ORDER IN THE COURT: GENDER AND JUSTICE

A Dissertation Presented

By

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ABSTRACT

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The major questions addressed in this research are: Are men and women treated differently in the criminal courts? If so, how and why? Past research shows that the symptoms of sexual stereotyping are evident in court outcomes, often expressed in more lenient treatment of female than male defendants. This research explicates the sources of such treatment.

A critique of the prevailing concepts of "court paternalism" and "evil woman" is developed. A new theoretical framework is advanced which draws upon feminist theory, focusing upon the material and ideological bases of gender relations, i.e., the presumed productive and familial responsibilities of men and women.

It is hypothesized that when court decisions center on a defendant's loss of liberty, men and women with familial ties or responsibilities will be treated more leniently than those without such ties. Further, among "familied" defendants, women will be treated more leniently than men because their familial labor is ideologically and materially more indispensible than men's.

Hypotheses related to the impact of the offense charged and to racial and ethnic variation in the treatment of men and women are also explored.

The hypotheses on the mediating influence of familial status are supported from (1) analyses of court outcomes in the New York City and Seattle state criminal courts and (2) interviews with 35 court personnel and observations of decision-making in the Springfield, Massachusetts criminal court.

Two conclusions are drawn from the research. First, although many attributes of defendants are "taken into account" in the adjudication process, this "individualization of defendants" is more broadly embedded in the "familialization of justice." Second, the prevailing usage of "court paternalism" needs to be transformed from a "protection" of women (female paternalism) to a "protection" of family members dependent on defendants (familial paternalism).

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C H A P T E R I

INTRODUCTION

After stripping away the professional circumlocutions, sociological research questions can be simplified in terms that everyone can understand. The question posed in this research is: Why do women seem to "get off" in the criminal courts? It is a blatantly contentious question, one that backs feminist-informed research in a corner. From their corner, some feminist criminologists have thus far replied: "sexism" or "sexist ideas about women." Others point to the classist and racist assumptions embodied in explanations for leniency extended to women. Others suggest that women really don't "get off," that leniency for women is an example of misinformed, but "received sociological wisdom;" and some argue that women are treated more harshly than men.

One of the difficulties in studying gender discrimination in criminal court decision-making is that for so long criminological theory and research has largely ignored male-female differentials in criminal involvement and in court outcomes. Instead, the conceptual focus has been on men (the "general" theories) or on women (the "special order"). These two quite separate streams of theoretical orientation and research reflected extant "commonsense" knowledge of

the "natural" differences between men and women, which was first explained by physiological differences between men and women, and subsequently by "sex-role" differences. During the 1970s, this earlier work was taken to task for its intellectual sexism, a "problem" of a fundamental sort found in every other social science discipline.

In the wake of the 1960s Women's Movement sociologists recognized the inapplicability of older theories. New theories were required with which to comprehend the "position of women" and the consequences of the inequality between men and women. One of the major insights of emerging feminist theories was that gender, a set of socially-defined categories signifying biological sex difference, was derived from power relations between men and women. These relations, whether termed "patriarchy," the "sex/gender system" or "gender relations," could in large part be traced to the gender division of labor "in the family," where women have primary responsibility for the care of children. Just how a gender division of labor became one where women were socially and economically subordinate to men is question of on-going debate and research. Thus far, historical and cross-cultural research suggests that when societies became more economically stratified and hierarchally ordered, gender relations became more unequal.

The implications of applying a gender relations perspective to theories of crime and the response to criminality are that the previous approaches centered on deviations from "male" or "female" normative behavior (often termed "sex-roles") were misleading. Specifically, if one wants to examine gender differences in criminal involvement (and more fundamentally definitions of "criminality") and the socio-legal response to "criminality," one should begin by exploring the social relations between men and women, as mutually defined by the gender division of labor. This is my starting point in theorizing about the sources of gender discrimination in criminal court practices. It will, I hope, re-orient thinking away from the more superficial descriptions of its symptoms.

Past and current sociological explanations for the treatment of women relative to men before the law have largely dealt with appearances and symptoms of gender inequality. Beginning with Thomas (1907) and continuing to the present (e.g., Simon, 1975), the common "finding" from research on gender differences in court outcomes was that women were treated more leniently. This leniency in turn was explained by "chivalrous attitudes" of male judges or by "court paternalism," both of which embodied the idea that more benign treatment was extended in order to "protect" women. Although some research did not find this pattern (e.g., Martin, 1934 and Green, 1961), the dominant belief was that women "got off" at all phases of criminal

justice processing. Three observations can be made with respect to this work:

(1) The findings were based on simple cross-tabulations of conviction rates or types of sentences and did not consider the type or severity of crime, nor the defendant's prior record.

(2) Until recently, no one was particularly concerned with or interested in the problem that women "got off." It was an "acceptable" form of discrimination, one that few questioned or were bothered by. This is in contrast to how researchers viewed racial discrimination, which of course was considered wrong and unfair.

(3) No one apparently studied court processes and practices. Rather, the "paternalism" explanation was derived from "widespread conviction."

There is still no published qualitative research on gender discrimination in court decision-making. Only in the last decade have researchers included a "sex variable" (as a control variable) in quantitative analyses of court outcomes; and Bernstein et al's (1979) research was the first to systematically focus on the problem of gender differences in court outcomes. My review of the quantitative research literature on gender differences in court outcomes reveals the following patterns:

(1) No discernible, or inconsistent differences with respect to likelihood or prosecution, dismissal, or conviction.

(2) Differences, small and large, favoring women in decisions concerning a defendant's loss of liberty--pre-trial release and sentences involving jail.

In searching for an adequate conceptual framework with which to make sense of gender differences in court outcomes, the court researcher is faced with two dominant paradigms which cannot account for differences when they emerge. Both the labeling-interactionist and conflict perspectives suggest outcomes for men and women that run contrary to available empirical work. The prevailing concepts of "court paternalism" and its more recently identified opposite, "evil woman" (for more harsh treatment toward women) both suffer from problems of specificity, unchecked assumptions of court rationales and practices, and most troublesome, no socio-structural referent. Indicative of their conceptual insufficiency, many researchers today have taken to putting quotation marks around these concepts, signifying increasing doubt as to their real and implied meanings.

Having identified these conceptual problems, researchers called for new conceptual frameworks to study gender and deviance (Smart, 1976; Leonard, 1982). Others have outlined new ways of understanding the differential response to male and female criminality. Described in more detail in Chapter II, their work focuses on (1) the socio-structural "type-scripts" by which men can exercise institutional hegemony (Harris, 1977); (2) extrapolation of Black's (1976) propositions on the differential application of law (Kruttschnitt, 1981a, 1981b); and (3) the implications of contextual definitions of "power" which may give women an advantage in particular settings (I. Nagel and Hagan, 1982).

In developing the theoretical framework guiding the research here, I extend upon Harris' work and define in more concrete terms I. Nagel and Hagan's insight on the situational aspects of a defendant's "power" in the criminal courts. The perspective advanced here is informed by recent Marxist-feminist theorizing (e.g., Barrett, 1980 and McIntosh, 1978) and its application to criminal justice phenomena (e.g., Smart, 1976 and Balkan et al, 1980). This theoretical work, combined with some suggestive leads in the research literature, focused my attention on defendant's familial relations as a means to understand gender differences in court outcomes. In Chapter III, I outline the elements of the gender relations perspective taken in the research, hypothesizing that family ties and familial responsibilities will affect court outcomes and that impact of a defendant's familial status will vary under certain circumstances for men and women.

The consideration of a defendant's familial status falls squarely into the "individualized" model of justice, where many background characteristics of defendants are "taken into account" in the adjudication process. I propose that this "individualization of defendants" is more broadly embedded in the "familialization of justice," the latter having an impact on court decision-making in two significant ways:

(1) A recognition that family members are affected by court decisions

(2) An expectation that familial controls will help defendants go "straight"

State resources to punish or "rehabilitate" those caught up in the criminal justice system are limited; thus, when it is feasible, the court will fall back on "the family" to do its work. This has consequences both for the treatment of single defendants living with families of origin and of those in families of procreation. In the latter case, court decision-making is doubly constrained by state resources: those for punishing defendants and those providing for family members who are dependent on a defendant. It is in this latter arena where I suggest gender differences in court outcomes emerge. In Chapter IV, I use quantitative analyses of court outcomes in two state criminal courts to examine hypotheses on the differential treatment of those with and without familial responsibilities, and of those men and women with familial responsibilities.

Although gender differences in court outcomes is the primary focus of the research, I also examine differences <u>among</u> men and <u>among</u> women along racial and ethnic lines and by the type of offense charged. These are important areas which many have speculated about, but few have attempted to systematically study. In Chapter V, quantitative analyses of the same data sets are used to examine hypotheses on the impact of offense charged and to explore how racial and ethnic differences shape the treatment of men and women.

As anyone knows who has spent time observing court processes, there is a wide gulf between what takes place in the courtroom and how quantitative research "models" the decision-making process. Apart from the recognized crudity with which quantitative research variables "measure" defendant attributes and case factors, such research leaves us ignorant of how these factors shape the processing of cases. More "sophisticated" analytical procedures have been employed in recent years, but they continue to yield rather superficial statistical patterns (or lack of pattern) devoid of depth and sociological insights on the adjudication process.

For these reasons, I felt it necessary to study a court in depth, observing court practices and interviewing court personnel. This research was made all the more necessary since no qualitative research exists that explores gender discrimination in criminal court decision-making. Chapter VI presents an analysis of the interview material and observations made over a three-month period in a Western Massachusetts courthouse. The chapter extends upon the previous ones by providing greater detail on the considerations court personnel give in handling male and female defendants, and why, in particular situations, women have an "edge" over men.

Although many of my expectations regarding the differential handling of men and women in the court were confirmed by the court observations and interviews with court personnel, the qualitative

material sheds light on the real problems of studying gender discrimination using quantitative analyses. At the same time, I found that court agents' explanations for gender differences in outcomes could not be correctly interpreted without insights gained from the quantitative analysis.

Throughout this research, my theoretical orientation is on developing criteria that are applicable to both men and women. That is to say, I am interested to learn what the content of gender discrimination is, not soley what the treatment of women is. Recent feminist critiques of the exclusion of women from criminological theories, while obviously important in raising this issue, should not get stuck on a "feminist criminology" which focuses on women or tends to exclude men. This would be a re-creation in reverse of the same problems that have typified previous criminological theory. Thus, I hope to re-orient the study of gender and deviance by understanding how male and female criminality and the socio-legal response to it derives from the structural elements of male-female social relations.

Lastly, while this research is specifically focused on gender discrimination in the context of criminal justice decision-making, some of the insights may apply to gender discrimination in other institutional contexts. The criminal justice system affords a peculiarly uncommon example of gender discrimination, one that seems to work to the advantage of women. However, it operates on the same

principles that work to discriminate against women in every other institutional context.

C H A P T E R II

RESEARCH LITERATURE AND THEORETICAL REVIEW

Introduction

Over the years, research on discrimination in the criminal justice system has centered on the treatment of black and white males. Racial discrimination was, and remains, important and politically salient, but its study until recently has eclipsed research on gender discrimination.[1] The lack of empirical work on gender discrimination was profoundly shaped by theoretical inattention to gender in reputedly "general theories" of crime and the socio-legal response to criminality, both of which in turn were fostered by its political unimportance. The reasoning was: Why study male-female differences at any point in the criminal justice system when there are so few women?

When male-female differences were studied, the object was the identification of separate and distinctive patterns of female criminality, stemming from particular physiological and sexual "maladjustment" problems of females (Lombroso, 1903; Thomas, 1907 and 1923; Pollak, 1950; Glueck and Glueck, 1934; Konopka, 1966; Vedder and Sommervile, 1970; and Cowie, Cowie, and Slater, 1968). Female

criminality was distinguished from the "general" patterns of male criminality which was explained by socio-economic and/or race differences. One important exception to this pattern was the work of the Dutch sociologist, William Bonger (1916). His Marxist-informed analysis of female criminality centered on economic conditions and male-female social relations in the family.

With respect to criminal court practices, there has been even less empirical work, combined with a greater degree of conceptual ad-hocism. Until 1970, only four studies of court outcomes were produced that contained enough women to make male-female comparisons (Martin, 1934; Green, 1961; Baab and Ferguson, 1967; Nagel, 1969). More frequent were male-female cross-tabulations of conviction rates or sentencing outcomes.

Although little was known on female offenders in general, the bulk of the work centered on female criminality and populations of females in reformatories and prisons (e.g., Kneeland, 1917; Lekkerkerker, 1931; Giallombardo, 1966; and Ward and Kassebaum, 1965). If not much was known of the differential treatment of men and women before the courts, this was more than compensated for by a good deal of intuition and "firm conviction" on the topic.

The early to mid-1970s marked a turning point for the following reasons:

(1) Gender and gender discrimination became politically salient;

(2) Multivariate analytical procedures, together with computer-based data analysis, facilitated improved quantitative applications to criminal justice data; and

(3) Extant criminological theorizing was subject to critique for its inattention to gender and the "sexist" assumptions embodied in the two streams of criminological theorizing, the "general" (for men) and the "special order" (for women).[2]

Salience of gender. In the early 1970s, criminological research, mirroring similar developments in other social science disciplines, capitalized on the "woman question."[3] Apparent large increases in female arrest rates were addressed and debated; the problems of women in prisons were exposed; and statutory differences in detention and sentencing for juveniles and adults were described. Research on the treatment of women as offenders was joined with the experiences and treatment of women as victims of sexual and domestic violence.[4] A review and critique of past criminological theory and research was cogently developed by Klein (1973) and elaborated in greater detail by Smart (1976) and subsequently by others.[5]

In the area of gender discrimination in criminal court practices, however, the politicization of the "woman question" had largely translated to the inclusion of a "sex variable" in quantitative analyses. This is a necessary first step in filling the large

empirical gaps, but it has become increasingly apparent that it is not sufficient to understand the sources of gender discrimination. Only in the last three years has gender discrimination in criminal court practices itself been addressed, but it has faced severe conceptual handicaps, inherited from previous work.

Juvenile-adult differences. One factor which has made the study of gender discrimination in the courts more complicated is that two sets of literature--one of juvenile, the other of criminal court practices--have taken divergent paths due to legal and procedural differences in handling adults and juveniles before the law and researcher specialities in each area. Although the following research literature review centers on adults before the criminal courts, I shall briefly consider apparent juvenile-adult differences in the handling of males and females. These superficial differences affirm the need for a theoretical re-orientation from the symptoms to the sources of gender discrimination.

Analytical tendencies and conceptual ad-hocism. Until the 1970s empirical work on gender differences in criminal court outcomes typically focused on bivariate relationships. Analyses typically did not take prior record and/or severity of the charge into account, two critical variables that were already known to affect court outcomes

from research on male defendants. Instead, male-female cross-tabulations of conviction rates or types of sentences received were presented, with perhaps one control for type of offense. Early examples of this orientation include Bonger (1916), Scheinfeld (1944), and Pollak (1950). Although Green (1961) had shown that one needed to introduce controls for prior record to make more sound interpretations of gender differences in court outcomes, his injunctions went unheeded. In 1975, Pope's urban-rural court comparisons of male-female sentencing re-affirmed the importance of introducing such controls. Despite the need to statistically control at a minimum for prior record, researchers continue to present male-female cross-tabulations to this day (Simon, 1975; Adler (ed.), 1981; and Simon and Benson, 1980). Indeed, the most frequently cited research in this area (S. Nagel and Weitzman, 1971) also suffers from the lack of controlling for prior record.

Based on these very shaky empirical foundations, the claim emerged that women were treated more leniently than men, and that this leniency was due to "chivalrous attitudes" and/or "paternalism" of male court agents. If the analytical procedures to explore gender discrimination were unsatisfactory, and the resultant "sex effects" favoring women possibly misleading, the explanations for these differences, "chivalry" or "paternalism," were also suspect.

Two observations can be made of the discussions of male-female differences in court outcomes:

(1) Until very recently, no one was outraged or even surprised. This was a "taken-for-granted" form of discrimination, which few questioned--a reaction quite different than that toward racial or economic discrimination.

(2) No one apparently bothered to research the rationales of court agents in their decision-making, nor to observe court room proceedings in order to substantiate their claims.

Rather, ideas of "chivalry" and "paternalism" seemed quite reasonable and commonsensical, as was the "general belief" that women were treated more leniently than men (see, more generally, Smart, 1977, for the "commonsensical" in criminological research on women). Until the mid-1970s both went unchallenged.

In addressing the question of <u>whether</u> there are gender differences in court outcomes and <u>why</u> these may arise, I turn first to a review of the research literature, including only those studies which at a minimum have controlled for prior record. My aim is to evaluate: (1) whether there are differences in court outcomes for male and female defendants, (2) the degree to which such differences emerge, and (3) at which particular court decision points differences arise.

Then, the reasons given for the differential treatment of men and women are discussed and assessed. Here, I will focus on concepts of "male chivalry" and "court paternalism," and their more recently

identified opposite, "evil women." I shall show how the concepts of "chivalry" and "paternalism," born of assertion with tenuous empirical support, continue to dominate the field, notwithstanding the few attempts to (a) critique their assumptions, (b) distinguish their meanings, or (c) demonstrate their mythical qualities with the use of quotation marks. In the last decade, "evil woman" has been introduced to explain the more severe treatment of women. If "chivalry-paternalism" has problems, the pitting of it against "evil woman" as opposing explanations for the differential treatment of men and women creates additional conceptual murkiness and confusion. Drawing upon some suggestive leads in the research literature, I conclude with the elements of a differing conceptual framework, one that is detailed in Chapter III, which situates gender differences in court outcomes within the contemporary gender division of labor.

Survey of research literature

The following literature review will begin with a consideration of studies that include a "sex variable," and will then turn to the few pieces that focus on male-female differences. This selective review includes research that at a minimum contains statistical controls for prior record. Note that thus far no qualitative studies of the differential treatment of male and female defendants have been done, with the exception of some dealing with prostitution.

"Sex variable" research. Analysis of pre-sentencing outcomes is featured in the following studies: Bernstein et al (1977b), Myers (1977), Pope (1976), Swigert and Farrell (1977), Farrell and Swigert (1978), Goldkamp (1979), I. Nagel (1981), and I. Nagel et al (1982).

Pre-sentencing outcomes. In analyzing the charge reduction process in a New York City court in 1974-75, Bernstein et al (1977b) found that holding other factors constant, there were no gender differences in the magnitude of the charge reduction. However, holding constant the severity of the most severe arraignment charge, the mean seriousness of the charge of conviction was higher for women than men.[7]

In her analysis of over 1,000 felony cases prosecuted in Indiana courts between 1974-76, Myers (1977) showed that defendant's sex had no bearing on decisions to dismiss charges, but there were differences, favoring women, in the conviction and sentencing decisions. Myers' results with respect to dismissal are in partial contrast to those of Pope's (1976) study of about 1,200 defendants prosecuted for burglary in California during 1972-73. Pope found that overall women were more likely to be dismissed, but that this varied depending on the nature of the defendant's prior record. When both men and women had no prior record, women were more likely to be dismissed, but these differences were not found between men and women with a record of prior arrests.

Swigert and Farrell (1977) and Farrell and Swigert (1978), analyzing a random sample of persons charged with murder during 1955-73 in an urban New York State court, found that women were less likely to be pre-trial detained and less likely to be convicted on more serious charges than men.[8] Goldkamp's (1979) analysis of over 8,000 defendants prosecuted in Philadelphia in 1975 revealed no gender differences in the likelihood of being released on recognizance (ROR'd) nor of the amount of bail set for those released on conditions.

However, I. Nagel's (1981) study of the pre-trial release decision in a New York City court in 1974-75 showed that women were significantly more likely to be ROR'd than to have bail set. Like Goldkamp, she found no gender differences in the amount of bail requested.

In a preliminary analysis of the pre-trial release decision for Federal court defendants, I. Nagel et al (1982) observed the same pattern as I. Nagel's (1981) for state court defendants: Women were significantly more likely to receive the less restrictive bonds or provide cash deposits, there were no differences between men and women in dollar amounts requested.

Overall, these studies reveal inconsistency with respect to gender differences in the likelihood of dismissed and in the likelihood of severity of charge conviction. However, more consistency is evident for the pre-trial release decision, for which women have a greater chance of being released on recognizance than men.

Sentencing outcomes. The following review of research on sentencing outcomes also shows more consistency, with differences apparently favoring women. "Sex variable" research focused on sentencing, includes Hagan's (1974) review, Baab and Ferguson (1967), Pope (1975), Hermann et al (1977), Sutton (1978), Hagan et al (1979a), Hewitt (1977), and Hagan et al (1980).

In Hagan's (1974) review of the role of "extra-legal" attributes on sentencing, five of the 20 studies controlled for "sex," but there were only three containing enough women to make comparisons. Of these, only one (Green, 1961) fits my criteria for relevant controls in the analysis. In that work, Green found no gender differences in sentencing outcomes for his sample of 1,437 defendants convicted in a Philadelphia court during 1956-57. Hagan tentatively concluded from the few studies then available that sex of defendant played a neglible role in sentencing. Other work, however, does not bear this out.

Baab and Ferguson (1967) analyzed 1,720 felony cases adjudicated in 27 Texas courts during 1965-66. Using a 12-point sentence severity scale and controlling for "all other known factors,"[9] they found that women were significantly more likely to receive more lenient sentences.

