures and the courts have already at their disposal far more flexible means of challenge to discriminatory practices in both the private and public spheres. Indicates that ERA may even limit Congressional power with respect to discriminatory state laws and practices. Analogizing the author says: "The choice resembles that in medicine between a single broad-specimen drug with uncertain and unwanted side-effects and a selection of specific pills for specific ills." Denigrates the idea of a "doctrinaire equality" under an absolute interpretation of ERA. Main objection is that energies channeled into drumming up support for ERA could be better directed toward specific legislative changes at state and federal levels. Freund as one of frequently cited opponents of ERA should be read. Article sometimes smacks of a subtle paternalism.

KURLAND, Philip B. "The Equal Rights Amendment: some problems of construction." Harvard civil rights - civil liberties law review. vol. 6, no. 2, March 1971. pp. 243-252.
"As a step towards full equality of men and women in this society, the proposed 'equal rights' amendment covers very little ground. . . . some of the primary planks in the 'women's liberation' platform, such as the right to abortion, or to 'child care centers.' would be totally unaffected by the proposal. . . " ERA, as proposed, does not substantially enlarge power national legislature already has to effect ban on discrimination. Discussion of "basic conflict of purpose" demonstrated by the womens movement in differing interpretations of ERA. On the one hand, advocates for ERA say it would "command the treatment of men and women as if there were no differences between them, even at the price of removing protection and benefits that have otherwise been afforded to females. It was a demand for legal "unisex" by constitutional mandate . . ." The second attitude toward "women's rights" would seek only the elimination of discrimination against women, a ban on treating females as a disabled class." Author obviously favors second approach to issue of women's rights without giving full recognition to the problems involved in leaving loopholes in the amendment. Good discussion of dangers ERA would present for certain segments of female population were courts to take strict interpretation of ERA (particularly in the area of family law). Fairly argued that sparse legislative history of ERA may lead to complications in interpretation where it is necessary to fathom legislative intent.

MURRAY, Pauli. "The negro woman's status in the Equal Rights Amendment." Harvard civil rights–civil liberties law review. vol. 6, no. 2, March 1971. pp. 253-259.
"Negro women as a group have the most to gain from the adoption of the Equal Rights Amendment. Implicit in the amendment's guarantee of equality of rights without regard to sex is the constitutional recognition of personal dignity which transcends gender. . . . All that has been said

about the deprivations and frustrations of women generally . . . applies with special force to black women, who have been doubly victimized by . . . racial and sexual bias." Ms. Murray, characterizing the negro woman as the "lowest and most vulnerable social and economic groups in the United States", shows how black women bear a disproportionate share of the discrimination against women in that they do not "enjoy . . . the advantages of the idealizations of 'womanhood' and 'motherhood'" and for the most part hold jobs which are not protected under current legislation governing minimum wage, labor and safety standards. Also shows how the stereotype of the matriarchal negro woman is misrepresentative and works to her disadvantage. Arguments well supported by statistics. Key point made that black women as an isolated group have little political influence, and yet are particularly affected by federal decisions because of their involvement with federal programs dealing with housing, health, welfare, education, job training and employment opportunity. The passage of ERA would establish needed unequivocal federal standard.

NAGEL, Stuart S. and Lenore J. Weitzman. "Double standard of American justice." Society. vol. 19, no. 5, March, 1972. pp. 18-25+
This review of how the law affects women concludes that ". . . women as litigants do not receive the same treatment as men. In criminal cases women are much less likely to be jailed before or after conviction and are more likely to lack a jury trial than are men charged with the same crime. In personal injury cases, adult women are less likely to win than are adult men, and they collect awards that are substantially smaller, especially before male-dominated juries. In divorce cases . . . the woman seems to win on the basis of a simple analysis of divorce decrees; but these decrees become meaningless when we look at the collection records. These findings seem consistent with how women are treated in American society in general. There is a kind of paternalistic protectiveness, at least toward white women, which assumes that they need sheltering from such manly experiences as being jailed or being treated in an overly formal fashion in family law or criminal cases. At the same time, when it comes to allocating scarce valuable resources such as personal injury monetary awards or money for child support, women are more likely to be slighted." Particularly interesting in its discussion of jury issues, this article presents a clear, well-reasoned and well documented overview of the problem without going into the legal technicalities usually in a law review article.