Using sentencing data from lower and superior courts for 12 California counties during 1971, Pope (1975) found that women in the lower courts were less likely to receive jail terms than men, but in superior courts there were no differences in proportions of men and

women receiving incarceration sentences. His research therefore points to the possibility of jurisdictional variation in gender discrimination. As I shall discuss in a subsequent section, other work suggests regional and temporal variation.

Hermann et al's (1977) analysis of felony cases prosecuted during 1971 and 1973 in Los Angeles, and of felony and misdemeanor cases in Washington, D.C., revealed that women fared slightly better than men with respect to conviction and sentencing decisions, but the most importanct factors in court outcomes were prior criminal record and pre-trial release status. Controlling for a range of "legal factors," Hermann et al concluded that in Los Angeles, "sex" had no unique effect on probability of conviction but a small effect on the probability of a prison term (women were 6% less likely to receive prison terms). In New York City, women were 6% less likely to be convicted and 3% less likely to receive prison sentences. In Washington, D.C., women were 7% less likely to be convicted, but only 1% less likely to be jailed or imprisoned.[10]

Sutton's (1978) analysis of sentencing patterns in 88 Federal courts during 1971 showed that for all of the offense types (robbery, marijuana violations, embezzlement, and narcotics) for which he examined type of sentence (prison or not), women were significantly less likely than men to receive prison terms.

Hagan et al's (1980) study of sentence severity for over 6,500 defendants convicted in 10 Federal courts revealed that men were significantly more likely to receive more severe sentences than women, using for the dependent variable an 18-point sentencing scale.

Hagan et al (1979) examined sentencing outcomes in the King County (Seattle) Superior Court for a sample of persons convicted of felonies in 1973. Using two codings of sentence outcome, they showed that women were significantly more likely to receive a "deferred" sentence (the most lenient type of sentence), but there were no significant sex differences in the likelihood of receiving a prison sentence. In their analysis, a variable termed "family integration" was also included. Defendants who were "family integrated" (i.e., had child dependents, were married and living with a spouse, or had ties with a family of origin), were significantly less likely to receive prison sentences.

Hewitt's (1977) analysis of the same King County Superior Court data set, using path analysis techniques, revealed that of 8 individual resource variables," only 2 ("sex" and "family integration") had significant direct effects on sentencing: Women and/or those "family integrated" were significantly more likely to receive deferred sentences, and less likely to receive jail time. Race, education, and work history had significant total effects, but were mediated through case variables of offense type, prior record, and use of weapon, among others.[11]

Hewitt (1977) and Hagan et al (1979), together with Bernstein et al's (1979) research (described below), clearly indicate the salience of family ties in the adjudication process. Their results provided the impetus in my research to examine more closely the impact of defendants' familial ties and its consequences for the differential handling of male and female defendants.

Research centered on male-female differences. A problem with "sex variable" research is that while "sex" is introduced as an independent variable, the analyses are not sensitive to the distributional differences between men and women on dependent variable(s) or on other independent variables. One needs to incorporate these distributional differences in analyses that focus on gender differences (in particular, type of offense charged and sentencing outcomes) to make meaningful comparisons. In so doing, one finds that there are constraints that need to be imposed (see Note 11). Even those studies that do focus on male-female differences suffer from this problem. Because the research literature centered on male-female differences is small, I order it by its cumulative contribution to knowledge of gender differences. I review research by Zatz (1979), Hagan and O'Donnel (1978), Simon and Sharma (1979), Moulds (1980) Kruttschnitt (1981a), and Bernstein et al (1979). Note that Kruttschnitt (1981b) analyzed sentencing outcomes for women only, and Bernstein et al (1979)

compared the determinants for men and women on pre-sentencing and sentencing outcomes.

Zatz (1979) explored the pre-trial release decision for defendants before 10 urban Federal courts during 1974-77. She found that women more often received more favorable pre-trial release decisions than men.

Hagan and O'Donnel (1978) rejected received "sociological wisdom" that women are treated more leniently than men, using a log-linear analysis of over 640 defendants prosecuted in a western Canadian court during 1973. For their model explaining the probation officer's evaluation of defendants' prospects for success if given probation, "sex" did not statistically improve the log-odds model. Similarly, in determining the model that "best fit" the sentencing dispositions of probation or incarceration, the addition of "sex" did not make a statistically significant contribution. One is troubled, however, with the limitations of the sentencing analysis, given the very small number of women receiving jail terms (see Note 11). Further, one questions this analytical procedure (developed by Goodman, 1972) as a means of probing gender differences in court outcomes. After all, the point is not necessarily to identify a parsimonious set of variables that "fit the data," but to determine whether there is a unique effect of "sex" holding other factors constant.

Simon and Sharma (1979) also utilized the Goodman model fitting procedure in analyzing court outcomes for individuals arrested on felonies and misdemeanors during 1974-75 in Washington, D.C. Five decision points were examined: the screening decision to prosecute or not, whether the case was dismissed by the judge, whether the defendant pled guilty, the determination of guilt or innocence for cases that went to trial, and whether the sentence received was probation and fines or prison. They found that women's cases were more likely screened out by prosecutors, except those charged with prostitution; but women accused of "violent" crimes were somewhat less likely to be dismissed by judges. For the three remaining court outcomes, "sex" provided no significant addition to their predictive models.

Moulds (1980) performed a cross-tabular analysis of California court statistics during 1970-74, controlling only for three levels of prior record in comparing sentencing outcomes. She found that although increasing sentence severity was associated with increasing levels of prior record for men and women, that within each of the three prior record categories, men more often received prison sentences; and women, probation.

Kruttschnitt (1981a) analyzed a sample of male and female defendants convicted of theft, forgery, or drug law violations in Hennipin County (Minneapolis), Minnesota, during 1972-76. Using an 8-point

sentence severity scale, she reported that men convicted of theft offenses were sentenced more severely than women, but there were no differences in sentencing outcomes for those convicted of forgery and drug law violations. In the same year, Kruttschnitt (1981b) derived hypotheses from propositions outlined by Black (1976) to determine whether "it is sex per se or the social locations attendant to a particular sexual status that affect gender-related sentencing patterns" (1981b: 248).[13] Using a sample of female defendants convicted of disturbing the peace, assault, petty theft, forgery, and drug law violations between 1972-76 in a middle-sized county in northern California, she analyzed how a women's economic rank (monthly income), employment status (employed or on welfare, temporarily unemployed, retired, student, or housewife), age, prior criminal record (time spent on probation), and race affected sentence severity. Although there were differences among the five offense categories, the general pattern was that women temporarily unemployed or receiving welfare received more severe sentences, as did those who had previously been on probation. As well, black women convicted of disturbing the peace or drug law violations were sentenced more severely than white women; while non-black minority women (Asian- and Mexican-Americans) tended to receive more lenient sentences than white women for two of the five offenses categories where this comparison was possible (petty theft and drugs). Although this research suggests

that there are racial and ethnic differences in the treatment of women before the court, one is troubled by the limitations of the analysis due to coding and distributions on the dependent variable.[14]

Ilene (Nagel) Bernstein et al's (1979) research is the best to date in examining gender differences in court outcomes and the pattern of factors that differentially bear on court outcomes for men and women. Using data on an initial number of approximately 3,000 defendants arraigned before a New York City court during 1974-75, they examined three different court outcomes: whether the case was fully prosecuted or ended in a dismissal, the severity of the sentence, and whether the defendant spent "any time imprisoned." For the first decision point, they found no differences between men and women for the dismissal decision. For the two other court outcomes, they found that men were significantly more likely to (1) receive the more severe sentence of probation and jail and (2) spend "any time imprisoned," either pending trial or a sentencing involving jail. Their analyses included case severity, prior record, race, age, employment, marital status, and presence of children and/or other adult in the household.

In exploring the determinants of the latter two court outcomes for men and women separately, they found few differences in the factors associated with sentence type; however, they did find different factors associated with "spending any time imprisoned." Charge severity had a strong effect for male, but not female

defendants; the advantage of being married was stronger for women than men; the effect of prior record was stronger for men than women; and women charged with personal crimes fared less well than those charged with property crimes, while no such difference was apparent for men.

Discussion. To summarize the bulk of the research literature--that on sentencing outcomes--one finds substantial to neglible gender differences in sentencing severity; the general pattern, however, is one of less severe sentences and a somewhat lower probability of incarceration for women.

For prior court decision points, there are fewer studies from which to extract definite patterns. Bernstein et al (1979) and Myers (1977) find no differences in the likelihood of dismissal, while Simon and Sharma (1979) and Pope (1976) do find differences, depending on the type of crime charged and prior record of defendants. From Simon and Sharma (1979), Hermann et al (1977), and Myers (1977), the results are also mixed with respect to differences in likelihood of conviction. For the pre-trial release decision, however four of five studies suggest a pattern of more lenient treatment of women, insofar as they are more likely to be ROR'd. However, if bail is set, the three available studies show no gender differences in the cash or surety bond amounts requested.

The conclusion I draw from the research literature is of no clear or consistent patterns in the dismissal and conviction decisions. However, more clear patterns do emerge when defendant's loss of liberty is at stake: there is a higher likelihood that men will be pre-trial detained, receive more severe sentences, and receive jail/prison sentences.[15]

Variability of gender discrimination. Recent reviews of research on racial discrimination suggest that there is temporal, urban-rural, and regional variation in court outcomes (e.g., Thomson and Zingraff, 1981; Kleck, 1981). With respect to gender discrimination over time, some have speculated that it has attenuated (Tepperman, 1977: 214; Steffensmeier et al, undated; Rasche and Foley, 1976). Regional and jurisdictional size differences have been noted by Hagan and Nagel (1982). Their preliminary analysis of ten Federal courts' pre-trial release decisions show a greater advantage for women in small jurisdictions in southern states. There are too few studies on pre-sentencing processes for men and women to speculate on the consequences of sample selection bias for sentencing outcomes, although this has featured in recent debates over the extent of racial and economic-based discrimination (Berk et al, 1981; Klepper et al, 1981; Garber et al, 1981). In short, the questions of variability and of analytical pitfalls raised in reviews of racial discrimination need to be addressed in research on gender differences.

Research on juvenile offenders. Terry (1967), Chesney-Lind (1977, 1978), and Datesman and Scarpitti (1980) have shown that adolescent females are more likely to be referred to juvenile court, detained, and sanctioned for non-criminal status offenses (e.g., runaways, truancy, incorrigible) than adolescent males. Given the less serious and non-criminal nature of status offenses, their interpretation is of a generally more punitive treatment of adolescent females. Chesney-Lind has characterized this as the "sexualization of the female offender," with male-female differences indicative of the greater degree of parental concern and court responsiveness to females who disobey parental authority and who violate sexual norms. (Estimates are that one-half of females, compared to one-fifth of males are referred to juvenile court for status offenses, and this difference widens for those institutionalized on status offenses.) Thus, juvenile justice researchers question the benign assumptions embodied in the "paternalism" thesis by showing that more "protective" treatment of female status offenders translates to more punitive outcomes.

Little study has been carried out on gender differences for juveniles accused of criminal offenses, however. Datesman and Scarpitti's (1980) is one exception; and it suggests that the treatment of juvenile females charged with criminal offenses is similar to that of adult females. Examining first offenders only, they show that juvenile females accused of felonies and to a lesser

extent, misdemeanors, are more likely to be dismissed or to receive warnings than males. For those charged with status offenses, males receive comparatively more lenient sentences. They provide the following interpretation for the more lenient and more harsh treatment of females charged with criminal and status offenses, respectively:

> Chivalrous judges ... view (females) as weaker, less responsible, less dangerous, and more likely to be harmed by a harsh disposition (Ibid.: 308).
>
> (However) since greater moral censure attaches to females involved in sex-related offenses, judges may feel that greater legal censure is warranted as well (Ibid.: 315).

As noted earlier, claims of "chivalrous" treatment of adult females charged with criminal offenses have long featured in the research literature. What is important about Datesman and Scarpitti's work is that juvenile court treatment of females is offense or behaviorally related. Their research significantly departs from the more common approach of focusing on the treatment of status offenders only. One consequence of the analytical separation of status and criminal offense is that research literature reviews invariably conclude that there is "support" for the idea of "judicial chivalry" in the treatment of adult, but not juvenile offenders. In developing the theoretical framework which will be applied in the analysis of adult outcomes presented here (Chapter III), I shall attempt to place these apparent juvenile-adult "differences" in more adequate theoretical terms.

Conceptual issues in studying gender discrimination

As others have argued in more detail, gender cannot be easily "grafted" onto existing theoretical frameworks for understanding the differential involvement in crime or socio-legal response to criminality (e.g., Smart, 1976; Harris, 1977; Leonard, 1982). The two major sociological paradigms employed in studies of discrimination in judicial decision-making--the "conflict" and "labeling-interactionist" perspectives--both assume a more harsh response to defendants who are economically marginalized and powerless.[16] If as the research literature suggests, women are treated more leniently than men at particular court points, and if, in socio-structural terms, the position of women is socially and economically inferior to that of men, then the expectations of both conflict and interactionist perspectives do not square with the research literature. Extending upon the interactionist perspective, one could argue that female defendants exhibit more acceptable behavior in the court, e.g., they are more contrite or have a "better" demeanor and appearance. However, if this were the case, one would expect more lenient treatment of women across an array of court decision-making contexts, something which the research literature does not show.

Rather than coming to grips with these theoretical problems, researchers continue to interpret the more lenient treatment of women as stemming from "court paternalism" or "chivalrous attitudes" of

predominantly male court agents toward women. These concepts alert us to the attitudinal symptoms of sexual stereotyping, but they have not been related to the socio-structural sources of these attitudes, or the circumstances under which the court's response to women might vary. For example, Klein (1973) has critiqued the use of "chivalry" of "paternalism" on the grounds that they are racist and classist, with the assumptions of judicial "chivalry" extending to all women regardless of class or color. I take issue with these concepts on two additionally fundamental grounds: (1) they do not address the socio-structural sources of why women (or more precisely certain women) might be the object of judicial leniency in particular court decision-making contexts and (2) they are intellectually sexist, i.e., the categories used are gender one-sided. For example, they do not consider the circumstances that give rise to preferential treatment of men.

Although "chivalry" or "court paternalism" are the dominant concepts employed in interpreting gender differences in court outcomes, researchers have not been consistent with respect to what these concepts mean. I will first review the variety of meanings found in the literature over time, for this alerts us to the power of a concept that is not precise and subject to a wide latitude of interpretation. My review is especially compelling because researchers have overlooked the conceptual distinctions and interpretations made over time. This omission is all the more ironic because debates over the efficacy of "paternalism" and "chivalry" currently center on

their meanings without an historical examination of their changing content.

The development of the more recent "evil woman" concept is then described, wherein one finds three disparate modes of argumentation. Interpretive problems of pitting the "chivalry/paternalism" factor against the "evil woman" response as opposing explanations for gender differences in court outcomes are noted. Finally, three recent attempts to move beyond "chivalry/paternalism" and "evil woman" are described, for they lay a promising foundation for the theoretical framework outlined in Chapter III.

More lenient response to women: "Chivalry" and "court paternalism". One of the earliest American observers of the differential treatment of men and women before the law was W. I. Thomas. In Sex and Society (1907), Thomas suggested:

> Morality as applied to men has a larger element of the contractual, representing the adjustment of his activities to those of society at large, or more particularly to the activities of the male members of society; while the morality which we think of in connection with women shows less of the contractual and more of the personal, representing her adjustment to men, more particularly the adjustment of her person to men (p. 172). ...
> It is on this account that man is merciless to women from the standpoint of personal behavior, yet he exempts her from anything in the way of contractual morality, or views her defections in this regard with allowance and even with amusement (p. 234).

Thomas' remarks were perceptive insofar as he located the social control of women in the "personal" or "private" sphere by their

association with family and economic dependence on men because their more marginal position in the sphere of productive and economic relations placed them "outside" contractual law. Most researchers interpret Thomas' ideas as the starting point for the idea that women's involvement in crime is more often "excused" or becomes the object of chivalrous treatment.

Note, however, that Thomas makes a distinction in the response to female "deviations," those of women's "adjustment" to men (the "personal") and those of women's "defections" from societal contractual morality. This distinction is important, for it suggests that leniency toward women would be extended for certain but not all forms of deviant behavior. If, as Thomas contended, female criminality was fundamentally derived from "sexual maladjustment" problems, i.e., those of women's "adjustment" to men (leading to "promiscuity" and prostitution, for example), then a significant portion of female crime should not, extrapolating from his view, be "regarded with allowance or amusement."

In Martin's (1934) introduction to male-female differences in criminal court outcomes, he noted that there were firm and "widespread convictions" on the handling of women before the court, even if these were largely unsubstantiated. He argued from an analysis of sentencing outcomes that his findings "dispel (led) the tradition of judicial chivalry,"[17] but he speculated that the lack of sex differences in sentencing could well be owed to differences in

pre-sentencing treatment (Ibid.: 69). Although one infers from his work that the idea of "chivalry" was in the air, Martin makes no reference to the source of the "widespread convictions." Rather he cites two of the "more generally accepted" beliefs that "you can't convict a woman," and upon conviction, the penalty imposed will not be as severe as that for a male defendant charged with a similar offense (Ibid.: 58).

Pollak (1950) re-introduced the idea of "chivalry" in describing the more lenient treatment of women from arrest through court adjudication. On one hand, Pollak's thesis of the "masked nature" of female criminality was a break from past ideas because he claimed that women committed the same amount of crime as men and with the same degree of criminal intent, but that it was "hidden," outside the purview of law enforcement, going both unnoticed and unpunished. Pollak differed from Martin (1934) in stating that there was more lenient treatment of women, and he departed from Thomas in his assertation that all women were accorded leniency:

> Men hate to accuse women and thus indirectly to send them to their punishment, police officers dislike to arrest them, district attorneys to prosecute them, judges and juries to find them guilty, and so on (Ibid.: 151).

Offering little empirical support for these claims, he relied instead on "frequently stated impressions" or upon bi-variate cross-tabulations of conviction rates and sentencing outcomes.[18] Pollak believed that female offenders were treated with a "misplaced

gallantry," and he owed "traditional chivalry in the courtroom" to "cultural attitudes toward women" (Ibid.: 4) and "existing inequality between the sexes" (Ibid.: 151). Although the contemporary literature rightly critiques Pollak's interest in the physiological basis for female criminality, it should be noted that he viewed (1) female crime as a protest against the sexual double-standard and (2) "chivalry" as reflective of the socially inferior position of women. Both of these themes are later found in the self-defined "revisionist" literature on female criminality (Cloward and Piven, 1979; Moulds, 1980; respectively).

A year later, Barnes and Teeter's (1951) second edition of the criminological text New Horizons in Criminology appeared. Like Martin (1934), but unlike Pollak (1950), they noted that "we have no factual basis" for the claim that "women are excused by judges and juries more often than men" (Ibid.: 591). Whatever doubt Martin, Barnes and Teeters, and subsequently Green (1961) may have cast on the claims of more lenient treatment of women, the idea of "male chivalry" had taken hold, dominating the research and reviews on gender differences in court practices.

Reckless and Kay's (1967) Report to the President's Commission on Law Enforcement and the Administration of Justice was heavily influenced by Pollak's ideas on the "nature" of female criminality and the "chivalrous" response to female crime:

> A large part of the infrequent officially acted upon involvement of women in crime can be traced to the masking effect of women's roles, effective practice on the part of women of deceit and indirection, their instigation of men to commit their crimes (the Lady MacBeth factor), and the unwillingness on the part of the public and law enforcement officials to hold women accountable for their deeds (the chivalry factor) (Ibid.: 13).

Similarly, Reckless (1967) reported without citation that the more lenient treatment of women was evident from citizen reporting to sentencing:

> Citizens are willing to report the behavior of males more readily than that of females. The police are supposed to be much more lenient in their arrests of females. Judicial processes in America are supposed to be very much more lenient with women than men. Consequently, female offenders have a much better chance than do male offenders of not being reported, of not being arrested, and of dropping out of the judicial process, that is, of remaining uncommitted (Ibid.: 99). (emphasis added)

Although there is a degree of uncertainty implied in Reckless' assertions prefaced with "supposed to be," this is clearly lost in a subsequent summation of the treatment of men and women before the court, again without a shred of empirical evidence cited:

> There is a very definite chivalry factor which operates to divert the women offender from police and court action (Ibid.: 156).

Baab and Ferguson (1967) concluded from their statistical analysis of sentencing in Texas that the significance of the "sex variable," favoring women "appears to prove that something of a chivalrous attitude toward women still exists." They added that sentencing may also be affected by

> ... The popular belief that women, having less control of their emotions than men, are given to crimes of passion but are seldom possessed of pervasive criminal tendencies that more often characterize male criminals (Ibid.: 496-97).

Thus, one sees here that more lenient treatment of women is related not only to ill-defined "chivalrous attitudes," but also to the particular features of the crimes which men and women commit. To Baab and Ferguson's (1967: 497) credit, however, some skepticism features in reviewing the merits of "the 'popular' theory" that women, having less control of their emotions, are more often given to crimes of passion than possessed of "pervasive criminal tendencies" in comparison to men.

Stuart Nagel (1969) interpreted differences, favoring women, at the bail, conviction, and sentencing decisions from the American Bar Foundation's national sample of state court defendants as follows:

> They seem to be attributable to American chivalry to women, stemming from medieval traditions and possibly biological functions (Ibid.: 92).

The character and consequences of "biological functions" and its relationship to "chivalry" is not spelled out by Nagel, and one can only wonder what was implied here.

In later summarizing the major findings from his research on defendant attributes in the adjudication process, Nagel (1969: 102) introduced the concept of "paternalism" in categorizing the treatment of three groups of defendants: (1) the disadvantaged (indigents, blacks, lesser educated); (2) the paternalized (those under 21 years

and females); and the industrialized (defendants prosecuted in northern and urban areas). He conceptualized "being paternalized" as "being treated by various social institutions in a somewhat fatherly way" (Ibid.: 103). As far as I can determine, this is the first time "paternalism" enters the court research literature; and in S. Nagel (1969) and S. Nagel and Weitzman (1971), it is the first and last instance where "paternalism" is described as applicable to females and juveniles.

If Nagel makes a conceptual distinction between "chivalry" and "paternalism," he never clarifies whether one or the other (or both) are operative in court practices. The identical distinction and the same problem of clarification features later in Moulds (1980), discussed below.

Nagel's (1969) work represents a transition from the concept of the "chivalry factor" to that of "court paternalism." In 1971, he and Weitzman wanted to "test" whether women were discriminated against on the basis of a "disadvantaged" or "paternalistic" pattern. "Paternalistic treatment" was defined as "favoritism for the weak" (i.e., females and juveniles) to impose negative sanctions (e.g., detention or jail sentences) and disfavoritism in the informality of judicial processing (e.g., not having a lawyer or a jury trial). Note that their specification of leniency embodied in "paternalism" departs from "chivalry" insofar as it implied positive and negative consequences and was applicable not only to females but also to younger

males. "Chivalry" was never mentioned in their discussion; rather, they concluded that the treatment of women fit the "paternalistic" mold.[19]

The two-edged implications of S. Nagel and Weitzman's "paternalism," as well as its potential applicability to juveniles, is very different from Rita Simon's (1975) definition of "paternalism," one that is the most frequently cited in current research. She combines ideas of chivalry, attributions of female behavior, and "practicality" of sending women with young children to jail in describing the "view held by most observers that women receive preferential treatment:"

> The factors that are thought to motivate judges toward leniency to women are chivalry, naivete (for example, judges often say that they cannot help but compare women defendants with other women they know well--namely, their mothers, and wives, whom they cannot imagine behaving in the manner attributed to the defendant), and practicality. Most of the women defendants have young children, and sending them to prison places too much of a burden on the rest of society (Ibid.: 49; also in Simon and Adler, eds., 1979: 254). (emphasis added)

If, as Simon states, these are the factors "thought to motivate judges toward leniency to women," one would have hoped for a reference to where these "thoughts" came from, in particular, attributions of criminality and the presence of children.[20] Moreover, if "paternalism" is defined in Simon's terms, a more complex set of criteria is at play in the handling of men and women before the court than "chivalrous attitudes" and "protection of the weak."

For all of those offering explanations on the differential treatment of men and women before the court, one finds no consistent conceptual referent and, as a consequence, a lack of conceptual development or refinement. Largely derived from "widespread conviction," "frequently stated impressions," "thoughts," and "popular beliefs," one finds a grab bag of interpretations offered over time. These include ideas of protecting the "weak," "male courtesy," or "chivalrous attitudes;" suppositions that women "need" greater protection or that judges attribute a different character to female criminality; and "practical" problems of jailing women with children. Disagreement exists over whether leniency extended to women is crime-dependent, and more fundamentally whether leniency is consistently evidenced in court outcomes for women. Although these interpretations for the more lenient treatment of women may have some merit, none has been explored empirically. As such, they should more appropriately be viewed as hypotheses, rather than substantiated conclusions. Further, more empirical study is required of court decision-making rationales and contexts surrounding the differential handling of male and female defendants.

I conclude this section of "chivalry-paternalism" with the most recent feminist critiques of these concepts, which expose the character of women's inferior socio-legal position in which more lenient and more harsh treatment can arise. This critique, which also features in the juvenile justice literature (e.g., Chesney-Lind, 1977), is illustrated

by Mould's (1980) conceptual distinction between "paternalism" and chivalry."

Moulds examines the historical meaning of "chivalry," the medieval institution of "service rendered by the crusading orders to the feudal lords, to the divine sovereign, and to womankind." Its modern manifestations center on appropriate "manners" for "ladies" and "gentlemen," primarily the "superficial elements in male-female relationships, the social amenities" (Ibid.: 279-80). "Paternalism," Moulds suggests, is a more complex concept than chivalry, and "its practice is far more destructive" since actions or attitudes stemming from "paternalism" hold women in a subordinate position viz their relationship to men. However, after reviewing some research and presenting an analysis of California court statistics,[21] Moulds simply asserts that the "paternalism factor" is the preferable explanation:

> ...The term "chivalry factor," or perhaps more accurately, "paternalism factor" is an appropriate one to describe the use of discretion by officials of the criminal justice system (Ibid.: 293).

Thus, Moulds argues that the more lenient treatment of women stems from "power relations of male domination," a theoretical-political interpretation taken by others to simultaneously show that (1) "paternalism" reflects institutional sexism and (2) the consequences of "paternalism" are not necessarily more gentle. This critique of "paternalism" grounded in a strong skepticism as to its consequences, not only for the judicial handling of women, but also for the socio-legal position of women more generally, is currently the

most prevalent in the feminist criminological literature. It is an important one for placing the possibility and consequences of "court paternalism" in socio-structural terms, and it will be the starting point for the gender relations framework developed in the following chapter.

Mere harsh response to women: indeterminate sentencing, status offenders, and "evil woman." Claims that women are treated more leniently before the court have been more recently countered with claims that women are treated more harshly than men. There are three ways in which researchers have argued that a more harsh response to women occurs:

(1) The "rehabilitation" model applied to female offenders, evident in indeterminate sentences for women but not for men, can mean longer incarceration sentences for women.

(2) "Paternalistic" treatment of female adolescents charged with status offenses can in fact translate to more harsh treatment because status offenders are detained or institutionalized longer "for their own protection" than males.

(3) Women involved in crime will have the "book thrown at them," and be treated as evil woman" (a) because they have violated normative sex-role expectations; or (b) when they are prosecuted on "more serious," "manly," or "male-typed" offenses.

As mentioned above with respect to (2), juvenile justice researchers have documented the greater likelihood of pre-trial detention and institutionalization of females charged with status

offenses, a form of "protective" treatment not found in research on female adults. For adults, researchers have turned to an examination of sex-based differences in sentencing statutes (Temin, 1973; Frankel, 1973; Clements, 1972). More specifically, Temin's review of the development of indeterminate or indefinite sentencing for women and its potential consequences for longer jail/prison terms is repeatedly cited by many as evidence that women generally receive longer incarceration sentences than men.[22]

Feminist overviews of the treatment of women in the courts are replete with statements such as: "(Women) will probably serve a longer time in prison for the same crime" (Anderson, 1977: 354); "women tend to receive heavier sentences (especially for) armed robbery and felony murder" (Jones, 1980: 9); and "female offenders often serve longer sentences than male offenders convicted on the same criminal conduct" (Armstrong, 1977: 109). Temin (1973), Frankel (1973), Singer (1973), and Clements (1972) are the common citations for these statements, although none empirically shows that women in fact receive longer incarceration sentences than men. Rather, each illustrates selected instances of sex-based disparities in sentencing statutes and selected appeals on particular cases. Although these legal reviews are important for documenting the egregious examples of sex-based disparities in sentencing upheld in case law prior to 1968, most are currently dated since most sex-based disparities have since been removed from state law.

Popiel's recent (1980) legal review suggests that such "statutory sentencing schemes which treat men and women differently are not likely to withstand challenge," given the landmark Robinson and Daniel & Douglas decisions in 1968 and Chambers in 1973.[23] However, largely non-existant sex-based sentencing statutes continue to be cited as indicative that women might receive longer sentences and that this potential disparity in fact translates to longer sentences!

There are only two studies on comparative sentence lengths that control for prior record (Pope, 1976 and Alabama Law Project, 1975). Pope found that male defendants received longer jail terms when sentenced in felony court, but there were no differences in the length of misdemeanor court sentences. Crites (1978: 165) reports that the mean sentence length from the Alabama Law Review Summer Project was lower for women than men, except for women charged with drug law violations where sentence lengths were identical. Research in this particular area is obviously required. Whether for the period prior to 1968-73 or after for states with indeterminate sentencing, studies must deal with sentences imposed, time served, and jail/prison environments and programs available.

Turning to the second set of arguments, one finds conceptual confusion. I concur with I. Nagel and Hagan's (1982) observation of logical problem that occurs when an "evil woman" interpretation is given for negative consequences of "paternalistic" treatment:

> If the evil woman thesis is the antithesis of the chivalry/paternalism thesis, then paternalistic

> responses that generate more harsh outcomes cannot logically be used to substantiate the evil woman thesis (Ibid.: 31).

This problem flows from the fundamental error of pitting the "evil woman" against the "chivalry-paternalism" response as mutually opposing explanations for the judicial treatment of women.[24] Rather than exploring whether one or the other is operative in court decision-making, we first require empirical examination of the circumstances in which more lenient and more harsh treatment may arise.

In the third set of arguments, the specification of the circumstances that give rise to more harsh outcomes for women have thus far been quite vague. Although some empirical investigations have related an "evil woman" response to the nature of the offense charged, some speculate that an "evil woman" response occurs depending on the "character" of the defendant or her lifestyle, as well as her appearance and demeanor in the court.

An "evil woman" response centered on the type of offense charged can be analyzed in two different ways: (1) for each of a number of offense categories, whether there is an effect of defendant characteristics (including "sex"); and (2) the differential impact of offense charged in separate analyses of male and female defendants. With two noteable exceptions (Bernstein et al, 1979; Nagel and Hagan, 1982), researchers do not specify which they are referring to. Given important differences in the structure of offenses prosecuted for men and women, it is important to proceed with both lines of

analysis for they may yield differing kinds of information. For the moment, however, such analytical distinctions are not made in the loose interpretation of an "evil woman" response.

Drawing upon Simon's (1975) or Adler's (1975) formulations, an "evil woman" response will arise for almost all women since any form of female criminal activity can be construed as a "transgress(ion) against expectations of womanly behavior" (Simon, 1975: 52) or as "cross(ing) a critical threshold of social tolerance" (Adler, 1975: 240). Thus far, there is no shred of empirical evidence to support this simple extrapolation of the "evil woman" thesis in comparing the impact of offense charged for male and female defendants.

If an "evil woman" response is limited to comparisons among women prosecuted for "manly" or "non-manly" offenses, one immediately wonders: What are the criteria for grouping offenses along these lines? This becomes more problematic since general offense categories of larceny, assault, burglary, homicide, or robbery mask large variation in the range of behaviors, culpability, degree of injury, victim-offender relation, and involvement in criminal incidents. The use of offense categories by themselves does not easily translate to "manly" or "non-manly" criminal behavior, and it is this component of the offense charged which the "evil woman" thesis purports to explore. Yet another approach is to designate offenses such as robbery, burglary, and motor vehicle theft (which constitute a lower proportion of female than male crime) as those "male-typed" offenses

for which an "evil woman" response might arise. Again, one would want to know the levels of culpability and degree of victim injury involved for those charged with these offenses.

Thus far, the "evil woman" thesis has only been tied to offense categories, or more simple categories of "violent" or "personal" crimes and "property" crimes, rather than constellations of behaviors involved in incidents. Perhaps for this reason, one finds inconsistency in the research literature on the offenses that give rise to an "evil woman" response, as the following four studies illustrate.

Bernstein et al (1977b) used an "evil woman" interpretation when they found that the mean severity of conviction charge was higher for women, holding constant initial charge severity. They suggested that the "serious non-female-type offenses" considered in their analysis (assault, larceny, robbery, burglary) might elicit such a response (but see Note 7). S. Nagel and Weitzman (1971) interpreted the more harsh response to women charged with assault than those charged with larceny as indicative of the "manly" character of assault. Kruttschnitt (1981a) in contrast found that men charged with larceny were more likely to receive more severe sentences than women so charged, noting that "offense specific variables within the theft category may account for this finding" (Ibid.: 13). Bernstein et al (1979) interpreted the relatively more harsh response to women charged with "personal" than "property" crimes as indicative of the court response to "their inappropriate sex-role behavior."

Thus, available research is conflicting on whether there are interactions of sex and offense type, and on specifying the form of interaction. The variety of vague specifications of an "evil woman" response to "non-traditional female crime," together with an overly simplified analysis of offenses charged, has clouded more than clarified the picture. Notwithstanding the intuitive appeal the "evil woman" thesis holds and the plausibility of a gender-linked differential response to particular forms of criminal behavior, its conceptualization has thus far been too crude and inconsistent; therefore, subsequent interpretations of its applicability are contradictory.

Discussion. This review of the "chivalry-paternalism" and "evil woman" concepts and of the analytical tendencies in court outcome research suggests that the study of gender discrimination in criminal court decision-making has a long way to go. With respect to research, I have noted the analytical problems that have characterized and continue to feature in comparing court outcomes for men and women. Review of more reputable research show that differences in the treatment of men and women consistently arise when decisions concern defendant's loss of liverty (pre-trial release and sentencing), but few differences or mixed results are found with respect to pre-sentencing decisions of dismissal and conviction.

The "paternalism" and "evil woman" concepts have been employed without empirical study of the reasons for and contexts surrounding the more preferential or punitive treatment of women. For example, there have been no attitudinal studies of court agents or qualititative observational studies of the treatment of male and female defendants in the court. If, as some argue, "paternalism" or "evil woman" treatment is an epiphenomenon of male-female power relations in larger socio-structural terms, then a theoretical framework is required in order to describe the character and content of such relations from which to derive an understanding of the basis for the differential treatment in the courts and the conditions under which gender discrimination is more or less pronounced. Finally, if the object of interest is gender discrimination, we need to move beyond the gender one-sidedness of the concepts introduced thus far by re-orienting our thinking to those discriminating factors that have consequences for both male and female defendants.

Beyond "chivalry-paternalism" and "evil woman"

In an effort to move beyond the symptomatic expressions of gender discrimination, a major question needs to be addressed which "chivalry-paternalism" and "evil woman" gloss over: Is it "sex" per se, or are there attendant gender-linked social locations and productive responsibilities to which court agents respond? Kruttschnitt (1981a,

1981b) and Harris (1977) address this question in their work, while I. Nagel and Hagan (1982) refer in abstract terms to the "respect, protection, and value" of women's "societal role."

Kruttschnitt, following Black (1976) suggests that the differing "social statuses" of men and women "bid more or less law" in judicial decision-making. As such, it may not be sex per se, but differences in the social characteristics that men and women bring before the court. Kruttschnitt introduces more detail in her "employment status" variable by including categories of housewife and welfare recipient, but she does not specify in theoretical terms what the differing "social statuses" of men and women might be, nor how these relate to "employment status." Rather, the implications from her conceptual statements are that once prior record, type and severity of charge, and other case factors are taken into account, "sex" will disappear as a unique effect in predicting court outcomes. Given this type of formulation, one wonders how to account for gender differences when they do emerge. What is promising about this line of work is that "differing social characteristics" that men and women bring to the court need to be expanded and made the central feature in conceptualizing the sources of gender discrimination.

Harris (1977) was the first to point out the major failure of criminological theories that excluded gender by reviewing extant theories and introducing a new formulation, "type-scripts." Type-scripts are individual or group self-attributions and identities,

reinforced by socio-structural expectancies and attributions. They form a rough map for individual "choices;" and they structure decision-maker "allowances" for certain classes of behavior, both "deviant" and "normative." "Scripts" are typifications not only in the phenomenological sense, but also in political-economic terms, for Harris views the differential structure of male-female "scripting" as serving the interests of the socially dominant (i.e., white middle-class men). Deviant type-scripts, a variant of type-scripts more generally, are "allowed" for economically marginalized men since their assignment of a deviant status does not threaten the material interests of the socially dominant. However, Harris suggests that it is not in the interests of socially dominant men to allow the development of deviant type-scripts for women, since the "prime structural mainstay of male institutional hegemony has been the assignment of females to the home and to the role of homemaker" (Ibid.: 13).

This formulation implies that because women's work for the family is seen as non-replaceable and critical to the maintenance of social life, court agents will be hesitant to assign a deviant type-script to women and to retain them in the criminal justice system. The general contours of this formulation, with its emphasis on the differing productive and familial responsibilities of men and women, based on the gender division of labor, is a promising beginning. However, empirical evidence suggests that it can be taken even further, revealing the more specific elements of gender discrimination

in court decision-making. Specifically, there are two features of Harris' arguments which I question: (1) Does one assume that court agents respond more leniently to all women, or only to those who have familial responsibilities, and (2) Does one assume that court agents are not concerned with men's productive and familial responsibilities?

Two studies (Hagan et al, 1979b; Hewitt, 1977) that have a measure of defendant's "family ties" suggest that male and female defendant's "with ties" are less likely to be incarcerated. Bernstein et al's (1979) results show that there may also be differences in the treatment of "familied" men and women. In a more speculative vein, Hogarth (1971), Simon and Benson (1980), and citations in Green (1961) and Baab and Ferguson (1967) show that judicial consideration is given to defendant's familial situation for the sentencing decision.[25] The Federal Bail Reform Act of 1966, enacted to protect the rights of indigent defendants in the bail decision, includes among the factors that may be lawfully considered in the pre-trial release decision, the "accused's family ties."[26] These factors have since been wholly or partially enacted in a number of states' procedural statutes for the determination of the pre-trial release decision.

Since the research literature review suggests that differences in the treatment of men and women more consistently arise for decisions concerning defendant's loss of liberty (pre-trial and sentencing), these "sex" differences may well be mediated by gender-defined familial location and responsibilities. At those court

points when decisions concern defendants' separation from familial obligations and responsibilities, "breaking up a family," through the loss of an economic provider or child-minder (or both), may play importantly into court decision-making, and have different consequences for male and female defendants. State provision exists for the loss of economic support (e.g., AFDC, food stamps), but comparable state provision for 24-hour childcare is lacking. That is to say, the state is prepared to act as a "father surrogate," but it is less willing and prepared to act as a "mother surrogate." Thus, in the state's (and the court's) eyes, the more serious loss to "a family" is the child-minder, a loss that is defined in ideological and material terms. Given the contemporary gender division of labor, wherein women are the primary child-minders and men, economic supporters, one can begin to see why differences may arise in the treatment of men and women in particular court decision-making contexts.

In pointing to defendants' family ties and familial responsibilities as the critical components of the sources of gender discrimination in criminal court outcomes, I can offer a more concrete basis for the abstract terms which I. Nagel and Hagan (1982: 25-26) employ in understanding why women might be accorded more lenient treatment for selected court decisions. They state that if the conflict and labeling-interactionist perspectives do not square with the treatment of women (i.e., more harsh treatment of the "powerless"),

the problem may lie in how "power" is conceived:

> Power is situational, and in the context of the criminal court the relative powerlessness of women in society would be more advantageous than disadvantageous. We contend this is so because the powerlessness of women is not accompanied by a diminution in value and rank. Rather, one societal view is that the proper role of women is one of powerlessness and dependency, yet this role is deserving of respect, protection, and value.

In anticipation of the theoretical framework developed in the following chapter, the "value of women" which is deserving of societal "respect" and "protection" emanates from the contemporary gender division of labor, where women have primary responsibility for child-care and the maintenance of the household. The ideological importance of "motherhood" and "homelife" is materially grounded in the indispensibility of women's familial labor and the personalization of motherhood, both of which cannot be "replaced" by state supports. In contrast, the absence of "familied" men's primary economic responsibilities can be partially alleviated by state benefits. Thus, a differential "value" is placed on men's and women's productive and familial labor, where women's <u>unpaid</u> familial labor has "no price," and no easy substitute. It therefore takes on the character of being "invaluable" and "non-replaceable" while men's does not.

Although the "value" and "indispensibility" of women's familial labor is greater than men's, I shall also propose that "familied" <u>men and women</u> are, in the court's eyes, deserving of "protection" in the interests of not "breaking up the family unit;" they will therefore be

treated more leniently than those without familial ties or responsibilities. This "protection" is not of male and female defendants per se, but of family members who are dependent on them. If, as many argue, women have a degree of economic dependence on men, women are more likely to have emotional, care-taking, and nurturing responsibilities for those who are dependent on them. Economic and emotional/care-taking dependencies and responsibilities, defined by the contemporary gender division of labor, characterize the social relations of men and women "in the family." The character of these social relations and their reinforcement by state policy in support of "the family" are the key elements of the gender relations theoretical framework outlined in the following chapter.

Notes to Chapter II

1. Reviews of the research literature on discrimination in the courts through the early 1970s by Hindelang (1969) and Hagan (1974) include a total of 22 different studies. All include "race," but only 5, "sex." I do not suggest that racial or gender discrimination is more important, but rather point to the historical interest in researching one and not the other. Male and female defendants before the court are disproportionately poor and non-white; however, gender discrimination has been poorly conceived and calls for theoretical work in its own right. Racial and ethnic discrimination among men and women before the court will be explored in Chapter V.