EXAMINING THE CRIMINAL LAW

BABCOCK, Barbara Allen. "Introduction: women and the criminal law." The American criminal law review. vol. 11, no. 2, Winter 1973. pp. 291-294.
Introduction to the American criminal law review. States the rationale for focusing this issue on women and the criminal law. There is a class of people (women offenders) with problems germane to their conditions which deserve consideration from this perspective (Although only 1% of the nation's state and federal prison population, women prisoners number about 5,000. These women are mostly poor, from racial minorities, and committed for non-violent crimes.) A feminist perspective lends new insight to familiar problems within the correctional system such as rehabilitation. Criminal law and the administration of criminal justice reflect society's "current notions, prejudices and concerns about groups within it."

CAVANAGH, Barbara Kirk. " 'A little dearer than his horse': legal sterotypes and the femine personality." Harvard civil rights – civil liberties law review. vol. 6, no. 2, March 1971. pp. 260-287.
Whatever the definition of human, it must encompass more than the sexual. No prescribed role or temperament is adequate to a whole population. The conventional feminine social and economic role is legitimate only if freely chosen. Likewise, masculine options should be broadened, for choice is the sine quo non of health and freedom." This article discusses "pathogenic definitions of womanhood" as embodied in American law and social mores. Demonstrations of how limiting female

stereotypes have the practical effect of depriving women of positions to which attach economic, social or political power. Interesting discussion of the psychological effects on women of the stereotypical role. Inferences that "all the mechanisms which circumscribe the female role are expressions of male society's anxiety lest she escape her prescribed position." Some of the generalizations seem a bit thinly supported; on the other hand, the article serves as a good source replete with footnotes.

DERR, Allen R. "Criminal justice: A crime against women?" Trial magazine. pp. 24-26.
"The nation seems on the verge of a revolution in the area of eliminating sexual discrimination, except where distinctions between the sexes are dictated by physiological differences. Criminal laws and/or the enforcement of them are prime targets." Discusses areas of the criminal law such as jury selection, rape, juvenile justice, prostitution, adultery, and anomalous pieces of legislation, often directly or obliquely related to sexual conduct of women, which are now archaic (such as a Florida statute making it unlawful for a lewd female to go within three miles of a college or boarding school). Mostly gives examples of various discriminatory state laws.

FRANKEL, Lois J. "Note: sex discrimination in the criminal law: the effect of the Equal Rights Amendment." The American criminal law review. vol. 11, no. 2, Winter 1973. pp. 469-510.
This article anticipates the impact of ERA on various areas of the criminal law including crimes of seduction, non-support and abandonment, carnal knowledge, rape, statutory rape, "male only to provide in any other form. For the male prisoner homosexuality serves as a source of affection, a source of the validation of masculinity, or a source of protection from the problems of institutional life. In a like manner, the females tend to create family structures in an attempt to ward off the alienating and disorganizing experience of imprisonment; the homosexual relationships are merely part of the binding forces of these relationships. The problem for the prison administrator then becomes considerably more complex than merely the suppression of sexual activity -- it becomes a problem of providing those activities for which the homosexual contacts are serving as substitutes. The inmates are acting out their own behavior, affection, and stability of human relationships. The homosexual relationship provides one of the few powerful ways of expressing and gratifying these needs. Unless these needs are met in some other way, there is little opportunity for adequate control of homosexual activity in the prison environment. It might be hypothesized that any attempt to become more coercive and controlling of inmate behavior in order to reduce homosexual contacts may result not in a decrease in activity, but perhaps in an increase. By increasing coercion one increases the pressure to divide inmates from one another, and one decreases their capacity for self-expression and self-control. As the pressure builds there may well be a tendency for homosexual relationships to increase in importance to the inmate population as a reaction to the intensity of the pressure."