2. Walter Reckless' (1961) 3rd edition of The Crime Problem illustrates the typical presentation of female criminality, i.e., as a "special order of delinquent and criminal behavior: ... To think of the criminality of women in the same order of phenomena as crime in general is to cloud the issue" (Ibid.: 78). Reckless was one of the earliest, however, to comment that "general theories of crime" were inappropriate for women, stating:

> If the criminologist, before propounding or accepting any theory of crime or delinquency, would pause to ask whether that theory applied to women, he would probably discard it because of its inapplicability to women (Ibid.).

One infers from Reckless' remarks that a "general theory" of criminality could not include women.

3. By the early 1970s, the many voices comprising the 1960s Women's Movement had cogently and forcefully addressed the inadequacies of social science theory and research on gender (e.g., edited collections by Babcox and Belkin, 1971; and Millman and Kanter, 1975). Every conceivable research area had large empirical gaps, which loomed large give the lack of theoretical categories and the difficulty of "grafting" gender relations onto existing sociological theories.

4. For debates on increases in female arrests, see Adler (1975, 1981) and Simon (1975) with critiques by Steffensmeier (1978, 1981a, 1981b) and Harris and Hill (1981). Procedural and sentencing statutory differences are described by Clements (1972), Temin (1973), Frankel (1973), Singer (1973), Sarri (1976), Popiel (1980), Women's jail and prison experiences are documented by Gibson (1976), McGowan and Blumenthal (1976), Sims (1976), and Haft (1980).

(Note 4 continued)

There is a very large literature on women as victims of sexual harassment, violence, and abuse. Millet (1970), Amir (1971), and Brownmiller (1975) are among the earlier statements. Good research and legal reviews may be found in Pagelow (1980: 272-277, 297-300), Bowker (1978: 134-142), Lerman (1980), Smart and Smart, eds. (1978), Wood (1981), and Babcock et al (1974).

5. An historical comparison of British-American law as it applies to the legal position of women was developed by Sachs and Wilson (1980). Balkan et al (1980) and Leonard (1982) have more recently critiqued extant criminological theory and roughly outlined the terms in which male-female criminality should be addressed. Two more detailed theoretical frameworks have incorporated gender, one for the differential involvement in crime (Hagan et al, 1979b) and the other for differential involvement and socio-legal response to criminality (Harris, 1977). Black's (1976) propositions from The Behavior of Law, which only peripherally deal with gender, have recently been empirically applied to the treatment of women before the courts (Kruttschnitt, 1981a, 1981b).

6. So entrenched was the idea that women were accorded more lenient treatment that Chiricos et al (1972: 558) found it difficult to explain the lack of cross-tabular sex differences for Florida probationers receiving a formal guilty adjudication vs. those where adjudication was withheld. (Adjudication withheld was translated theoretically to those who would not be stigmatized with the label of "convicted felon.") They state:

> This findings was not totally anticipated. Since females get preferential treatment in all phases of the criminal justice process, it was expected that females would be adjudicated guilty less often than men. (emphasis added)

7. Bernstein et al's (1977b) result here needs to be qualified in light of my re-analysis of this data set, i.e.: (a) proportionately more men's cases are prosecuted as felonies in supreme court and (b) far higher proportions of women do not receive a guilty conviction, but a "soft" conviction of "adjournment in contemplation of dismissal." As well, the mean differences in conviction charge severity are very slight, although statistically significant. In Nagel and Hagen (1982: 47), the senior author has revised the earlier interpretation, suggesting that the result may be due to the more serious nature of women's cases disposed after first presentation:

(Note 7 continued)

> It is possible that the surprising finding may have occurred because females charged with more serious offenses were compared to males charged with less serious offenses.

8. Nagel and Hagen (1982) rightly point out the limitations of this research because the dependent variable combines dismissals, acquittals, and convictions. They argue that if different criteria affect dismissals and the likelihood of and severity of conviction, one rank-order variable combining these outcomes is inappropriate.

9. Baab and Ferguson's (1967) analysis uses multiple regression, but in their presentation of the results, it is not clear what factors were controlled in the analysis of the "sex effect" on sentence severity, nor of the male-female distributions on the dependent variable.

10. Hermann et al (1977) do not include the statistical significance of these male-female differences, but the substantive trends in general indicate that women fared somewhat better than men.

11. My re-analysis of this data set reveals the following problems with Hagan et al's (1979a) and Hewitt's (1977) interpretation of "sex effects" from the Seattle court. The following are the distributions for men and women on sentencing outcomes:

	MEN		WOMEN	
	N	%	N	%
deferred	199	50%	82	78%
suspended	44	11	7	7
jail	89	22	8	8
prison	68	17	7	7
	400	100%	104	100%

Hewitt used each of the 4 sentencing outcomes as dependent variables in analyzing the direct and indirect effects of independent variables on the sentences, while Hagan et al analyzed deferred and prison sentences only. Both found significant differences favoring women for the deferred sentences; Hewitt found no differences for suspended sentences, but he did find that women were less likely to receive jail sentences. Both found no difference in the likelihood of receiving a prison

(Note 11 continued)

sentence. The problem with both analyses as applied to the differential handling of men and women is that there are too few female cases in the suspended, jail, and prison categories for women to sensibly analyze a "sex effect" for each of these three sentence outcomes. When gender differences in outcomes become the focus of court research, analyses must compensate for distributional differences between male and female defendants on variables of interest (see e.g., Bernstein et al's, 1979, rationale for creating the sentence and "any time imprisoned" dependent variables), something which "sex effect" oriented research can easily overlook. Note, however, that those who focus on gender differences make the same mistakes. Hagan and O'Donnel's (1978) sentencing analysis contained an N of only 6 women jailed.

12. In a subsequent publication (Simon and Benson, 1980), however, these Washington, D.C., court results are presented in a different light, using simple tabulations. There the authors reported that the major difference in court treatment of men and women was that more men were sentenced to prison. Without controlling for prior record and case severity in this latter analysis, this conclusion is obviously suspect, and it is all the more unfathomable given the senior author's previous conclusion from the data.

13. In both her 1981a and 1981b publications, Kruttschnitt is not clear on the meaning of "sexual status." At times, it takes on the gender-linked character of defendant attributes (education, employment, and marital status), while at other times it means simply sex of defendant. This is made all the more confusing when in the 1981b publication the aim is to determine whether it is "sex per se or social locations that affect gender-related sentencing patterns" with an analysis of female defendants only.

14. The dependent variable, sentence severity, is an 8-point scale ranging from suspended sentence or fine (1) to prison (8). While it has become commonplace for court researchers to treat ordinal scales as interval in sentencing research, one needs to pay attention to the distributions on the scale, which Kruttschnitt does not. For example, the sentence outcomes for women convicted of disturbing the peace are as follows (Kruttschnitt, 1981a: 251):

(Note 14 continued)

		N	%
1	suspended sentence/fine	2	2%
2	court probation	20	22
3	formal probation (0-1 yr)	18	20
4	formal probation (1 yr)	19	21
5	jail (1 mo)	23	25
6	jail (1-6 mo)	7	8
7	jail (6-12 mo)	1	1
8	prison	1	1
		92	100%

With this kind of distribution, it is more appropriate to create a dummy variable (e.g., jail/prison or not). The findings of a race effect in the analysis with this 8-point scale could be caused by 2 black women in categories (7) and (8). The possibility that black women did receive more severe sentences for disturbing the peace is not disputed; however, one would have hoped for a better analytical demonstration of it.

15. My conclusions from the research literature are in agreement with those of Nagel and Hagan (1982), with one exception. They suggest that while women may receive more of the less severe types of sentences, there may be negible differences in the likelihood of receiving incarceration sentences. This latter conclusion is questioned for two reasons: (1) there are studies not cited in their review which do show that women are less likely to be incarcerated; and (2) the studies cited for the finding of "no difference" contain too few women who are incarcerated (see, e.g., Note 11).

16. What is termed the "conflict" perspective includes a diverse body of theoretical and empirical work. As developed by Turk (1969) the "conflict" perspective focuses on power relations between "authorities" and "subjects," not connected to the political economy. Quinney (1970, 1973), Chambliss and Seidman (1971), and Taylor, Walton, and Young (1973, 1975) situate their work in a critique of capitalist class relations and the socio-legal-economic relations that foster "crime" and definitions of "deviance." Their work is variously termed Marxist, radicial deviancy theory, and critical criminology.

Although there are differences in theoretical and empirical emphasis, a "conflict" perspect can be described as follows: An elite (or capitalist or ruling class) maintains its control

(Note 16 continued)

over an "underclass" by defining as criminal and responding more punitively to deviance engaged in by the poor and the powerless (e.g., an emphasis on street crime vs. corporate and white collar crime, with a differing structure of penalties attached). Discrimination against this "underclass" (or working class or "subjects") and minority defendants is evidenced by more harsh treatment in the criminal justice system.

Empirically, the "conflict" perspective has been directly applied to samples of (male) criminal court defendants (e.g., Lizotte, 1978) or prison populations (Chiricos and Waldo, 1975), respectively revealing "plausibility" and "no support" for the conflict model. Other research has focused on the larger structure of legal penalties and practices embodied in Federal and state regulation of corporate practices, wherein the class structure of social control is more powerfully revealed (Pearce, 1976).

The interactionist or labeling perspective (Becker, 1963, Schur, 1971) does not directly consider the socio-structural context in which crime arises, nor how people initially come into the criminal justice system. Instead, the emphasis is on the process by which a "deviant label" once "attached" to an individual (by teachers, parents, or more formal agents of social control) acts promote an "actor's" continued status as a "deviant." Those individuals less likely to resist being labeled deviant are the poor and powerless, non-majority, and youth. Bernstein et al (1977a) provide one of the better applications of the "interactionist-labeling" perspective to court outcomes, with a good discussion of the specification and interpretive mproblems using this perspective.

Harris (1977), Smart (1976) and Leonard (1982) have critiqued the "conflict" and "labeling-interactionist" perspectives, explicating the difficulty of incorporating gender within these perspectives.

A third set of literature on court practices--the political and organizational context of court decision-making--(e.g., Blumberg, 1967, 1979; Eisenstein and Jacobs, 1977; Feeley, 1979) does not with some exceptions (Levin, 1977) consider the connections between defendant socio-economic location and court practices.

17. Martin's (1934) is the earliest, most comprehensive American study of sentencing outcomes. Although he presented bi-variate tables, he found few differences in proportions of men and women receiving various sentences.

18. Pollak (1950) cites Frances Kellor (1901), T. E. Sullenger (1936-37), Harry Barnes and Negley Teeters (1st ed., 1944), Amram Scheinfeld (1944), and William Bonger (1916) on "complaints of an acquittal bias." He neglects to cite Martin's finding of no difference; Barnes and Teeters (2nd ed., 1957) later report that there is "no factual basis" for ideas of judges or juries "excusing" women.

19. Of the 16 outcomes analyzed, there were 5 with too few women to compare. Of the remaining 11, 7 fit the "paternalistic" mode in terms of "favoritism for the weak," but there were no male-female differences evidenced in "disfavoritism" with respect to formal legal safeguards.

20. Social-psychological studies of differential attribution of criminality were available prior to 1975 (e.g., Landy and Aronson, 1969). For the "practical" problem of women's childcare responsibilities, Martin (1934) analyzed marital status and presence of child dependents finding that married male and female defendants and those with children under the age of 16 received less severe sentences.

    While differential attribution and the presence of children are promising lines of inquiry, Simon cites no previous work on these "factors thought to motivate," indicative of the generally unsubatantiated nature of the reasons asserted for "court paternalism" or leniency accorded to women more generally.

21. Mould's also re-analyzed the American Bar Foundation data used by S. Nagel (1969) and S. Nagel and Weitzman (1971), with a simple cross-tabular comparison of outcomes for men and women, controlling for no other factors. Why she presents this kind of data and then warns that prior record, race, and offense type should be introduced in the California court data is inexplicable.

22. With no limits set on minimum terms, women might in theory be immediately placed on parole. In practice, however, women could serve longer periods of time than men because judges did not possess discretion to fix a minimum sentence for parole eligibility. While most states put a limit on the maximum sentence using the maximum term prescribed by law for the offense, judges did not have discretion to impose a shorter maximum sentence for women than that provided by law, while they could do so for men.

23. Popiel (1980) presents an historical review of the application of the 14th Amendment equal protection standards to women in

(Note 23 continued)

sentencing statutes. Until Robinson v. York and Commonwealth v. Daniel and Douglas in 1968, courts uniformly rejected the argument that disparate sentencing violated the equal protection clause of the 14th Amendment. The court reasoned that women were more amenable to rehabilitation that men, and the duration of their incarceration should reflect the time required to rehabilitate, rather than punish. Indeterminate or indefinite sentences for women were established during the late 19th century and upheld on appeal until 1968 based on the premises of "inherent differences" between men and women and the possibility of rehabilitation of female offenders in reformatory settings, rather than in jails, workhouses, and penitentiaries. Opinions from Robinson, Daniel and Douglas, and Chambers rejected these premises.

24. An empirical example and some hypothetical examples illustrate the logical and conceptual problems of pitting the "paternalism" against the "evil woman" thesis. In her study of gender differences in the pre-trial release decision, Zatz (1979) found that women characterized as involved in a "dangerous arrest" were given more favorable pre-trial release decisions than men. Zatz concluded that this result was consistent with the "paternalism" thesis. If, as the "evil woman" thesis implies, women are treated more severely for "manly" or "male-typed" actions, then one might expect that women charged with a "dangerous arrest" would be responded to more harshly. Is her result then consistent with the "paternalism" thesis or demonstrate a lack of support for the "evil woman" thesis?

    Hypothetically, if we find that women are more likely to be convicted and sanctioned for prostitution than men so charged, do we conclude that they are being treated as "evil women," or do we conclude that men are being treated "paternalistically?" Given the common usage of "evil woman" as arising from "male-typed" or "manly" actions, and the gender one-sidedness of "paternalism" and "evil woman," there is no clear interpretation.

25. In his study of the background characteristic that Canadian judges believed to be "most essential" in sentencing, Hogarth (1971: 232) found that "family background" was the most frequently cited (over prior record) in the judges' minds, a result that surprised Hogarth and for which he had no clear interpretation. Since his research did not distinguish judicial decision-making criteria for male and female defendants, one can only presuppose that judges were considering the "typical" defendant before them,

(Note 25 continued)

i.e., a male defendant. Hogarth found the importance of "family background" inexplicable because he assumed that it was solely interpreted by the judges as indicative of the defendant's experiences growing up on the family of origin, not a defendant's responsibilities for and ties to family of procreation. My interviews with judges and other court agents (Chapter VI) reveal that "family background" includes both forms of familial ties, the former representing the degree of parental control, and the latter, the degree of economic and parental responsibilities defendants have for family members.

Simon and Benson (1980: 559) speculate that women are less likely to be sentenced to jail/prison than men because many women have young children which influenced the judges' decisions. They note, however, that "the data by themselves allow us neither to confirm nor deny that guess."

The following excerpt from Green's (1961: 6) citation no doubt holds today for judicial considerations in sentencing:

> Was the crime against person or property? If the former, did it endanger the life of the victim or leave permanent effects upon his general welfare? Does the background of the offender reveal a pattern of transgressions of the law? Are the offender's emotional and mental characteristics, his family ties, and his business interests such as to offer encouragement and hope for his reformation, or is he likely again to collide with the rules of living established by society? Will irreparable damage result to the family group if he is removed from it? (Judge Theodore Levin, March, 1949) (emphasis added)

Lastly, Baab and Ferguson (1967: 495) found that married offenders tended to receive less serious sentences. To corroborate this tendency, they cited a federal court case in which four male co-defendants were convicted for their involvement in a 2.5 million dollar marijuana smuggling operation. Three of the four received prison terms, but the fourth was freed on probation to earn money for a heart operation to save the life of his 5-year old son:

> (The) District judge sternly told (the defendant) that the only reason for his probation was that the life or death of the sick child possibly depends on the freedom or imprisonment of his father. (Ibid.: footnote 137)

26. The Federal Bail Reform Act of 1966 stipulates that the following factors be considered in the pre-trial release conditions for defendants accused of all except capital offenses:

> The nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.
>
> (18 U.S.C. s3146, b)

C H A P T E R III

THEORETICAL FRAMEWORK, HYPOTHESES, AND METHODOLOGICAL CONSIDERATIONS

Introduction

In the last decade, the social sciences have been infused with developments in "feminist theory," a rubric I use to denote the many conceptual forms and emphases this work takes. In its most general form, feminist theory(ies) seek to explicate the material and ideological content of gender relations to understand the maintenance and social reproduction of women's oppression. Cleavages exist between radical and Marxist feminists, the former emphasizing gender relations and their universality, and the latter, the connections between class and gender relations and their historical specificity. Debates center on the theoretical terms in which "materialist and ideological structures" should be related, whether Marxist forms of class analysis are applicable to gender relations, and the theoretical "categories" in which one should relate gender to class relations. "Feminist theory" covers a spectrum of ideas on theoretical terms and their political implications.[27]

I take my lead from Marxist-feminist theoretical statements by Barrett (1980), Beechey (1979), and McIntosh (1978), and from those who apply a feminist perspective to criminology and the criminal

justice system (Smart, 1976; Balkan et al, 1980; Leonard, 1982). I first discuss one of the major contributions of feminist theory to sociological theory and research; then I identify an apparent paradox when applying Marxist-feminist theory to criminal justice practices.

Contribution of feminist theory. Feminist theory transforms the terms in which sociologists (and criminologists) discuss the differing "sex roles" of men and women. "Role theory," which focuses on the consequences of differential socialization of males and females, represents an important departure from earlier thinking of "natural" male-female differences rooted in biological and psychological terms. However, as Smart (1976: 66-70) observes a "sex roles" approach is limited in understanding gender differences in criminal involvement, a limitation that I would argue also holds for understanding the differential response to criminality:

> There is a failure to situate the discussion of sex roles within a structural explanation of the social origins of these roles. In other words, there is no attempt to account for the development of the division of labor between the sexes nor to explain the socially inferior nature or women's status and position in historical, economic, or cultural terms. (emphasis added)

I concur with Smart that rather than treating differential involvement in crime as an outcome of sex roles, one must view criminal involvement and "sex roles" as the "outcome of socio-economic, political, and historical factors."

This means that "sex roles" can only be understood in the context of historically-situated social relations between men and women, relations that have as their initial referent the division of labor "in the family." Depending on the structure of associated economic and political arrangements, gender relations characterize the relative power and autonomy of men and women. Employing "sex role" terms, in contrast, easily neutralizes the political-economic basis and consequences of an unequal gender division of labor, rendering gender divisions"natural" or "universal" and ignoring their historical specificity and cultural diversity. Thus, feminist theory re-defines "sex roles" and associated differences in male-female socialization as reflections of gender relations; and it poses the larger political question, "Who gains?" from such arrangements (e.g., Gordon, 1972). One sees here that this conceptualization of gender relations is parallel to how "conflict" sociology has traditionally understood class or race relations: Few conceive of the expression or consequences of class or race through the use of terms such as "class roles" or "race roles."

Feminist theory and criminal justice practices. In addressing the question, "Who gains?" given current gender and class relations, Marxist-feminists argue that "bourgeoise" or "capitalist" men gain at the expense of the "double oppression" of women. Evidence of the "oppression" and "subordination" of women can be seen in pay

differentials and job segregation in paid employment; the lack of political representation and appointment to religious office; and the hodge-podge of sex-based disparities contained in criminal and civil codes, family law, and state policies. If feminist theorizing is applied to criminal justice practices, however, one runs into an apparent paradox, similar to that found in "conflict" and "labeling-interactionist" perspectives. If, as it is clearly apparent, the poor, marginalized, and powerless members of society are more often subjected to criminal justice control; and if as Marxist-feminists argue, women are "doubly oppressed" by class and gender relations, why are there relatively few women subject to criminal justice control and penalties?[28] This question is not easily resolved, one British feminist acknowledging that "feminist criminologists are hard put to find a line of attack" (McIntosh, 1978: 258).

As my research literature review suggests, the criminal court represents an institutional anomaly insofar as women have an "edge" over men in particular court decision-making contexts. I shall show, however, that this "edge" results from the same elements that promote discrimination against women in every other institutional context.

Gender relations, class, and race. The theoretical emphasis here is on the socio-structural explication of gender relations and its consequences for gender discrimination in criminal court decision-making. One cannot ignore the fact, however, that the men and women

before the court and in our nation's prisons and jails are poor and disproportionately "minority."[29] Ultimately, any conceptual framework that purports to understand gender discrimination in the criminal justice system must attend to its association with class and race. The theoretical approach taken here will center on gender, but I shall now address the framework proposed in light of class and race differences.

Because class relations have so profoundly shaped the profile of defendants before the court, whatever may be proposed on the relationship between class and gender relations has little empirical referent for those caught up in the criminal justice system. Thus, I take it as axiomatic that "middle-class" male and female defendants are quite rare, so that "class differences" in the treatment of defendants can only be argued in hypothetical terms or at best illustrated by selected case studies.[30] However, since court personnel are predominantly white, male, and "middle-class," I present the assumptions and expectations they have in the adjudication process, thereby introducing a class bias evinced by court agents toward defendants.