NAGEL, Stuart S. and Lenore J. Weitzman. "Women as litigants." The Hastings law journal. vol. 23, November 1973, pp. 171+
Includes an interesting discussion of women as criminal defendants with a view to two trends in attitudes towards women involved in the criminal legal system: the disadvantaged pattern (eg. as applies to indigent, black, or elementary educated defendants) and the paternalistic pattern. Shows how the various stereotyping may be more or less operative given specific areas of the law (eg. crimes against property as opposed to crimes against the person). Interesting in that it begins to discuss other variables such as poverty and race as interwoven with the women's issue.

WHAT HAPPENS TO THE FEMALE OFFENDER?

GIBSON, H.E. "Women's prisons: laboratories for penal reform." Wisconsin law review. vol. 1973, no. 1, 1973. pp. 120-233.
Discusses crime and imprisonment patterns for women and history of correctional institutions for

women in Wisconsin and elsewhere. The problems inherent in women's correctional institutions include size and number limitations; oppressive atmosphere because of economics and female attitudes; inaccessibility from their children, other visitors and work opportunities; need for vocational rehabilitation because, although women make up 38% of the labor force, they don't see themselves as wage earners; the tendency to reinforce the female role, i.e., a woman's life goal is achieved mainly through marriage and child rearing, the fact that most prison vocational rehabilitation programs are oriented toward women's work; and the fact that the impetus for change is lacking, manifested in the fact that women have not taken part in the riots and law suits which are major sources of change in corrections. The author feels that "it is parodoxical that while all the evidence points to the fact that women criminals are more likely to be rehabilitated, and in fact are more frequently rehabilitated, the facilities which are supposed to produce rehabilitation are less available to them." Needed changes include shorter sentences for definite periods of time (elimination of indeterminate sentences); correctional services in the community; emphasis on training in marketable skills; increased use of work release, probation and parole; and diversion from institutions.

HAFT, Marilyn G. "Women in prison: discriminatory practices and some legal solutions." Clearinghouse review. vol. 8, May 1974. pp. 1-6.
Well-written organized over view of discrimination against women at all stages of legal, enforcement and correctional systems including discrimination in sentencing (indeterminate vs. term sentences); enforcement (especially in the area of prostitution); juvenile treatment (moral opprobium with respect to female runaways, prostitution, sexual relationships with respect to custodial sentencing); placement in facilities (out-of-state placement due to lack of in-state facilities); treatment (lack of training and vocational programs); and parole (moralistic, paternalistic factors may jeopardize parole opportunity for women). Also discusses avenues of approach to legal reform including equal protection clause of 14th amendment. Points out that male correctional institutions cannot, however, be the model; that women inmates' new awareness should be directed toward reform of dehumanizing institutional models and creation of community facilities.

HOWE, Sharon M. "State v. chambers: Sex discrimination in sentencing." New England journal on prison law. vol. 1, 1974. pp. 138-145.
Review of State v. Chambers and other N.J. cases where females convicted of gambling offenses were given indeterminate sentences and appealed conviction under the equal protection clause of the 14th amendment. Clear treatment of the suspect classification and rational purpose doctrines involved in 14th amendment Equal Protection actions using concrete example of N.J. statute which clearly discriminated against women, and specific hardships women suffered (no work credit or time off for good behavior; no right to mandatory parole hearing; tendancy to serve more time than men sentenced under minimum-maximum sentences for same offense). Suggests inherent problem in indeterminate sentencing is that discretionary power passes from courts to non-judicial authorities where it may be abused.

KRAUSE, Katherine. "Denial of work release programs to women: a violation of equal protection." Southern california law review. vol. , 1974, pp. 1453-1490.
Very thorough and lucid review of the legal arguments for equal protection of women under the fourteenth amendment presented in terms of the issue of work release for female offenders. Landmark decisions in the area of equal rights are examined with a view to demonstrating the development by the U.S. Supreme Court of a stricter standard of review more favorable to women who have come to be regarded as a disadvantaged class in need of the Court's protection. Also discusses California cases which include women among those groups characterized as "suspect classifications." Effective argument made that women prisoners are "similarly situated" as their male counterparts and cannot be excluded from work release programs. Author shows that arguments that state purpose in offering work release to male inmates (eg. rehabilitation, reduction of public assistance costs resulting from incarceration, and defraying costs of incarceration) does not apply

equally to female inmates fail; and state showing of burden of administrative difficulties and expenses and of extra housing costs for women involved in work release insufficient to justify deprivation caused to women by denial of access to programs. Statutes denying work release to women prisoners, therefore, do not pass "rational purpose" or "compelling state interest" tests of constitutionality, and must fall since constitutionally tainted. Necessary reading for anyone contemplating bringing suit.

ROGERS, Kristine Olson. " 'For her own protection: conditions of incarceration for female juvenile offenders in the state of Connecticut." Law and society review. Winter 1972. pp. 223-246. Excellent Connecticut case study of differential treatment for juvenile male and female offenders. Graphic examples of how "do good" rationale prejudices the fate of juvenile girls—that is, results in 1) a high rate of commitment for conduct (usually "sexual" or "sex-related" activity) which is not considered criminal for adults; 2) longer periods of incarceration than that imposed on juvenile boys; and 3) institutional conditions considerably less innovative and more grimly beset with moral sanctions than those endured by male juveniles (whose institutions, though in a state of greater upheaval, have been more suseptible to change). Good balance of statistical data for Connecticut (which is corroborated by national reports) and description of conditions documented by comments from court reports, correctional staff reports, and the juvenile girls themselves. Obstacles to change and possible remedies discussed. Flavor of writing, concrete and persuasive. Gist of theme illustrated by one of closing comments: "Ironically, even most of the young females interviewed for this study prefer punishment to protection, because then 'They can't give you any more than you deserve'."

"the SEXUAL segregation of American prisons." Yale law journal. vol. 82, 1973. pp. 1229-1273. A research study, funded by a Ford Foundation grant, which examines the effect of segregation on women inmates who are a minority population within the correctional system from two points of view: the general problems and differences in treatment caused by scale (including the significant point that women must often be placed in institutions remote from their community and family ties because so few facilities for the female offender exist); and those aspects of differential treatment caused by sexual stereotyping. The second half of the article suggests means of reforming the system under the Fourteenth Amendment or of eliminating the dual system altogether under the Equal Rights Amendment. Good discussion which points out that the Equal Rights Amendment is open to multivarious interpretations and applications, not all of which are without some negative implications for the position of women in prison. This article is fairly long, but thorough and supported by a clear presentation of research data.

SINGER, Linda R. "Women and the correctional process." American criminal law review. vol. 11, no. 2, 1973. pp. 295-308.
Three-part article dealing with the presence of adult and juvenile females in the correctional system in-prison courtrooms and possible remedies of the inequities and inhumanity of prison life. Focuses on the boomerang effect of the "chivalry factor": fewer women (especially few middle class women) are in the system, but those who are there may be more severely punished (particularly good examples of this in respect to juvenile women) or may be given many fewer opportunities and privileges than men committed for similar offenses because of stereotyping and for reasons of economy (expense of rehabilitation too great per individual as a result of small and scattered female offender population). Particular needs of women with respect to pregnancy counseling, abortion, care of children born in prison, and on-going contact with families and children outside prison are not met. Discussion of possibilities for legal challenge somewhat limited in this article, although it does discuss the possible use of Title VII (Civil Rights Act) actions or a way of extending work program opportunities for women. Touches on larger issue of discrimination against women ex-offenders in outside job market. Final plea is for alternatives to present prison system: number of suggestions including development of administrative grievance procedures; formation of prisoners' unions, establishing of community centers.