Among this overwhelmingly economically marginalized group of defendants before the court, differences in the treatment of men and women along color and ethnic lines are important to assess. In describing the contemporary character of gender relations, from which my hypotheses on gender differences in court outcomes are derived, I

describe the "normative" character of male-female social relations "in the family," that which I assume structures court agents' reactions to men and women before the court. What remains unclear is how court agents differentially respond to "deviations" from idealized familial relations. For example, studies of "lower-class" black families (e.g., Rainwater, 1970; Stack, 1974) show that in comparison to white families, they are more "matrifocal" in type, characterized by feminine authority and male marginality whether the husband is absent from or present in the familial network. Male-female social relations in these black families are thus less likely to involve female dependency of men, particularly for economic provision for family support.

In formulating my hypotheses on gender differences in court outcomes, I shall not specify in advance how defendant's familial ties and responsibilities may differentially bear on court outcomes for black, white, and hispanic men and women. Rather, I will explore this question empirically in Chapter V with the aim of assessing whether racial and ethnic variation exists.

Departure from previous court outcome research. Many of my expectations regarding the treatment of defendants in the criminal courts do not radically depart from those held by other court researchers. What I do introduce that represents a departure is the "attribute" of defendants' familial situation. I propose that familial ties and

responsibilities are important discretionary criteria in the adjudication process; they affect decision-making for male and female defendants, but their mitigating effect is stronger for "familied" female defendants.

Thus far, court outcomes research has shown relatively little statistical difference in the treatment of defendants based on "attributes" of "class," race, age, education, and occupation.[31] Instead, the consistent factors associated with outcomes are prior record and the severity and/or type of charge prosecuted. More recently, it has been argued that the lack of effects for defendant attributes, particularly at the tail-end of the decision-making process (sentencing) can be understood in light of sample selection bias. That is, there are a host of prior decisions where individuals are "filtered out" of the criminal justice system, beginning with the initiation of a complaint to the police, to the willingness of complainants to press charges, to prosecutorial decisions to go ahead with cases, and to the different types of convictions that call for sentences or not. The "filtering out" process produces a successively more homogeneous group of defendants, so that at the very last stage of the adjudication process (sentencing), one would be far less likely to find differences on the basis of defendant attributes.

In formulating my hypotheses on the differential treatment of men and women, I do not suggest that factors of prior record, severity of

offense, and offense type are eclipsed by defendant's familial situation. Rather, familial ties and responsibilities are the means to understand and make sense of "sex effects" favoring women at certain court outcomes and for differences in outcomes among men and women. If I find that the familial situation of defendants does exert a significant impact on court outcomes, particularly the sentencing decision, then it is plausible that it may also play a role for earlier discretionary judgements.

Gender relations framework

I begin with the basic contours of the contemporary character of "normative" gender relations from which I derive hypotheses on the differential treatment of men and women. The referent throughout this research is to contemporary practices in the American criminal justice system.

Gender and gender relations. A variety of theoretical excursions have been taken on how gender and gender relations are "produced" and "reproduced," but most center on the following core principles. Gender is socially constituted from biological differences between men and women, where women bear children and lactate, and men do not. In all known human societies, these biological differences have fostered a social division of labor in which women have primary

responsibility for the care of children. Although debate continues and perhaps will not be settled over how this division of labor between men and women was transformed to one in which women become socially and economically subordinate to men, such changes did occur and are particularly striking in more economically stratified and hierarchically ordered societies.[32]

As currently constituted in both "advanced capitalist" or "socialist" countries, gender relations reflect unequal power relations between men and women: Men are socially and economically dominant, although there are "moments" when women do contest and subvert such domination. More specifically, the contemporary character of gender relations has the following form:

(1) "The family" is idealized as a heterosexual, monogamous pair of adults with sole economic and affective responsibility to each other and to children.

(2) Women's primary "place" is in "the family" as wife and mother performing productive and consumption work: domestic labor, such as buying and preparing food, childcare, and emotional supportive work for a husband and child(ren).

(3) Men's primary "place" is in the paid labor force, securing primary economic support for "the family." This economic provision secures a valued and dominant position in familial relations.

(4) A woman's family labor, while critically important to the maintenance of "the family," is labor that is unpaid. Ideologically, women must do certain work (even if employed in the paid labor force), work from which men are often exempt, but work from which men benefit, socially and economically.

(5) In contrast to ideas surrounding "women's work," a man must work in the paid labor force, he must provide economically to be a social adult, to be a father and husband.

(6) For unmarried men, gender relations defines those qualities which constitute potential "good husbands" or "fathers" (heterosexual, able to hold job, economically responsible). For unmarried women, gender relations defines those qualities that constitute potential "good wives" or "mothers" (heterosexual, sexually "pure," nurturing, obedient).

The character of gender relations corresponds to the gender division of labor, wherein primacy of productive and familial responsibilities are differentially assigned to men and women. This differential assignment becomes internalized through the socialization process and familial dynamics; boy-girl gender identities are formed early, together with the constellation of characteristics termed "masculine" and "feminine" (see, e.g., Chodorow, 1978).

Gender relations and "the state." As others have shown in greater detail (e.g., Kanowitz, 1969, 1973; Babcock et al, 1975), the expected familial and productive responsibilities of men and women and the social relations between husbands and wives are embodied in and reinforced by criminal and civil law, labor law, tax legislation, property ownership, insurance and social security benefits, and criteria for Federal and state welfare allocations. The underlying assumption is that women and children have a degree of economic dependence on men, and that in the absence of this economic provision, the "state" (embodying a diverse array of Federal and state law and

practices) will intervene in particular (if contradictory) ways as a "father surrogate" (see, e.g., Eisenstein, 1980, and Sprague, 1981, on the "patriarchal state," and Wilson, 1977 on the "patriarchal welfare state").

In contrast, minimal state provision is given for "mother surrogates."[33] In the absence of a primary childminder, the "state" has limited means to intervene and will only do so under extreme circumstances, e.g., in the instances of child neglect, abuse, or abandonment; or when there is a critical need for women in paid production during war time. The costs and consequences of state intervention as "mother surrogate" are high, both economically and ideologically. Personalized parenting (or motherhood) is the preferred state policy over institutionalized or foster care of children.

Vandepol (1982) shows that in the early 1900s, state practices concerning substitute care of children (largely for working class and poor families) changed from forms of institutional care to parental subsidies, with the introduction of mother's pensions (1910-1915) and then AFDC (1935). This shift in state policy occurred for two reasons: (1) it was less expensive for the state to provide parental subsidies than to provide institutionalized or group care and (2) changing ideologies elevated "natural homelife" and invested in mothers the critical emotional qualities deemed necessary for the socialization of children. Contemporary state supports on behalf of

families, specifically, its provision for "father surrogates," but not "mother surrogates" have important consequences for contemporary court practices.

Gender relations and court considerations. The implications of the contemporary gender division of labor and normative familial relations for the treatment of male and female defendants before the court are:

(1) Although a defendant may appear as an "individual before the law," the court assumes that s/he is connected to a family as a son or daughter, husband or wife, mother or father. As such, the court recognizes that its decisions have consequences not only for a defendant, but also for those tied to defendants (e.g., parents and dependents).

(2) Court agents assume that women's primary productive responsibility is family labor, while men's is as economic provider. Both types of responsibility are viewed as critical to the maintenance of the "family unit."

(3) Court agents assume that the heterosexual, monogamous marital tie is a stable social unit; it is the idealization of gender relations because men and women have responsibilities for each other and for maintaining this family form. As such, married individuals and/or those assuming productive responsibilities for a family are presumed to be more "integrated" into the normative world of social adulthood.

(4) Court agents attempt to balance the competing interests of "what's best for society" (keeping parents and children together) and "protecting society" (protecting property and persons from future harm through segregation and punishment).

The court's interest in knowing the character of the defendant's familial situation is important to stress and elaborate upon, for

it represents a critical departure from previous theorizing and analysis of the strength of defendant "attributes" in the adjudication process. At the same time, it is highly consistent with much past theorizing on the etiology of crime.

"Individualization of defendants" and "familization of justice." A component of many criminological theories is that a "disorganized family life" creates the conditions fostering a lack of normative and law-abiding "values," i.e., a lack of "appropriate" socialization. Although I would not argue that a "poor family life" is the cause for involvement in crime, criminologists have noted an association between one's familial situation and the likelihood of being caught up in the criminal justice system, an association mediated largely by economic circumstances. However, criminological theorists have largely ignored the implications of these etiological assumptions for the decision-making criteria involved in the response to criminality. That is, if the character of one's familial situation is associated with the probability of criminal involvement (and by implication, the likelihood of "rehabilitation"), then an important criterion in the response to criminality would be knowledge of and interest in defendant's familial situation.

The consideration of a defendant's family situation falls squarely into the "individualized" model of justice, wherein many background characteristics of defendants are "taken into account" by

sentencing judges and probation officers.[34] I propose that this "individualism of defendants" is more broadly embedded in the "familialization of justice," the latter having an impact on court decision-making in two ways:

(1) Court recognition that family members are affected by court decisions.

(2) Court consideration that familial controls will help defendants "go straight."

State resources to punish or "rehabilitate" those caught up with the law are limited; thus, when it is feasible, the court will fall back on "the family" to do its work. This has particular consequences for the treatment of single defendants living with families of origin. For example, court agents will work on the assumption that all else equal a younger male defendant living with his parents and having a degree of parental control will be less likely to be involved in future crime. They, therefore, may give him a "break."

For those defendants in families of procreation, court decision-making is doubly constrained by state resources: those for punishing defendants and those for punishing the family members of defendants. By removing a defendant's economic support and/or care-taking responsibilities for dependents, there will be added cases on the welfare rolls, and even more costly (economically and ideologically), the need for foster care or institutionalization of children.

One sees that the logic of court decision-making and the discretion to impose an array of sanctions is linked to the assumptions

of future criminal involvement (deterrence) and the "appropriate" sanctions that should be imposed (punishment) given limited state resources. As such, decisions are guided and constrained by the knowledge of a defendant's familial social controls and/or familial responsibilities in the calculus of the state and social costs of imposing criminal justice sanctions.

This then is how justice is "familialized," and how it bears on the handling of "familied" and "non-familied" defendants, and "familied" male and female defendants. It is important to distinguish these, for it is the latter--the response to "familied" men and women--where gender differences in criminal court outcomes are sharply revealed.

Hypotheses: male-female differences. Court interest in a defendant's familial situation, together with the assumptions made on the "stable" and "integrative" character of the marital tie and expected productive and familial responsibilities of men and women, are the bases for the following research hypotheses. All hypotheses are presented with the assumption that other case factors are "held constant."

(1) Married men and women will be subject to more lenient treatment than singles since court agents view the marital tie as an "integrative" social unit.

(2) Men and women with familial dependents will be treated more leniently than those without dependents.

(3) Women with dependents will be treated more leniently than men with dependents because court agents recognize:

   (a) The importance of maintaining women's labor and responsibilities for the family, labor which is ideologically and materially indispensible, and which is not (or cannot) be adequately replaced by state alternatives.

   (b) Men's economic provision for family members, while important, is replaceable; it is less costly to the state economically and ideologically to provide minimum economic support (i.e., AFDC).

(4) Those single men and women living with "families of origin" or other close kin, who evidence a degree of social control via family members or who contribute economically to the household will be treated more leniently than those living alone, with friends, or without parental social control.

In specifying "more lenient" treatment of men and women, I refer primarily to those court decisions surrounding defendant's loss of liberty, i.e., (1) the pre-trial release decision to ROR, or to set money conditions for release and (2) sentencing decisions to incarcerate or not. In these particular court decision-making contexts, the effect of familial ties and responsibilities should be most apparent, since the defendant's loss of liberty imposes a hardship on family members who require economic support and/or parental care. Decisions to prosecute the case and the types of convictions received will also be examined to determine whether defendant's familial situation also bears on these court outcomes.

Gender relations and "court paternalism". This framework identifies differential court outcomes for men and women based on their familial ties and degree of indispensibility in the support and maintenance of "family life." As such, its categories are relevant to men and women. From the perspective advocated here, I can re-orient the terms in which "paternalism" is commonly understood: from a "protection" of women (female paternalism) to a "protection" of family members of defendants (familial paternalism).

"Female paternalism" is the dominant concept applied by researchers in interpreting gender differences in court outcomes; it is narrowly construed as the "protection" of women "as women," independent of considerations of "maintaining the family" and separate from similar judicial considerations toward "familied" male defendants. I propose that familial paternalism is at play in court decision-making; it is more generally construed as the "protection" of family members of male and female defendants via those who have parental and/or economic responsibilities for them.

These conceptual distinctions aside, it remains an empirical question whether both "familial" and "female paternalism(s)"--the former located in familial considerations for all defendants and the latter in particular factors directed to female defendants--are mutually implicated and reinforced in the process in court decision-making. If, as suggested earlier in this chapter, there is an ideological affinity of "female" with "family," an affinity materially

grounded in the contemporary gender division of labor, then one can see that "familial paternalism" and "female paternalism" may be hard to distinguish in court agents' accounts of the differential handling of male and female defendants.[35]

Hypotheses: differences among men and women. Having identified familial ties and responsibilities as the mediating factors in understanding the "sex effects" that emerge when a defendant's loss of liberty is at stake, I turn to hypotheses on the differential treatment among men and women, again stated holding "other factors constant." Hypotheses (5) and (6) affirm the identical structure of the court response to male and female defendants on the basis on their familial situation, while hypothesis (7) proposes that the impact of familial responsibilities of men will be mediated by employment situation. Hypotheses (8) through (10) consider how the offense prosecuted bears on court outcomes among men and among women.

(5) Among men or among women, the court response to those who are married and/or who have dependents will be more lenient than those single without dependents.

(6) Among men or among women, those singles without dependents who can show a degree of parental social control or who make an economic contribution to the household will be treated more leniently than singles without parental social control or not contributing to the household.

(7) Among men, the strength of their familial situation on court outcomes will be mediated by their employment situation, i.e., there will be a stronger mitigating impact for "familied" men who are employed or seeking employment than for those who are unemployed and not looking.

Hypothesis (5) suggests that among men and among women, those married and/or having dependents will more likely be accorded favorable treatment when decisions concern defendant's loss of liberty. I assess this hypothesis in light of available information on the current familial situation of women in jails and prisons.[36]

Glick and Neto's (1976) and McGowan and Blumenthal's (1976) national surveys of incarcerated women arrive at very similar estimates of the family situation of these women: About 70% had children, and about half had at-home children at the time of arrest. One infers from both studies that most women with children were single at-home parents, with about half having been on welfare during their adult lives. This significant number of incarcerated women with dependent children appears to undermine the hypotheses proposed on the considerations given by court agents in the handling of women with and without dependents.

In addressing this issue, I note that there are no national statistics on the familial situation of defendants <u>arrested</u> to compare with those incarcerated to see whether there is a reduction in proportions of women (or men) with dependents. Secondly, and more subtly, there may be a court assessment of the "quality" and

"indispensibility" of parental care.[37] Finally, the familial situation of defendants is set against prior record, probation, and parole status, as well as the offense of conviction in determining sentences. I do not expect that women (or men) with dependents, who have developed prior records and are prosecuted for particular offenses will be given a "break" (i.e., probation rather than jail time). As such, I stress that although the presence of familial dependents may mitigate against incarceration (or pre-trial detention), it obviously does not prevent such sentencing or pre-trial release decisions. With these considerations, I now turn to hypotheses on the nature of offenses prosecuted.

Hypotheses: nature of offense prosecuted. For the relationship of offense prosecuted and court outcomes, there are intractable problems in specifying court treatment. As previously indicated, the specific content of the crime charged rather than an offense category per se needs to be analyzed. In addition to this, Brosi's (1979) cross-city analysis of the handling of felony cases and Vera's (1977) study of four New York City boroughs reveals a great deal of case attribution that is offense dependent.

Brosi (1979: 7-8) shows in her analysis of six urban courts that 30-50% of felony arrests were screened out by prosecutors; of cases accepted for prosecution, about one-third were nolle prossed or dismissed by judges. Rapes and assaults were more likely screened

out by prosecutors, and robbery, burglary, and larceny less often rejected. For cases prosecuted, homicides were most likely to be prosecuted, and assaults, least likely; rape and the remaining property offenses were in the middle (Ibid.: Appendix C). The Vera analysis (1977: 8-9) confirmed this general pattern of the greater filtering out of assault and rape cases.

Thus, the impact of offense charged may be highly variable, depending on which court decision point is under examination and the overall structure of offenses in the analysis. Given this problem, the hypotheses are specified in two ways: (1) the likelihood of dismissal and (2) for those cases not dismissed, the more lenient or more harsh forms of conviction and sentencing.

> (8) Among men or among women, those charged with offenses where victims are family (or kin) members or others known to them will more likely be dismissed and not subject to prosecution.

This hypothesis is very much in line with Black's (1976) propositions and empirical evidence on the "amount of law" imposed depending on the social distance of victims and offenders. While one would expect that assaults and less serious forms of economic crimes between parties known to each other would be dismissed, this should be attenuated for more serious charges of homicide or forms of economic crimes.

In this regard, I briefly consider but cannot empirically assess the response to defendants charged with offenses related to intra-kin or familial violence (e.g., physical and sexual abuse of spouses

and children), offenses which are rarely subject to criminal prosecution, although estimates of their actual incidence are high.[38] If these types of offenses are prosecuted, as well as those involving homicides among family members or lovers, however, there is heightened public curiosity and media attention.[39] This curiosity occurs because of the ambiguity surrounding (1) whether a person should be held "as responsible" or punished "as severely" for acts of intra- kin or familial violence, combined with (2) a degree of outrage that such acts do occur. In this ambigious context, I expect that prosecutorial discretion, guilty verdicts, and sentencing decisions will be highly variable and not predictable. For those prosecuted on these types of offenses where victims are strangers or not well known to them, I expect little ambiguity and more predictability in the likelihood of prosecution and heavier sanctions, if found guilty.

With respect to hypothesis (8) and the following hypothesis, I emphasize an earlier assumption presented: "Court agents attempt to balance the competing interests of 'what's best for society' ... with those of 'protecting society'." This means that defendants prosecuted for certain types of behavior and with a particular history of criminal involvement will not accrue any advantage due to their familial responsibilities, i.e., the court will not consider giving these defendants a "break." In attempting to balance these "competing interests," however, court agents will want to know why the defendant

was involved in a crime, and this will have implications for the kinds of convictions and sentences given.

> (9) Among men or among women, the defendant's rationale for committing the crime will be considered. If it was carried out in the "support of the family" or kin ties, it will be subject to more lenient treatment than if it was motivated out of "greed" or "self-interest."

This hypothesis suggests that where offenses concern economic gain on behalf of supporting others, court agents will be more inclined to treat these cases more compassionately. For example, larcenies of life necessities (e.g., food, children's clothing) may have some justification in the court's eyes, while those involving theft for supporting a drug habit will not. If, in general, women's criminal court offense structures are more likely associated with "consumption work" (e.g., food and clothes shopping and securing funds to buy these items) for family members, they may be in a better position than men to justify criminal behavior in light of its necessity for the family.[40]

Finally, I consider prostitution, which constitutes a significant proportion of behavior for which women are prosecuted and jailed. However, there has been only one study (Simon and Sharma, 1979) which compares the court treatment of women charged with prostitution and other offenses. I extend upon their result that women charged with prostitution are <u>less</u> likely to be dimissed, and hypothesize that they will be treated more harshly in the conviction and sentencing decisions, as well.

(10) Women charged with prostitution will be less likely to be dismissed, and they will be treated more harshly at the conviction and sentencing decisions, holding charge severity constant.

There are three aspects of prostitution and the treatment of prostitutes that are important to address. First, the municipal control of prostitution is highly variable, with cyclical waves of police relaxation and vigilance in "cleaning up the streets" political campaigns (see, e.g., Roby, 1969); thus court practices may also shift with the political winds. Second, prostitutes represent a qualitatively "different breed" of female offender, one who will not be "rehabilitated" or intimidated by fines or probation, and who is more openly disdainful of criminal justice practices and the fact that prostitution is considered a crime in the first place.[41] Third, extrapolating in more abstract terms from my gender relations framework, prostitution represents an overt transgression against the expected channeling of female sexuality in monogamous heterosexual marriage; therefore, one might expect a more harsh response to it. However, one needs to qualify this abstraction with the recognition that there is a great deal of stratification among prostitutes. Street prostitutes, not "call girls," are the objects of arrest and criminal justice penalties. Among street prostitutes, James (1972) identified over a dozen "argot roles," ranging from the more dangerous "rip-off artist" to the professional "lady," but it is not clear which type(s) of street prostitutes are the likely objects of arrest and criminal court prosecution.

Having completed the theoretical terms and my hypotheses on the differential treatment of men and women before the criminal courts, I turn now to how a gender relations perspective can make sense of apparent juvenile-adult differences in the treatment of female offenders.

Gender relations and treatment of juveniles

Recall that adolescent females are far more likely referred to juvenile court for status offenses, and they are more likely detained and institutionalized for these offenses in comparison to adolescent males. Status offenses have many differing labels (running away from home, ungovernability, in danger of being morally depraved), but they are essentially concerned with female sexual behavior and disobedience to parents. Research is very limited with respect to the treatment of juvenile males and females charged with criminal offenses; however, it seems to be similar to the pattern for adults.

I turn to features of juvenile justice practices which give rise to male-female differences in the likelihood of and reasons for being brought before the court on status offenses. One key element is that parents are primarily responsible for initiating status complaints, having "given up" in trying to control and discipline their children, and therefore turning to the state to intervene.[42] Thus, parents impose of a differential standard of male-female social

conduct and obedience to parental authority in their initiation of status complaints.

If this phenomena is viewed in the context of the "familization of justice," one sees that status offenders will more likely be retained in the juvenile system because there is not only a self-acknowledged lack of parental social control, but also parental demand that the court punish their child. Chesney-Lind (1978: 186) describes the differences in the role of parents whose children are charged with status and criminal offenses:

> Children charged with crimes have natural allies in their parents at every step in the judicial process. Parents of young people charged with status offenses are themselves the complainants and they not only impune the moral character of their children but frequently refuse to take them home in an attempt to force the court official to retain jurisdiction. (emphasis added)

The more fundamental problem of why parents impose a sexual double standard of conduct on their children is comprehensible in light of the contemporary character of gender relations. The expected productive and familial responsibilities for adult men and women create the conditions for heightened parental and juvenile court concern with female sexual experimentation and "disobedience," both qualities that fly in the face of being a "responsible" wife and mother. Notwithstanding the likelihood that these young women will work in the paid labor force, the "womanhood equals motherhood" identity remains, having consequences for the expected behavior of

adolescent females. Vedder and Somerville (1966) illustrate this theme which no doubt features today in the minds of many parents and juvenile justice personnel:

> While studying delinquent girls, we should keep this in mind; when you train a man, you train one individual; when you train a woman, you train a family (Ibid.: viii). (emphasis added)

The consequences of the differential parental standards for male and female socio-sexual conduct, reinforced by juvenile court practices, are staggering indeed. From 1978-79 statistics for the U.S., one finds that of the 35,000 adult and juvenile females incarcerated or detained, 40% are juvenile offenders, about three-fourth's of whom are status offenders. By contrast, of the 168,000 males incarcerated, 12% are juveniles.[43]

In addition to the important differences in the initiation of complaints against status and criminal offenders, which have implications for the more likely institutionalization of juvenile than adult females, one can also view such differences in light of the degree and form of familial responsibilities that juvenile and adult women have. One expects that adult females more likely have responsibilities for child(ren) than adolescent females; as such, the mitigating impact of familial responsibilities would more frequently apply to adult females. As far as I know, juvenile justice researchers have not yet explored the handling of adolescent females who are pregnant or have child(ren). Such research would be important to determine whether

adolescent females with and without familial responsibilities are subject to similar (or different) considerations as those for adult females.

Methodological considerations

I approach the study of gender discrimination in criminal court decision-making with the aim of linking quantitative and qualitative methodologies. Statistical patterns will be explored, holding other factors constant, to determine:

(1) Whether defendants' familial ties and responsibilities mediate the relationship between "sex" and court outcomes ("between-sex" differences);

(2) the court decision-making contexts where this occurs; and

(3) differences among men and among women based on race/ethnicity, offense charged, and familial situation ("within-sex" difference).

There are two major limitations to the quantitative analyses:

(1) The creation of statistical equivalence in multivariate analyses masks a great deal of substantive difference in the men and women before the court with respect to the types of crimes charged, their severity, and prior record.

(2) I can only make speculative inferences on the kinds of considerations court personnel make in the differential handling of men and women and their association with familial situation.

Thus, the "between-" and "within-sex" quantitative analysis will be joined with a qualitative assessment of the particular considerations

given and rationales used by court agents in the handling of male and female defendants.

I pursue this research aware of two major methodological problems in conducting research on court processes: the difficulty of (1) generalization and (2) "modeling" the complexity of judicial decision-making criteria and court processes.

Generalization. Single jurisdiction studies dominate court outcome research; only recently have quantitative cross-city comparisons been carried out for state courts (Brosi, 1979; Eisenstein and Jacob, 1977; Church et al, 1978) and federal courts (Hagan et al, 1980; Nagel et al, 1982). These studies provide the opportunity to determine the degree of variation in court practices and outcomes, and they alert us to important organizational differences in how courts process cases which can make simple cross-city comparisons misleading. For example, Eisenstein and Jacob's (1977) three-city comparison of the character of courtroom "workgroups" shows city differences in the particular composition of groups of court workers have consequences for the speed and types of court dispositions.

Levin's (1972, 1977) two-city comparison of the relationship between judicial appointment or election and judicial decision-making reveals that the method of judicial selection has consequences for differing judicial philosophies toward defendants. In the city where judges were appointed, a more "strict" application of legal

standards in sentencing occurred; in the city where judges were elected, a "personalized" assessment of the defendant's life situation was made. Others label this distinction as one of "formal rationality" ("equal treatment" regardless of background) and "substantive rationality" (decisions tailored to fit a person's background) (Maynard, 1982: 357). Levin's work is particularly relevant for my research since the consideration of defendant's familial situation may be more pronounced in jurisdictions taking a "personalized" approach. (I note, however, that very little is known about the "standards of justice" applied in criminal court decision-making, i.e., the extent to which "formal rationality," "substantive rationality," or a mixture of both prevails.)

I agree with Levin (1977: 2) that there "probably is no such thing as a 'typical criminal court'," and that attempts to generalize "court activities" from single jurisdictional studies are misleading and inappropriate. Researchers themselves have compounded this problem: Conflicting results found from study to study have as much to do with differing modes of analysis and variables used, as they do with actual differences in how courts handle cases. Hagan and Busmiller (1981) review how this problem has prevented the accumulation of much knowledge of the factors associated with sentencing outcomes.

"Modeling" the adjudication process. If court research yields conflicting findings, and inter- and intra-jurisdictional variation is

apparent for both court practices and factors associated with particular court decision-making contexts, most researchers also acknowledge that their best attempts to "model" the decision-making process with quantitative procedures are undermined by its subtle complexity. Qualitative studies reveal many intricate features in the adjudication process that elude even the best crafted quantitative analysis (Feeley, 1979; Rosett and Cressey, 1976; Downie, 1972; Maynard, 1982). Berk et al (1981) and others argue that quantitative research on sentencing outcomes must statistically account for the selective attrition of cases filtered out at earlier points.

If "explained variation" is used as an indicator of how well quantitative court research can specify those factors associated with court outcomes, then a range of 20-30% for sentencing and typically less for other court outcomes is the best one finds. This is indicative of the assumptions (probably incorrect) of a linear relationship between independent variables and outcomes, the inherent imprecision of measuring socio-legal phenomena in their contextual detail, and an inability to include a range of other influences selectively at play from case to case.

Maynard (1982) has recently argued that "variable analysis" is not appropriate in understanding court decision-making, and that a "gestalt framework" is necessary. His analysis of conversations between prosecutors, judges, and public defenders during the plea bargaining process reveals that for each defendant a "unique set of

attributes appropriate to a particular argument" is deployed by the public defender (Ibid.: 355). These "demographic identities" are contextually related to biographical nuance by the public defender in explaining why the offense occurred; in so doing, he or she can justify a dismissal, reduced charge, or certain type of sentence. Maynard's conversational analysis of plea bargaining demonstrates the limitations and crudeness of the variables utilized thus far in court outcome research. Moreover, he rightly points out that court researchers presume court agents are "cultural dopes," "mechanically running through a checklist of categories" rather than "actively organizing the decision-making process" (Ibid.: 352). Finally, he calls for research on the "structure of commonsense reasoning practices" to reveal legal practioners' ideas about "who defendants are and what justice is." Two of the four cases he presents are particularly revealing in understanding how "justice" is applied in the handling of male and female defendants with familial responsibilities.[44]

Data collection and analysis. The methodological approach taken in this research--a quantitative analysis of court outcomes in two state criminal courts and an observational study of court proceedings and interviews of court personnel in a third court--is a modest attempt to bridge the gap between two forms of data and what can be gained from an analysis of each.

I required a large data set, one that contained enough cases to hold a variety of factors "constant" and which included information on defendant's family situation to statistically compare the differential outcomes for male and female defendants. This type of analysis is important to determine at an aggregate (if crude) level whether there are differences in court outcomes, at which point they emerge, and whether defendant's familial situation is associated with them. Two such data sets were obtained for court outcomes in New York City and Seattle; these are analyzed using multiple regression procedures. In Chapter IV, a detailed description of the data, how it was coded, and some of the statistical issues involved with its analysis are discussed. In that and the succeeding chapter, the quantitative analyses of factors associated with particular court outcomes are presented.

For the qualitative study, I conducted a 6-week observational study of court proceedings in a district court, and I followed selected trials in superior court in the Springfield, Massachusetts, courthouse. The observations were combined with interviews of 35 court personnel (judges, probation officers, prosecutors, and defense lawyers). I would have preferred carrying out this closer glimpse into decision-making in one of the courts where the quantiative analyses were done. Unfortunately, this was not possible due to geographical accessibility.

The Springfield courthouse, the second busiest in the state, is located in Western Massachusetts in a city with 155,000 population. The observational data collected center on the types of information that defense lawyers present to the court on behalf of their clients, the frequency with which certain defendant characteristics are invoked, and whether there are male-female differences in the form and frequency of the background characteristics mentioned. The observational forms were open-ended, and verbatim accounts were recorded. A description of the general adjudication procedures in this Massachusetts court, together with the flow of cases, offenses charged, and dispositions over the 6-week period in district court are shown in full in Appendix B. Since the Springfield court has no computerized data base, nor a ready means to retrieve detailed information on cases, it was impossible to carry out quantitative analyses of outcomes of the type for New York City and Seattle.

The semi-structured interviews of 35 district and superior court personnel center on the kinds of background characteristics considered important in (1) plea bargaining (prosecutors), (2) making dispositional arguments before the judge on the defendant's behalf (defense lawyers), (3) recommending sentences (probation officers), and (4) sentencing (judges); and whether there were differences depending on whether the defendant was male or female. Other questions asked included: relations between prosecutors, probation officers, and defense lawyers in influencing judges; and the specific features of

the role of each court worker. The interview schedules and observational forms used are shown in Appendix C; and the presentation of the interview material, illustrated with the observations, is contained in Chapter VI.

My aim for this research is to determine the plausibility of the hypotheses outlined for court outcomes and practices in criminal court decision-making in three states. In so doing, I hope to re-orient the terms in which gender discrimination is conceptualized and interpreted, and to provide needed clarity in an area long characterized by unsubstantiated claims. The use of quantiative and qualitative methodologies adds an important dimension to the research by linking statistical patterns to court agents' accounts and practices, both of which I hope to tie to the socio-structural terms of the gender relations framework.

Notes to Chapter III

27. Barrett (1980: 8-41) provides and excellent review of the development of feminist theoretical debates. Edited collections that expose the spectrum of current American, British, and French feminist theoretical thinking includes Reiter (1975), Barker and Allen (1979), Sargent (1981), and Marks and de Courtivron (1980).

28. The FBI UCR figures for 1980 show that females comrpise 21% of those under 18 arrested, and 15% of those 18 and over arrested. Based on available court research, women are 10-15% of those prosecuted in state criminal courts and federal courts. In 1978-79, females were 20% of those in private and public juvenile facilities, 6% of those in jail, and 4% of those in state and federal prisons (see Note 43 for a complete breakdown of incarceration statistics for men and women). Those American statistics are similar to those for Eastern and Western European countries and Japan; African and Latin American countries and India have lower proportions (see Adler, ed., 1981).

29. The UCR arrest rates do not provide breakdowns for race and sex to assess the minority proportions among men and women, a serious omission. However, overall rates of arrest for all offenses are: 74% white, 24% black, and 2% other; hispanics comprise 11% of all arrests (UCR, 1980: 206-7).

    For state criminal court prosecutions, there are no national statistics. Although detailed information on Federal district court criminal defendants is kept, it does not include race as a demographic category (see latest and all preceding annual editions of Federal Offenders), a curious oversight.

    From my analysis of New York City and Seattle courts, I find that among women, blacks are more highly represented than their proportions among men, a pattern which is also shown for those in jails and state and federal prisons in 1978 (Sourcebook, 1982: 462-481):

	Men	Women
Local jails	(N=148,839)	(N=9,555)
black	41%	48%
white	57	49
other	2	3
	100%	100%

(No hispanic designation is shown.)

(Note 29 continued)

State and federal prisons	(N=261,562)	(N=11,416)
black	47%	53%
white	45	40
hispanic	7	5
other	1	2
	100%	100%

For comparison the 1980 census for the American population was (Bureau of Census, 1981: 25-26):

	Men	Women
US population	(N=110,032,000)	(N=116,473,000)
black	12%	12%
white	83	83
other	5	5
	100%	100%

(7% of males and 6% of females are of Spanish origin)

30. Anne Smith (1980) attempted such a comparison in her historical analysis of women accused of murder. Others (e.g., Reiman, 1979: 119, 121-22) have compared selected penalties for "crimes of the poor" and "crimes of the affluent," an approach that seems the most sensible in exploring the question of "class differences." The Patty Hearst and Jean Harris cases were both objects of journalistic-style books of the middle-class white woman "on trial," while the proliferation of books by Watergate defendants is indeed staggering. Given their very low probability of being prosecuted and jailed, we certainly learn more of the celebrated middle-class white experience.

31. Hagan's (1974) review was a pivotal one in suggesting that "legal" rather than "extra-legal" factors have the overwhelming influence on sentencing outcomes. He has since re-defined this distinction as "legitimized" and "non-legitimized" influences in sentencing, recognizing that "legal" factors vary between jurisdictions and "extra-legal" factors are built into some parts of the law (Hagan and Busmiller, 1981: 6).

32. See the classical statement of this thesis by Engels (originally published in 1884), which has been used as a taking off point in feminist anthropological and historical research (e.g., Leacock, 1972; and edited collections by Rosaldo and Lamphere, 1974; Reiter, 1975; and Bridenthal and Koonz, 1977). Whyte (1978) concluded from a quantitative cross-cultural study that the "position of women" erodes in more "complex" societies, but that there is no one set of factors that is consistently related to the status of women.

33. McIntosh (1978) eloquently states the particular problems and consequences of women's claims on state resources and intervention. Fairbairns (1979) provides a witty, if disturbing, fictional account of the awful consequences of women's struggle for "maternal benefits."

34. See Note 25 in Chapter II for the particular considerations given in judicial sentencing.

    The "individualized justice" model with enormous discretionary power invested for sentencing judges and parole boards has come under attack in the last decade. Since sociological studies of court decision-making assume this model is operative in court decisions, it is uncertain what the effect will be of proposed sentencing and parole board guidelines to "structure" judicial discretion. The most extreme form of limiting prosecutorial and judicial discretion has been the state legislative enactment of mandatory sentences. The 1982 passage of California's "Victim Bill of Rights" exemplifies this trend toward a tough law and order stance, in the face of perceptions that criminal justice agents' discretion has become "too soft" on criminals.

35. Only one study that I'm aware involved interviews of criminal court judges and how they handled male and female defendants. Rita Simon collected material from 30 judges in 4 major American midwestern cities in 1974. She reported that more than half of them said they treated women more leniently, particularly at the sentencing stage, where they were more inclined to recommend probation rather than imprisonment. As well, if they sentenced a woman to jail, it was usually for a shorter time than for a man (Simon, 1975: 87; 1979: 562-63).

    Since the collection of the interview material has not been documented or analyzed in any published fashion by Simon, it is impossible to evaluate it. One wonders, however, whether court agents' accounts of the treatment of female defendants slips into

(Note 35 continued)

the "female paternalism" explanation, when "familial paternalism" is the basis for differential treatment. As well, judges may not be able to separate the differences in offenses prosecuted and prior records of male and female defendants, which are typically less severe for female defendants.

36. Comparable information for men can be found in a 1979 survey of inmates of local jails (Department of Justice, 1980: 37), but to the best of my knowledge is not available for state and federal prison inmates.

37. I expect that the biases by "family sociologists" and other observers of "the family" would also be held by court agents. See, e.g., Rodman's (1964) and Staples' (1971) critique of how middle-class "values" distort lower-class or black family life as disorganized and "chock full of problems."

38. Researchers of family violence note that "If one is truly concerned with the levels of violence in America, the place to look is in the home rather than on the streets" (Balkan et al, 1980: 242). Research is needed here on the divergent paths taken in the state response to acts of familial violence vs. acts involving other victims. Straus's (1978) was the first national American study focusing on family violence; he estimated from a national sample of over 2,000 couples that on an annual basis, 1.8 million wives are beaten by their husbands. Straus suggests that the true incidence of wife beating may be more than twice as high as the estimates obtained from his study (as cited in Bowker, 1981: 235). Gaquin's (1978) analysis of LEAA victimization data shows that of the assaults on women currently or previously married during 1973-75, 25% were by spouses (Ibid.: 234).

The incidence of marital rape, which is not legally defined as a crime in most states (Oregon and Massachusetts are the exceptions), is not known. Bart's (1975) analysis of over 1,000 questionnaires completed by rape victims, and Gelles' (1977) survey of rape crisis centers in 16 states show a similar proportion of .3-.4% of rapes committed by husbands. (The ability of wives to define unwanted or forcible intercourse by husbands as rape is thwarted by both socio-legal definitions and self-perceptions of what constitutes rape.) Bart also found that rapes by relatives (5%), lovers (1%), and ex-lovers (3%) constituted an additional proportion of rapes between familial and intimate lover relations.

(Note 38 continued)

In 1979, there were about 500,000 serious child abuse cases reported in the U.S., and 2,000 children were killed by parents. Survey estimates place the annual incidence of child abuse at about 2,000,000 cases, but it is important to stress the definitional problems that abound in this area (see, e.g., Newberger and Bourne, 1980). A recent Newsweek (August 9, 1982: 45-47) article reports that a conservative figure of 1 out of 10 children is sexually abused each year, usually by a "trusted authority figure."

Brownmiller's (1975: 308) summary of a 1969 study of adult sex crimes against children reported to police and child protection agencies in New York City reveals the following. The sexually abused child is more prevalent than the physically abused or battered child, 10 girls are molested for every 1 boy, 97% of offenders are male, 27% of offenders lived in the child's home and an additional 11% related by blood or marriage, and force or threat of force was used against 60% of the children.

39. The following cases were subject to a great deal of national media attention: Claus von Bulow (murder of wife); Jean Harris (murder of lover); and Francince Hughes (arson-murder of husband after years of being a victim of physical abuse). The celebrated murder cases masks the generally high incidence of homicides between husbands and wives. Balkan et al (1980: 241) report that in 1974, 25% of murders in San Francisco were committed between married or cohabiting couples, and they cite another research study where one-third of female homicide victims in California during 1971 were murdered by husbands.

40. The proliferation in recent years of store theft surveillance devices and house detectives, check-cashing screens in food markets, and more coordinated city efforts to root out welfare fraud are likely bringing more women into the criminal justice system than in the past. I would not expect that "welfare fraud" cases would be the object of lenient treatment; instead, court agents would view stealing this state money as out of "greed" since family members are presumed to be adequately supported by other sources. However, I would expect that offenses involving small amounts of money or household goods secured without victim injury may receive court compassion.

41. Haft (1976) discusses four grounds on which prostitution laws are unconstitutional (equal protection, privacy, cruel and unusual punishment, and due process). COYOTE and other

(Note 41 continued)

prostitute organizations are working to decriminalize prostitution, together with NOW and the ACLU.

42. Their "problem" goes two ways. Young women may run away from homes characterized by sexual abuse and parental neglect. As "runaways" they cannot return to school or take a regular job for fear of being caught (Chesney-Lind, 1978: 178; Wooden, 1976: 122-23).

43. Male-female breakdowns by site of and reason for incarceration are as follows:

	MALE		FEMALE	
	N	%	N	%
Juvenile				
public facility	37,063	8%	6,026	17%
private facility	20,505	4	8,173	23
sub-total	57,568	12%	14,199	40%
Adult (jail)*				
awaiting arraignment	15,412	3%	1,338	4%
awaiting trial	47,367	10	2,736	8
awaiting sentence	11,560	3	798	2
sentenced	74,374	16	4,678	13
unknown	125		5	
sub-total	148,568	32%	9,555	27%
Adult (prison)				
state	235,308	50%	9,659	28%
federal	26,254	6	1,757	5
sub-total	261,562	56%	11,416	33%
TOTAL	467,968	100%	35,170	100%

* Of the 148,838 males in jail, 1,333 (1%) are juveniles; and of 9,555 females in jail, 278 (3%) are juveniles.

Source: Data for juvenile facilities are for 1979 (Sourcebook, 1982: 457-58); and that of adult facilities for 1978 (Sourcebook, 1982: 462, 481), edited by Flanagan et al.

44. In one case, a woman charged with shoplifting of small items from a supermarket was described as having three small children--a 2½ month-old baby, the youngest--whom she was trying to support; as well, she had traveled some distance to make her court appearance. Maynard subsequently notes that the defendant attributes and biographical details were tailored by the public defender to persuade the DA that the defendant had "suffered enough" and did not deserve the standard penalty of 24 hours in the county jail.