TEMIN, Carolyn Engel. "Discriminatory sentencing of women offenders: the argument for ERA in a nutshell." American criminal law review. vol. 11, no. 2, Winter 1973. pp. 355-372.
Discussion of the key cases which challenge discriminatory sentencing of women. The argument is that progress toward winning constitutional rights and fair treatment for women under Fourteenth Amendment doctrines has been slow and uneven, and what advances have been made in this area are not secure from reversal by decisions of reactionary courts. "Only by ratification of the Equal Rights Amendment can we assure that statutory schemes such as discriminatory sentencing acts will cease to exist." Discussion of cases is detailed and technical, typical of law review articles. There is little or no discussion of the problems of implementation of ERA.

THE LAW ON PROSTITUTION AND RAPE ASSESSED

HAFT, Marilyn G. "Hustling for rights." The civil liberties review. vol. 1, no. 2, Winter/Spring 1974. pp. 8-26.
Concise article, forcefully written. Discusses the work of groups, such as COYOTE, seeking to decriminalize prostitution and to gain legal rights and social acceptance for prostitutes. Traces the history of antiprostitution legislation and outlines arguments for decriminalizing prostitution. Perhaps the strongest of these arguments is legal. "The Supreme Court (has) handed down decisions on abortion and on sex discrimination in employee benefits that expanded the concepts of sexual privacy and equal protection. These decisions made it obvious to lawyers that the prostitution laws proscribing private sexual activity between consenting adults stand in conflict with the constitution. Enforcement of these laws unequally against women clearly violates the court's mandate against sex discrimination under the equal protection clause." In addition, enforcement of prostitution laws is expensive, ineffective, increases the workload of police with more important laws to enforce, and drains respect for the law. Unlike Strickland's work on prostitution, Haft does not advocate the abolitionist system as practiced in England. This article is important because it respects the point of view of the prostitute herself and presents the facts of prostitution as a counter to the myths.

HIBEY, Richard A. "The trial of a rape case: an advocate's analysis of corroboration, consent, and character." The American criminal law review. vol, 11. no. 2, winter 1973. pp. 309-334.
"The trial of a rape case imposes inordinate demands on the advocates' abilities to prepare and present the evidence. . . [T]his discussion. . . should have provided the advocates with an insight into issues which more often than not, will appear in most rape cases. The emphasis . . . is on the role of the attorney as an advocate addressing discussion of the issues of corroboration, consent and character as they figure in a rape trial. This article maintains a strictly "legal" viewpoint and should be compared with Pamela Lakes Wood's Note on "The victim in a forcible rape case: a feminist view." See annotation.

ROSENBLEET, Charles and Barbara J. Pariente. "The prostitution of the criminal law." The American criminal law review. vol. 11, no. 2, Winter 1973. pp. 373-428.
Discusses means of constitutional attack on prostitution laws, especially on grounds of denial of equal protection (Female prostitutes not male prostitutes or male clients are the object of prostitution laws and enforcement.) and right to privacy. Also includes arguments for bringing actions against prostitution statutes on grounds of vagueness and overbreadth, free speech, and cruel and unusual punishment. View of the authors stated in part: "Prostitution, both in the preliminary solicitation and negotiations and in the act itself, is overwhelmingly a private, consensual affair between individuals who wish to make their own decisions as to how to control their sexual lives and use their bodies." "The authors have focused on challenging the government's involvement in proscribing the sexual behavior of its female citizens without a compelling state interest. That a woman should have the right to control the use and function of her body without

unreasonable interference from the state is crucial." "This article is, in large part, an attempt to guide attorneys who share a frustration over the legislative stagnation in decriminalizing prostitution. Certainly the elimination of criminal penalties is an ideal but distant solution. The efforts, therefore, must be directed at how the present laws can be successfully attacked." Lucid argument but it would be optimistic to suppose that courts will be quickly moved to the positions stated here.