Another case involved a man charged with drunken driving, who had two previous convictions for this offense. In response to the DA's offer of 75 days in jail, the public defender noted: "the guy's .. got a good job, he supports his family, wife and kids ... if he does 75 days straight time, he's going to lose his job, his ... family's going to be on welfare." The public defender persuaded the DA that a weekend sentence rather than straight time was appropriate.

These are exactly the kinds of considerations I have in mind in the differential handling of "familied" and "non-familied" defendants.

C H A P T E R IV

GENDER DIFFERENCES: "SEX EFFECTS" AND FAMILIAL SITUATION

Introduction

In this and the following chapter, gender differences in court outcomes are explored with quantitative analyses of data from state criminal courts in New York City and Seattle. The New York City analysis is of cases disposed before a lower criminal court, with a small portion (6%) disposed in the higher supreme court during a four-month period in 1974-75. It contains sentencing and pre-sentencing dispositions (dismissal, type of finding, pre-trial release decisions) and thus allows for analyses of gender differences across an array of court decision points.

One limitation of this data set is that it contains too few cases to analyze the determinants of a jail sentence for female defendants. However, the second data set, a sample of defendants convicted of felonies and sentenced before a Seattle (Washington) superior court during 1973 has enough female cases for analyzing the determinants of a jail sentence. The Seattle data are limited to sentencing outcomes only, containing no pre-sentencing decisions.[45] By using both data sets, I can (1) determine whether the kinds of outcomes expected are found in two different state criminal courts

and (2) attempt to overcome the limitations contained in each data set.

The analysis is organized as follows: In this chapter, male and female cases are combined in the equations as a first step in assessing whether "sex effects" in court outcomes are mediated by the familial situation of defendants. In the following chapter, outcomes are analyzed with separate equations for male and female defendants, exploring the "within-sex" differences along three dimensions: type of offense charged, race and ethnicity, and familial situation.

Conceptual and statistical issues. For the analysis of both data sets, ordinary least squares (OLS) multiple regression analysis is used, with a simultaneous inclusion of all independent variables. Some conceptual and statistic issues are addressed here in the choice of independent variables and the type of statistical analysis employed.

Independent variables of case severity, charge type, and prior record are utilized throughout the analyses; their strong association with court outcomes (particularly, the sentencing decision) has been demonstrated in previous research, and their inclusion is critical in examining the differential treatment of defendants. In addition, defendant background characteristics of race and ethnicity, employment situation, and age are included as independent variables throughout the analyses. Previous quantitative research shows that the impact of

defendant attributes is less apparent than factors of case severity or prior record in quantitative analyses; however, they remain important sociological variables.

Defendant's employment situation is used as an independent variable, rather than an education or "class" variable, for two reasons. First, whatever fine-grained distinctions of "class" or "SES" that researchers might use, the overwhelming profile of defendants before the court is one of less education and great economic disadvantage, reflecting the larger societal and legal confluence of economic inequality, definitions of "crime," and those who are the likely objects of criminal justice social control. Second, based on interviews with court personnel (Chapter VI), a defendant's employment situation is a salient characteristic distinguishing (in their minds) those defendants who are "trying to help themselves" by holding a job, and those who are not. This accords with the gender relations framework outlined, where I presented hypotheses that employment in the paid labor force will positively influence judicial decision-making, particularly for male defendants.

While the foregoing independent variables typically feature in court research, the family variables analyzed here are rarely employed. For both data sets, these variables are constructed to (1) reflect the defendant's marital status (single or married) and (2) whether defendants have household dependents or not (New York City) or have "family ties" (Seattle). Due to differences in the data available for each file, the family variables are not strictly comparable.

Moreover, a specific categorization of the type of familial responsibility (e.g., responsibility for children, spouse, or both; or responsibility for parents) is not possible, given the nature of each data set. Thus, data limitations preclude an assessment of whether the court response to defendants varies by the particular types of dependents.

Interaction terms of sex with family situation are included to determine whether there are differences in the way the court responds to "familied" men and women. Note, however, that the interpretation of interaction terms can be tricky. If an interaction regression coefficient is statistically significant, one knows that there are slope differences between men and women that warrant an interpretation of a differential response based on family situation. Yet the lack of statistical significance can be more difficult to interpret since the inclusion of these terms creates multicollinearity problems, hence higher standard errors around the estimates for the interaction terms.

Mode of analysis. With one exception, the multiple regressions all utilize dummy dependent variables in characterizing the type of court outcome. As others have noted (Goldberger, 1964: 248-251; Berk, 1983: 30-39), the use of dummy dependent variables violates the assumptions of the classical regression model, i.e., the expected values for the dependent variable can theoretically fall outside the 1.0 interval,

and the error term is heteroskedastic. Theoretically, these problems occur when the distribution on the dependent variable departs too far from 50/50. However, recent studies comparing OLS with the preferable logit or probit models (e.g., Cassel and Hill, 1981) suggest that the statistical "problem" may be more apparent than real, that is, problems are confined to analyses with very poor splits on the dependent variable. Since debate continues over the "correct" statistical tool to apply with dummy dependent variables, selected equations were run using the logit model. This model, as calculated using the Bio-Med Program (BMDP), is the appropriate one when both dummy and interval level independent variables are employed with a dummy dependent variable (as compared with probit, which takes only dummy independent variables). The logit model does not suffer from the statistical problems that can arise with OLS.

A comparison of the regression results using OLS and logit revealed no substantive difference between the two, i.e., the interpretation of statistical or substantive "effects" was the same. Thus, OLS is used throughout for the greater ease of interpreting the coefficients and its more frequent usage in the court research literature.

Finally, it is important to stress that although a number of court outcomes are examined here, they are not modeled in a strictly process-oriented way. That is, the approach used does not account for the potential cumulative effects of selection bias in court

adjudication, which has been shown to have consequences for subsequent court outcomes. Rather, they are cross-sectional snapshots of the factors associated with each court outcome. Others (e.g., Klepper et al, 1981; Berk et al, 1981) have shown using hypothetical and real empirical examples that this method can mask the "true" extent of discrimination and/or promote counterintuitive results (such as, non-whites receiving more favorable sentences than whites) that are artifacts of selection bias itself. The statistical problem of sample selection bias and its effect on the results will be briefly considered in the presentation of the New York City outcomes.

Outcomes in the New York City court

The data. Court outcomes are analyzed for a total of 2748 defendants (12% female) arraigned before a New York City criminal court between December 1974 and March 1975 on a range of offenses. Demographic characteristics of defendants (race, employment, marital status, has dependents or not, age) were gathered from interviews conducted by the Vera pre-trial release services agency following arrest and before the defendant's first appearance in court. Prior record information (prior arrests, and convictions, if any) was recorded from state criminal records, and data on the criminal offense(s) charged were taken from court records.

This lower criminal court serves as the "in-take" court for all persons arrested; it can decide, for example, to send a case to family court for disposition, or to send the case to the grand jury for indictment and subsequent disposition in supreme court. The analyses are predominantly of cases disposed of in the lower court, but do include a small proportion of cases disposed in supreme court. Excluded from all the analyses are cases which went on to family court or where a warrant was outstanding, for which there is no disposition data. The final sample of 2748 is of those defendants for which data are complete on demographic characteristics; thus, it only contains cases where the defendant was cooperative in the post-arrest interview.[46]

Table 1 displays the overall flow of cases analyzed. A brief review of this table is necessary to understand the features of the court's practices that guided the analysis. In Table 1, one finds that 25% of men's and 33% of women's cases are disposed of at arraignment, with about half of these dispositions drawing sentences. Guilty pleas and sentences are possible at arraignment in this jurisdiction when the plea is to a misdemeanor or lesser included offense (Vera, 1977: 15). As will be made more apparent, it is necessary to model this phenomenon by separating the analysis into two parts: those cases disposed at arraignment, and those later disposed.

For cases disposed at arraignment, one-fourth are dismissed, about 40% are guilty pleas with guilty convictions, some 4% are

Table 1. Flow of cases through the New York Criminal Court

	Men (N=2425)				Women (N=323)			
	HOW AND WHERE CASE DISPOSED				HOW AND WHERE CASE DISPOSED			
	N=612 (25%) disposed at arraignment		N=330 (14%) case cont'd or pending in grand jury	N=1483 (61%) disposed after arraignment	(N=105 (33%) disposed at arraignment		N=20 (6%) case cont'd or pending in grand jury	N=198 (61%) disposed after arraignment
How disposed	N	%		N %	N	%		N %
dismissed	157	26%		508 34%	24	23%		63 32%
ACD	179	29		293 20	29	27		58 29
pled NG; acquitted	0	0		14 1	0	0		1 1
pled G; await. sentence	7	1		49 3	0	0		6 3
pled G; sentence	242	40		568 38	48	46		64 32
plea unk'n; sentence	27	4		38 3	4	4		4 2
Pled NG; found G; sentence	0	0		13 1	0	0		2 1
	612	100%		1483 100%	105	100%		198 100%
Sentence	N=269			N=619	N=52			N=70
suspended	81	30%		131 21%	25	48%		37 53%
fine only	2	1		9 1	1	1		1 1
fine or jail	164	61		236 38	25	48		13 19
probation	14	5		97 16	1	1		13 19
jail	8	3		146 24	0	0		6 8
	269	100%		619 100%	52	100%		70 100%

sentenced but the type of plea is unknown, and the remaining 30% are disposed by "ACD." "ACD" stands for "Adjournment in Contemplation of Dismissal" and is a lenient finding for a defendant; it carries no sentence, and the charge is removed from the defendant's record if no new crimes are brought to the attention of the court within a six-month period.[47]

For cases disposed after arraignment, about one-third are dismissed, over one-fifth "ACD'd," and over 40% adjudicated guilty. A tiny proportion of cases involve pleas of not guilty, which either end in acquittals (1%) or findings of guilt (1%). About 3% of defendants are sentenced, but the type of plea is unknown.

For the type of sentence imposed, combining arraignment and post-arraignment dispositions, one sees that women are twice as likely to receive suspended sentences as men (51% versus 24%), tiny proportions of men and women receive fines only (1 and 2%, respectively), and similar proportions of men and women receive probation (12% and 11%, respectively). However, men are more likely to receive a sentence of "fine or jail" (45%) than women (31%), and men are more likely to get a jail sentence (17%) than women (5%).

Two features of these sentence outcomes bear elaboration. First, the "fine or jail" sentence is a difficult one to interpret in terms of its effect on defendants. The average outcome is $75 or 16 days (at arraignment) and $88 or 20 days (after arraignment), leading one to suspect that defendants might find the means to pay the fine and

thus avoid the default of serving jail time. However, there are no data that show how in fact defendants responded to this particular sentence. The second feature of the sentences received is the small number of women who received jail sentences (N=6 of the reduced sample of 323 women). Thus, there are too few cases to explore how family-related variables affect sentencing decisions to jail women, but this analysis can be carried out for men. Given the small number of female defendants who received jail time, I can only indirectly assess how family-related variables affect New York City sentencing decisions concerning men's and women's loss of liberty by comparing "more harsh" sentences of probation and "fine or jail" with "more lenient" ones of suspended sentences and fines only. However, the pre-trial release decision does afford a more direct assessment of the factors associated with loss of liberty decisions for male and female defendants.

Dependent variables. In modeling the adjudication process, the sequence of court decision-making is approximated by establishing nine dichotomous dependent variables that correspond to the types of court outcomes. These are: Y_1; whether cases are disposed at arraignment or not (includes cases that are continued or pending in grand jury). For cases that are disposed at arraignment (excluding continued cases and those in the grand jury), whether the case is dismissed or not (Y_2); the type of conviction, guilty or ACD (Y_3); and the type of sentence for guilty convictions (Y_4). For cases disposed following

arraignment, I examine the proportion of time spent in pre-trial detention (includes cases continued or pending in grand jury) (Y_5),[48] whether the case is dismissed or not (Y_6), type of conviction (Y_7), and type of sentence (Y_8). Lastly, for male defendants only, I examine the determinants of a sentence involving jail for cases later disposed (Y_9). The coding and distribution of the nine dependent variables is presented in Table 2.

Independent variables. The choice of independent variables reflects those identified as relevant in previous literature, in addition to those specified by my gender relations framework. Case variables include the type of crime charged, severity of most severe arraignment charge, and the number of initial arrest charges. A large range of offenses are included in the analysis, and these are categorized along seven dimensions: homicide (murder, negligent homicide, manslaughter), assault (reckless endangerment, sexual assault, and assault), burglary and burglary related offenses (possession of burglar's tools and trespassing); robbery; larceny (petty and grand larceny, possession of stolen property, forgery); "sale" (sale and or possession of drugs, prostitution); and an omitted category that comprises a range of assaultive and potentially dangerous behavior (harassment, possession/use of weapons, and disorderly conduct).[49]

Defendant's prior record is coded as follows: (1) record of prior arrest(s) but no conviction(s); prior arrest(s) and

Table 2. Distribution and coding of dependent variables for the New York City analysis

			Men	Women
Y_1:	Case disposed at arraignment?[a]	yes (0)	25%	33%
		no (1)	75	67
			100%	100%
		N=	2425	323
Y_2:	For cases disposed at arraignment, was case dismissed?	yes (0)	26%	23%
		no (1)	74	77
			100%	100%
		N=	612	105
Y_3:	For cases disposed at arraignment by conviction, type of finding (excludes those pleading not guilty):	ACD (0)	39%	36%
		guilty (1)	61	64
			100%	100%
		N=	455	81
Y_4:	For cases disposed at arraignment by guilty conviction and defendant was sentenced, type of sentence:			
		suspended (0)	31%	48%
		fine only (0)	1	2
		fine or jail (1)	63	48
		jail (1)	5	2
			100%	100%
		N=	261	52
Y_5:	For cases disposed after arraignment or continued or pending in grand jury, proportion of pre-trial time spent detained:			
		proportion of time detained	.42	.24
		s.d.	.47	.41
		N=	1790	214

Table 2 (continued)

		Men	Women
Y_6: For cases disposed after arraignment, was case dismissed?	yes (0)	34%	32%
	no (1)	66%	68
		100%	100%
	N=	1483	198
Y_7: For cases disposed after arraignment by conviction, type of finding (excludes those pleading not guilty):	ACD (0)	30%	43%
	guilty (1)	70	57
		100%	100%
	N=	961	134
Y_8: For cases disposed after arraignment by guilty conviction and defendant was sentenced, type of sentence:	suspended (0)	27%	58%
	fine only (0)	2	2
	fine or jail (1)	50	20
	probation (1)	21	20
		100%	100%
	N=	537	64
Y_9: For men's cases disposed after arraignment by guilty conviction and defendant was sentenced, type of sentence:	fine or jail (0)	49%	
	probation (0)	20	
	jail (1)	31	
		100%	
	N=	479	

[a] For Y_1, the dependent variable is coded with the assumption that an arraignment disposition is more advantageous to a defendant. However, one cannot be convinced that this is the case: Although a speedy disposition by plea to a misdemeanor or lesser included offense early on means no further court appearances, it may also draw a non-trivial sanction.

conviction(s); and an omitted category of no prior arrest(s); and (2) whether or not the defendant was currently on probation or parole. Characteristics of defendants include sex, age, race and ethnicity, employment status, and familial situation.[50] Following my gender relations framework, interaction terms of sex with the three family variables are included. In addition, an interaction term of sex and "sale" is added to the arraignment dispositions to account for the differences in the content of this offense category: for women disposed at arraignment, "sale" is predominantly prostitution charges, while for men, it is possession or sale of drugs charges. For cases later disposed, "sale" contains sale or possession of drugs charges for men and women; thus, no interaction term is employed.

The distributions of the independent variables for men and women at the Y_1 court outcome are displayed in Table 3. There one sees that male cases are more severe (higher charge severity and number of initial arrest charges); men are more likely to be charged with robbery and burglary, while women are more likely charged with sale and larceny; and men have more developed prior records than women. For background factors, there are proportionately far more black women than black men, with fewer hispanic women in comparison to men. While differences in male-female proportions of blacks and hispanics are found, almost 90% of defendants are non-white, thus confining the interpretations of gender differences in outcomes

Table 3. Distribution and coding of independent variables for the New York City analysis

(Distributions at Y_1 court outcome; all X^2 tests are statistically significant at $p \leq .05$.)		Men N=2425	Women N=323
CASE FACTORS			
x_1: Severity of most severe arraignment charge, coded by number of maximum jail days [days was transformed by using the logarithm (base 10)]			
SEVERITY			
violation	15	0.5%	4.3%
B misdemeanor	90	2.4	12.1
A misdemeanor	365	26.8	19.5
E felony	1460	14.0	14.2
D felony	2555	30.3	29.4
C felony	5475	12.6	8.0
B felony	9125	10.4	9.6
A felony	18250	3.0	2.8
		100.0%	100.0%
x_2: Number of initial arrest charges[a]			
ARRESTS			
1		36.8%	43.4%
2		35.5	35.6
3		21.0	16.7
4 or more		6.7	4.3
		100.0%	100.0%
x_{3-8}: Arraignment charge type categories[b]			
HOMICIDE		3.4%	3.1%
ROBBERY		12.1	8.0
BURGLARY		18.4	13.1
SALE		12.7	18.3
LARCENY		25.9	41.5
ASSAULT		19.1	17.3
(omitted)		8.4	8.7
		100.0%	100.0%

Table 3 (continued)

			Men N=2425	Women N=323
PRIOR RECORD				
x_9:	Prior arrest(s), no convictions	ARRNCON (1)	24.2%	17.6%
x_{10}:	Prior arrest(s) and convictions:	ARRC (1)	37.6	19.8
	(omitted: never arrested)	(0)	38.2	62.5
			100.0%	100.0%
x_{11}:	Currently on probation or parole:	PROBAR (1)	9.6%	4.6%
	Not on probation or parole:	PROBAR (0)	90.4	95.4
			100.0%	100.0%
BACKGROUND CHARACTERISTICS				
x_{12}:	Sex of defendant	SEX		
		male (1)	88.2%	
		female (0)	11.8	
			100.0%	
$x_{13, 14}$:	Race/ethnicity	BLACK (1)	46.0%	65.0%
		HISPANIC (1)	41.0	25.7
		(omitted, white) (0)	13.0	9.3
			100.0%	100.0%
x_{15}:	Age of defendant	AGE		
		mean	26.6	27.4
		s.d.	9.4	8.2
x_{16}:	Employment status[c]			
	self-employed, full-time or part-time employed, student, housewife, disabled, and retired:	EMPLOY (1)	43.1%	18.6%
		EMPLOY (0)	56.9	81.4
			100.0%	100.0%

Table 3 (continued)

		Men N=2425	Women N=323
FAMILY TIES AND RESPONSIBILITIES[D]			
x_{17}: single, with dependent(s)	SINDEP (1)	4.1%	38.7%
x_{18}: married, no dependent(s)	MARNO (1)	9.2	12.7
x_{19}: married, with dependent(s)	MARDEP (1)	28.0	12.4
(omitted: single, no dependents)		58.7	36.2
		100.0%	100.0%

[a] Over 92% of cases had only one arraignment charge, but most cases had at least 2 arrest charges. To account for the overall se-erity of the case before the court, it was important to include both measures of case severity.

[b] Charge type categories combine charges of varying levels of severity; and with one exception (robbery) combine lesser-included offenses: HOMICIDE (homicide, manslaughter); ROBBERY (3 seriousness levels); BURGLARY (burglary, possession/use of burglar's tools, trespassing); SALE (possession or slae of drugs; prostitution); LARCENY (petty and grand larceny, arson, mischief, possession of stolen property, and a small number of "white collar" offenses); ASSAULT (assault, menancing, reckless endangerment, sexual assault, kidnapping); and the omitted category includes a range of publicly-oriented assaultive behavior (resisting arrest, disorderly conduct, harassment) and possession of weapons violations. See Note 49 for discussion of the offenses in the omitted category.

[c] The file contains <u>one</u> category labeled "housewife, retired, or disabled," for which there were few women (N=2) and men (N=6). Because these individuals have legitimate reasons for not having jobs in the paid labor force, they were considered "employed." Similarly, the category "students," for which there were 3 men and no women, is a legitimate form of "employment" in the court's eyes.

[d] "Single" includes those separated, divorced, and widowed; "married" includes common-law marriages. See Note 50 for discussion of the considerations given in constructing the family variables, and for differences in household composition for men and women who are single and have dependents.

largely to black and hispanic defendants. This disproportionate "minority" presence is owed in part to the jurisdiction served by the court (from the 1970 New York City census, 50% of the area's population was black or hispanic), in addition to the disproportionate representation of minorities typically found in court disposition samples.

Over 55% of men and 80% of women are currently "not employed" as operationalized on the "employment" variable, a significantly large proportion of defendants who have no independent economic means of support, at least through "legitimate" jobs.[51] Finally, one sees large distributional differences for men and women in their types of family ties and responsibilities: Almost 40% of women (compared to 4% of men) are single with dependents, a difference indicative of women's child-rearing responsibilities outside of marriage. In contrast, men's familial responsibilities for dependents are more likely in a marital context. Far more women than men evidence a familial tie or responsibility, with about 60% of men (compared to 36% of women) single without dependents.

Overall results of the analysis. I briefly summarize the overall results of the analysis before turning to the central analytical focus on "sex" and "familial" responsibilities. This overview is important for understanding the (1) differing factors associated with court outcomes and (2) related aspects of sample selection bias given the "filtering out" of cases across an array of court outcomes.