SEIDENBERG, Faith A. "The myth of the evil female as embodied in the law." Environmental law. Winter 1971. pp. 218-229.
"Criminal law in the United States has long followed the principle that there are two kinds of women: 'good' women and 'bad'. 'Good' women, particularly those who are married, are viewed by the courts as children. . . . 'Bad' women. . . are defined by law as those who are sexually free, and by almost no other moral standard." This theme is explored in view of laws dealing with prostitution, fornication, adultery, rape, and abortion. Some interesting insights but sometimes it seems the theme is pushed too far.

WOMEN endorsing decriminalization. "Prostitution: A non-victim crime?" Issues in criminology. vol. 8, no. 2, Fall 1973. pp. 137-162.
Women are the victims of prostitution, which should not be legalized but rather decriminalized to abolish this state sanctioned economic oppression of young, poor and minority women. Efforts to legalize prostitution in California are seen as male dominated business ventures which seek to formalize the exploitation of women. California Statute 647 is examined in the light of precedents and (1) unconstitutional vagueness, (2) equal protection, (3) freedom of speech and (4) the right to privacy, to suggest legal argument for decriminalization. Such effort is seen to be the only sensible alternative, given the sexism inherent in our society.

WOOD, Pamela Lakes. "Note: the victim in a forcible rape case: a feminist view." The American criminal law review. vol. 11, no. 2, Winter 1973. pp. 335-354.
The author examines the operative assumptions which determine the treatment of the rapist and the victim before the law, by the court, by juries, and by the police. Among these are assumptions of feminine malice (". . .accusations [are] brought by malicious women who all too often are afflicted with sexual and emotional problems"); of feminine masochism (". . .the woman may have really wanted to be raped" and may have unconsciously "precipitated the rape" or taken unnecessary risks); of the victim's shaky character or mental state; and of the victim's duty to resist. The actual rape is followed by an ordeal for the victim, for when she reports the crime at the police station and is examined at the hospital there is rarely any consideration given to her mental state and she may even be subjected to abuse from police, hospital or court authorities. Rape is "probably reported to the police less than any other Crime Index offense." Women feel that reporting rape is "useless" and they "do not wish to encounter additional stress and abuse" meted them in the investigation and trial process. The premise of this article is: "The most curious thing about forcible rape cases, despite common misconceptions, is the amount of sympathy which is afforded the offender, and the callousness, or even hostility is some cases, which is felt for the victim." Some change in attitude has been brought about the establishment of rape crisis centers and other means of support for the female victim. The author contemplates other changes as well, including legislative reform. Representative expression of the feminist perspective of rape.

BIBLIOGRAPHY OF LEGAL SOURCES

JOURNAL AND NEWSLETTER ARTICLES

BABCOCK, Barbara Allen. "Introduction: women and the criminal law." *The American criminal law review.* vol. 11, no. 2, Winter 1973. pp. 291-294.

CAVANAGH, Barbara Kirk. " 'A little dearer than his horse': legal stereotypes and the female personality." *Harvard civil rights–civil liberties law review.* vol. 6, no. 2, March 1971. pp. 260-287.

DERR, Allen R. "Criminal justice: A crime against women?" *Trial magazine.* pp. 24-26.

DORSEN, Norman and Susan Deller Ross. "The necessity of a constitutional amendment." *Harvard civil rights- civil liberties law review.* vol. 6, no. 2, March 1971. pp. 216-224.

EASTWOOD, Mary. "The double standard of justice: women's rights under the constitution." *Valparaiso law review.* vol. 5, no. 2, Symposium issue 1971. pp. 281-317.

EMERSON, Thomas I. "In support of the equal rights amendment." *Harvard civil rights–civil liberties law review.* vol. 6, no. 2, March 1971. pp. 225-233.

FRANKEL, Lois J. " Note: sex discrimination in the criminal law: the effect of the Equal Rights Amendment." *The American criminal law review.* vol. 11, no. 2, Winter 1973. pp. 469-510.

FREUND, Paul A. "The Equal Rights Amendment is not the way." *Harvard civil rights–civil liberties law review.* vol. 6, no. 2, March 1971. pp. 234-242.

GIBSON, H.E. "Women's prisons: laboratories for penal reform." *Wisconsin law review.* vol. 1973, no. 1, 1973. pp. 120-233.

HAFT, Marilyn G. "Hustling for rights." *The civil liberties review.* vol. 1, no. 2, Winter/Spring 1974. pp. 8-26.

HAFT, Marilyn G. "Women in prison: discriminatory practices and some legal solutions." *Clearinghouse review.* vol. 8, May 1974. pp. 1-6.

HIBEY, Richard A. "The trial of a rape case: an advocate's analysis of corroboration, consent, and character." *The American criminal law review.* vol. 11, no. 2, Winter 1973. pp. 309-334.

HOWE, Sharon M. "State v. chambers: Sex discrimination in sentencing." *New England journal on prison law.* vol. 1, 1974. pp. 138-145.

KRAUSE, Katherine. "Denial of work release programs to women: a violation of equal protection." *Southern California law review.* vol. 74, 1974, pp. 1453-1490.

KURLAND, Philip B. "The Equal Rights Amendment: some problems of construction." *Harvard civil rights–civil liberties law review.* vol. 6, no. 2, March 1971. pp. 243-252.

MURRAY, Pauli. "The negro woman's status in the Equal Rights Amendment." *Harvard civil rights–civil liberties law review.* vol. 6, no. 2, March 1971, pp. 253-259.

NAGEL, Stuart S. and Lenore J. Weitzman. "Double standards of American justice." *Society.* vol. 19, no. 5, March, 1972. pp. 18-25+

NAGEL, Stuart S. and Lenore J. Weitzman. "Women as litigants." *The Hastings law journal.* vol. 23, November 1973, pp. 171+

ROGERS, Kristine Olson. " 'For her own protection: conditions of incarceration for female juvenile offenders in the state of Connecticut.' " *Law and society review.* Winter 1972. pp. 223-246.

ROSENBLEET, Charles and Barbara J. Pariente. "The prostitution of the criminal law." *The American criminal law review.* vol. 11, no. 2, Winter 1973. pp. 373-428.

SEIDENBERG, Faith A. "The myth of the evil female as embodied in the law." *Environmental law.* Winter 1971. pp.218-229.

"The SEXUAL segregation of American prisons." *Yale law journal.* vol. 82, 1973. pp. 1229-1273.

SINGER, Linda R. "Women and the correctional process." *American criminal law review.* vol. 11, no. 2, 1973. pp. 295-308.

TEMIN, Carolyn Engel. "Discriminatory sentencing of women offenders: the argument for ERA in a nutshell." *American criminal law review.* vol. 11, no. 2, Winter 1973. pp. 355-372.

WOMEN endorsing decriminalization. "Prostitution: A non-victim crime?" *Issues in criminology.* vol. 8, no. 2, Fall 1973. pp. 137-162.

WOOD, Pamela Lakes. "Note: the victim in a forcible rape case: a feminist view." *The American criminal law review.* vol. 11, no. 2, Winter 1973. pp. 335-354.

ENTIRE ISSUES OF JOURNALS

"**EQUAL** rights for women: A symposium on the proposed constitutional amendment." *Harvard civil rights-civil liberties law review.* vol. 6, no. 2, March 1971. pp. 215-287.

"**SYMPOSIUM**--women and the law." *Valparaiso University law review.* vol. 5, no. 2, Symposium Issue 1971. pp. 203-488.

"**WOMEN** and the criminal law--a symposium" *American criminal law review.* vol. 11, no. 2, Winter 1973. pp. 291-558.

"**WOMEN** and law." *Trial magazine.* vol. 9, no. 6, November/December 1973. pp. 10-28.

printed at the Minnesota Metropolitan Training Center, Minnesota Department of Corrections.

END