Table 4 summarizes the results for the nine court outcomes; these are shown in full in Table A-1, equations Y_{1C} through Y_9 (Appendix A).

From Table 4, one sees that the results from the analysis are generally in accord with previous research. Higher charge severity, case severity (number of initial arrest charges), and a prior record are most often positively related to more harsh outcomes, with the exception of decisions concerning case dismissal.[52] The type of offense charged affects court outcomes, but the significance of the effect varies depending on the particular court decision examined. In comparison with these case factors and prior record, background characteristics of age, employment, and race or ethnicity are not as consistently or predictably related.

Sample selection. The analysis of sample selection bias (Appendix A, Table A-2) shows that cases disposed at arraignment differ from those later disposed. The former contain defendants who are (1) somewhat less likely to have prior records, (2) more likely to be charged with less severe crimes, (3) less likely to be charged with homicide and robbery, and (4) more likely to be charged with drugs and prostitution-related charges. Defendants with prior records are disproportionately more likely to receive sentences than those without a record, for those disposed at and after arraignment. In comparison to these distributional changes, those for familial and background characteristics of defendants are smaller and more subtle; there is no clear

Table 4. Summary of New York City outcomes[a]

		CASES DISPOSED AT ARRAIGNMENT		
	Y_1	Y_2	Y_3	Y_4[c]
	1=not disp'd at arraign.	1=not dismissed	1=guilty 0=ACD	1=more sev. 0=less sev.
Case factors				
severity	+	-	0	+
arrests	0	+	+	0
homicide	0	b	b	b
robbery	0	0	0	0
burglary	0	0	-	0
sale	-	+	-	0
larceny	0	0	-	0
assault	0	-	-	0
Prior record				
arrncon	0	0	+	0
arrc	0	0	+	+
probpar	+	0	0	-
Characteristics				
sex (1=male)	0	0	+	+
black	0	0	0	0
hispanic	0	0	0	0
age	-	0	+	0
employ	0	-	0	+
Family situation				
sindep	+	0	0	0
marno	0	0	0	+
mardep	0	0	0	0
Sex interactions				
sex/sindep	-	0	0	0
sex/marno	0	0	0	-
sex/mardep	0	0	0	0
sex/sale	0	0	-	0
constant	-.197	.866	.267	-.029
F	26.21	2.80	14.75	3.20
(adj) R^2	.17	.04	.36	.11
N	2748	717	536	313
$\bar{x}$	.74	.75	.61	.65

Table 4 (continued)

	CASES DISPOSED AFTER ARRAIGNMENT				
					MEN ONLY
	Y_5	Y_6	Y_7	Y_8[c]	Y_9[d]
	% time detained	1=not dismissed	1=guilty 0=ACD	1=more sev. 0=less sev.	1=more sev. 0=less sev.
Case factors					
severity	+	-	+	0	+
arrests	+	0	+	0	0
homicide	+	+	0	0	+
robbery	0	0	0	0	+
burglary	-	0	-	0	0
sale	0	0	-	0	0
larceny	-	0	0	-	0
assault	-	-	-	0	0
Prior record					
arrncon	+	0	+	0	+
arrc	+	0	+	+	+
probpar	+	0	0	0	0
Characteristics					
sex (1=male)	0	0	0	0	
black	+	+	0	-	0
hispanic	+	+	0	-	0
age	-	0	0	0	0
employ	0	0	0	0	0
Family situation					
sindep	0	+	0	-	-
marno	0	0	-	0	0
mardep	-	+	-	-	0
Sex interactions					
sex/sindep	0	0	0	+	
sex/marno	0	0	+	0	
sex/mardep	+	-	+	+	
constant	-.267	.799	.223	.707	-.284
F	33.31	4.17	10.87	3.94	6.35
(adj) R^2	.21	.04	.17	.11	.17
N	2004	1681	1095	537	478
$\bar{x}$	.40	.66	.68	.67	.30

Table 4 (continued)

[a] See Table A-1 (Appendix A) "C" and Y_9 equations for regression coefficients and degree of statistical significance

Key: + positively related to outcome at $p \leq .10$
- negatively related to outcome at $p \leq .10$
0 statistically unrelated to outcome

[b] Variable dropped from analysis because of too few cases.

[c] $Y_{4,\ 8}$ sentence: more severe (probation and "fine or jail")
less severe (suspended and fines)

[d] Y_9 sentence: more severe (jail)
less severe (probation and "fine or jail")

"homogenization" of the sentencing samples toward more minority, male, or less "familied" defendants. Thus, sample selection is least apparent for defendant characteristics and most apparent for prior record, charge severity, and specific crime types.[53]

The important implication from the analysis of sample selection for gender differences in court outcomes is that female cases disposed at arraignment are dominated by prostitution charges: Over one-fourth of women in arraignment dispositions and about 60% of those sentenced at arraignment are charged with prostitution. In contrast, prostitution charges represent only 2% of women's cases disposed after arraignment. As the following section will reveal, the disposition of predominantly prostitution cases for women at arraignment has consequences for the relationship between sex and family situation. Specifically, the hypothesized outcomes are generally confirmed for male and female defendants later, but not early disposed.

Impact of sex and family situation. I have hypothesized that the central factor distinguishing the handling of male and female defendants is the degree to which they have familial responsibilities, specifically, whether they are responsible for the economic support and/or care of dependants. As such, I expect that the effect of "sex" is mediated by gender-related familial responsibilities and that this should be most pronounced when defendant's loss of liberty is at stake, when decisions can separate them from familial responsibilities.

To determine whether these expectations are born out, three separate equations were run for each of the court outcomes with the following variables included: (a) sex only; (b) sex and family variables; and (c) sex, family variables, and sex-family interaction terms. Each equation contains all the other independent variables of charge type and severity, prior record and probation/parole status, employment situation, age, and race and ethnicity. Table 5 presents the results of this analysis. For clarity of presentation, only the coefficients for sex, family situation, and interaction terms are shown (see Appendix A, Table A-1 for the full equations).

Recall that male cases are coded "1" and female, "0," so that a positive sex coefficient means a more harsh outcome for men, given the manner in which the dependent variable is coded. Similarly, a positive coefficient for the sex-family and sex-sale interaction terms means that men are accorded relatively more harsh treatment than women. The table demonstrates that for particular court outcomes, the effect of "sex" changes in magnitude and statistical significance, once gender-related family variables and interaction terms are included in the analysis.

Two outcomes in particular, Y_5 (proportion of time spent pre-trial detained) and Y_8 (sentencing for later disposed cases) are illustrative of the changing impact of "sex." Without family variables and interaction terms, men are 8% more likely to be pre-trial detained and 19% more likely to receive a more severe sentence.

Table 5. Comparative effect of "sex" with no family variables, family variables, and interaction terms[a]

	CASES DISPOSED AT ARRAIGNMENT					
	disp'd at arraignment: 1=no			case dismissed: 1=no		
	Y_{1A}	Y_{1B}	Y_{1C}	Y_{2A}	Y_{2B}	Y_{2C}
sex (1=male)	.010	.010	.065	.019	.009	.048
sindep	-	.015	.121**	-	-.022	-.001
marno	-	-.038	.017	-	-.031	-.027
mardep	-	.047***	.041	-	.037	-.053
sex/sale	-	-	-.026	-	-	-.144
sex/sindep	-	-	-.181***	-	-	-.036
sex/marno	-	-	-.060	-	-	-.055
sex/mardep	-	-	.006	-	-	.096
R^2	.17	.17	.17	.06	.05	.04
N	2748	2748	2748	717	717	717

	type of finding: 1=guilty 0=ACD			sentence: 1=more severe[b] 0=less severe		
	Y_{3A}	Y_{3B}	Y_{3C}	Y_{4A}	Y_{4B}	Y_{4C}
sex	-.062	-.064	.153**	.140	.106	.205*
sindep	-	.011	.041	-	-.133	-.112
marno	-	-.005	-.152	-	-.103	.367*
mardep	-	.081*	.047	-	-.033	.175
sex/sale	-	-	-.672****	-	-	-.024
sex/sindep	-	-	-.015	-	-	.049
sex/marno	-	-	.198	-	-	-.573***
sex/mardep	-	-	-.035	-	-	-.240
R^2	.31	.31	.36	.12	.12	.13
N	536	536	536	313	313	313

****$p \leq .001$
***$p \leq .01$
**$p \leq .05$
*$p \leq .10$

Table 5 (continued)

	CASES DISPOSED AFTER ARRAIGNMENT					
	proportion of time detained			case dismissed: 1=no		
	Y_{5A}	Y_{5B}	Y_{5C}	Y_{6A}	Y_{6B}	Y_{6C}
sex (1=male)	.075***	.067**	.023	-.010	-.002	.087
sindep	-	-.031	-.043	-	.020	.126*
marno	-	-.020	-.121	-	-.066	.030
mardep	-	-.038*	-.218***	-	-.035	.170*
sex/sindep	-	-	-.024	-	-	-.147
sex/marno	-	-	.114	-	-	-.105
sex/mardep	-	-	.190**	-	-	-.220**
R^2 (adj)	.20	.21	.21	.04	.04	.04
N	2004	2004	2004	1618	1681	1681

	type of finding: 1=guilty 0=ACD			sentence: 1=more severe[b] 0=less severe		
	Y_{7A}	Y_{7B}	Y_{7C}	Y_{8A}	Y_{8B}	Y_{8C}
sex	.025	.053	-.105	.189***	.118*	-.070
sindep	-	.065	-.082	-	-.182***	-.436***
marno	-	.047	-.413***	-	-.028	-.088
mardep	-	-.007	-.225**	-	-.057	-.517***
sex/sindep	-	-	.160	-	-	.358**
sex/marno	-	-	.531****	-	-	.067
sex/mardep	-	-	.235**	-	-	.486***
R^2 (adj)	.16	.16	.17	.09	.10	.11
N	1095	1095	1095	537	537	537

[a] Coefficients are net of the following independent variables: severity; number of arrests; the six charge categories; prior record variables of arrncon, arrc, and probpar; and race/ethnicity, employment, and age (see Appendix A, Table A-1 for the full equations).

[b] For Y_4 and Y_8, sentences are dichotomized as follows: more severe, "fine or jail" and probation; less severe, fines only and suspended sentences.

When family variables and interaction terms are added to the equations, "sex" is no longer statistically significant; and in the case of the Y_8 decision reverses in sign. These results show that if family variables are not included in analyses comparing gender differences in court outcomes, significant "sex" differences (favoring women) are misleading. For Y_5 and Y_8 outcomes, "familied" men and women, particularly those with dependents, have an advantage before the court, and this advantage is even greater for female defendants.

In comparison to these court outcomes, there is no effect of "sex" in the dismissal decisions (Y_2 and Y_6) and none for the type of conviction for cases later disposed (Y_7). Note, however, that when family-sex interaction terms are in the Y_7 equation, "sex" becomes more strongly (but not significantly) negative. This suggests that the impact of family variables is strong for female defendants in the direction of court leniency, so that once this is taken into account, those women without family ties are responded to more harshly than their male counterparts.

Two court outcomes (Y_3 and Y_4) do not support the proposition that the inclusion of family variables and interaction terms attenuates the effect of "sex" to non-significance. One sees from equation Y_{3C} that men are significantly more likely to be found guilty at arraignment with the inclusion of the interaction terms. However, this "sex" effect arises from the strong interaction effect of "sex" and sale. That is, once taking into account the higher

likelihood that women are convicted of predominantly prostitution charges, men are more likely to be found guilty for other offenses.

This result allows for a better interpretation of the Y_{4C} sentencing outcome, where like Y_{3C}, the inclusion of the interaction terms increases the likelihood that men are more likely to receive more severe sentences. Most women subject to sentencing at arraignment are charged with prostitution, which militates against any positive affect of being married or having dependents. Once taking into account that married women with and without dependents receive more harsh sentences than similarly situated men, there remains a unique effect of "sex" favoring single women without familial responsibilities.

Thus, there are differences in the handling of male and female defendants early and later disposed and the impact of defendant's familial situation on these outcomes. One might expect that there is little court knowledge of (or interest in) defendant's familial situation for the former, more speedy dispositions. Rather, the offense and defendant's prior record would be the most salient sentencing criteria. It remains uncertain, however, just why, for the arraignment dispositions, the joint influence of offense and prior record gives "non-familied" women a sentencing edge over "non-familied" men.

Discussion. The general direction of Hypothesis (2) is confirmed for defendants disposed following arraignment: "Familied" men and women,

particularly those with dependents, are more often the recipients of more lenient court outcomes when defendant's loss of liberty is at stake (Y_5 pre-trial release and Y_8 sentencing decisions). This result is also found for the determinants of a jail sentence for men only (Y_9) where single men with dependents are significantly less likely to receive jail time. This result suggests that family considerations do weight importantly for men; in this instance their primary responsibilities for children and/or other family members is comparable to women with dependents.

Hypothesis (3) is also supported for the Y_5 and Y_8 decisions: "familied" women, i.e., those with dependents, are treated more leniently than similarly situated men. The expectation that married individuals would fare better than singles (Hypothesis 1) is not consistently born out in the analysis. Rather, the presence of dependents is the more predictable factor for more lenient outcomes. The New York City data do not permit an exploration of Hypothesis (4) on the influence of parental social control, but the Seattle sentencing analysis will.

The mitigating effect of family ties was not found for cases disposed at arraignment or for dismissals of later disposed cases. Indeed, the Y_6 dismissal decision shows that those with dependents are less likely to be dismissed, and that this effect is stronger for women than men with dependents. However, the conviction decision for cases disposed later is affected by defendant's family situation in

the expected direction. This is the only court outcome where married individuals without dependents are most likely to receive more favorable outcomes, although the two other types of familial situations are positively associated with the more gentle ACD finding. Thus, a defendant's familial ties may have a bearing on conviction, something which I did not expect. This decision is an important one insofar as an ACD finding does not draw an immediate sentence or conviction record.

The "sex effect" for the Y_{3C} and Y_{4C} outcomes which appears to favor women is double-edged: Women are less likely to be convicted on charges other than prostitution compared to men; and women sentenced for predominantly prostitution charges do not accrue any advantage due to their familial situation.

These results suggest that the inclusion of family variables in analyses comparing court outcomes for men and women is clearly warranted. It is precisely at those court points where previous research finds differences favoring women where such differences are mediated by familial social location and responsibilities. The results indicate that the differential handling of men and women, linked to differences in familial and productive responsibilities, has consequences for men and women, but the effect is stronger for women. I interpret the stronger mitigating effect of dependents for women as indicative of their responsibilities for the primary care of dependents, arguing that these familial responsibilities are more "indispensible" than those of economic provision to family members.

The New York City data provided a limited assessment of the impact of a defendant's familial responsibilities on the likelihood of receiving jail time. Although this analysis was of male defendants only, the results suggest that the more rare male defendant who has responsibilities for the primary care of dependents is subject to the "indispensibility factor" that I have argued occurs for female defendants.

In the following section, the results of the Seattle sentencing outcomes are presented. These results extend upon those for New York City by exploring the determinants of jail time for men and women and how this varies by a defendant's familial responsibilities.

Sentencing outcome in the Seattle felony court

The data. The following analysis is based on a random sample of 504 cases (20% female) drawn from over 1800 adult felony convictions in the King County (Seattle) superior court in 1973. During a one-week period in August, 1974, the data were obtained from the case files of the court prosecutor's office. Although each case file normally held information on the police record, court data, and probation report, those files where such information was incomplete were rejected in favor of an alternative file. Since the data are only of those defendants convicted and sentenced, they permit analysis of the type of sentence received, but not of prior record decisions.

Dependent variable. Table 6 displays the distributions and method of coding for the dependent and independent variables. The dependent variable, type of sentence received (Y_{10}), is coded as a dummy variable from the four kinds of sentences possible in this jurisdiction: deferred and suspended sentences are coded as "more lenient"; jail and prison sentences, "more harsh." Deferred and suspended sentences are forms of probation and may be accompanied by similar probation rules and requirements. However, once the requirements and conditions have been fulfilled for persons with a deferred sentence, the offense and conviction are removed from the court records (although they remain on the police records). Jail sentences are for less than one year and are served in a county jail, whereas prison sentences are for one or more years, served in state prison or reformatory. Although qualitative differences exist between the "jail" and "prison" sentences, my analysis and interpretations will not distinguish between the two.

Independent variables. Number of initial prosecution charges (x_1) and primary conviction charge types (x_2 through x_6) are the case factors used in the analysis. No independent measure of charge severity is contained on the file. Note that while 70% of defendants initially had one prosecution charge, over 94% were convicted of one charge; thus, to a limited extent, x_1 taps the degree of seriousness of the case before the court.

Table 6. Distribution and coding of dependent and independent variables for the Seattle analysis

(Except where indicated, X^2 tests of significance between men and women are significant at $p \leq .05$.)

			Men N=383	Women N=103	
Dependent variable					
Y_{10}: Sentence type					
	Deferred	(0)	50%	78%	
	Suspended	(0)	11	7	
	Jail	(1)	21	8	
	Prison	(1)	18	7	
			100%	100%	
Independent variables					
CASE FACTORS					
x_1: Number of initial prosecution charges					
	CHARGES				
	1		71%	68%	
	2		19	16	(NS)
	3		6	10	
	4 or more		4	6	
			100%	100%	
x_{2-6}: Primary conviction charge type					
	VIOLENCE		8%	6%	
	ROBBERY		6	0	
	BURGLARY		19	4	
	LARCENY		32	49	
	FORGERY		5	19	
	(omitted: drugs)		30	22	
			100%	100%	

Table 6 (continued)

			Men N=383	Women N=103	
PRIOR RECORD					
x_7: Number of previous felony convictions					
	PRIORS				
	0		63%	81%	
	1		19	17	
	2		8	2	
	3		3	0	
	4 or more		7	0	
			100%	100%	
BACKGROUND CHARACTERISTICS					
x_8: Sex of defendant	SEX				
	male	(1)	79%		
	female	(0)	21		
			100%		
x_9: Race of defendant	RACE				
	non-white	(1)	30%	39%	
	white	(0)	70	61	
			100%	100%	
x_{10}: Age of defendant	AGE				
	mean		25.7	26.1	
	s.d.		8.4	8.2	
x_{11}: Work history[a]					
	steady	(1)	29%	29%	(NS)
	unsteady	(0)	71	71	
			100%	100%	

Table 6 (continued)

	Men N=383	Women N=103
MARITAL STATUS AND FAMILY TIES[b]		
x_{12}: Single, has ties	37%	26%
x_{13}: Separated, divorced, or widowed, no ties	13	7
x_{14}: Married, has ties	21	23
x_{15}: Separated, divorced, or widowed, has ties	13	35
(omitted: single, no ties)	16	9
	100%	100%

[a] An "unsteady" work history is characterized by the following: a period of unemployment lasting six months or longer during the two years preceding conviction, or two or more stretches of unemployment during this period.

[b] "Ties" can mean one of the following: responsible for children (living with or making support payments to children), married and living with a spouse, or close ties/lives with family of origin. Since all those married are coded as having "ties" in the file, it is not possible to distinguish those married with and without children.

The charge types are coded as dummy variables, using the following categorizations: violence (assault, manslaughter, murder, negligent homicide, and rape); robbery (completed and attempted); burglary (completed and attempted, criminal trepass); larceny (attempted and completed grand larceny, auto theft, arson, destruction of property); and forgery (credit card theft and forgery, forgery). The omitted category contains drug law violations. Eliminated from the analysis are the following offenses: firearms violations, sodomy, soliciting a minor, gambling, carnal knowledge, and bestiality), reducing the analysis to 486 cases. (These latter offenses, which I had initially specified as the omitted category were eliminated because there was only one woman charged with an offense in this category.)

Defendant's prior record, x_7, is a count of the number of previous felony convictions; as such, it represents a limited assessment of "prior record" with no account of previous arrests or appearances before the court, nor of misdemeanor convictions. Defendant background characteristics of sex (x_8), race (x_9), and age (x_{10}) are self-explanatory. Note that of the non-white defendants, 80% are black.[54]

An employment variable designed "work history" (x_{11}) taps the steady or unsteady nature of a defendant's employment history during the two years preceding conviction (see Table 6 for the specific definition). Note the very high proportions (70%) of men and women whose work histories are characterized as "unsteady"; this reflects

the unstable employment conditions in the Seattle area during the early 1970s and the typical economically disadvantaged profile of those caught up in the criminal justice system.[55]

Lastly, defendant's family situation is characterized as a combination of marital status and familial ties, with four dummy variables (and an omitted category) created. "Family ties" can mean one of the following: responsible for children (living with or making support payments to children), married and living with a spouse, or has close ties/lives with one's family of origin. There is, unfortunately, no greater detail for the "family tie" category contained on the file. One can infer that the nature of a defendant's family situation as constructed by these variables takes the following forms. "Single, with ties" are those who are living with or having close ties with parents or relatives in the community. Thus, this variable can tap the effect of "parental social control" on sentencing. "Separated, with ties" are those who are separated, divorced, or widowed who have responsibilities for the care and/or economic support of children. "Married, with ties" does <u>not</u> distinguish between those who are married with and without children (and it no doubt contains both of these familial situations); while the remaining category of "separated, no ties" is akin to the "single, no ties," with the obvious exception that the former group has been married at one point in their lives.

The construction of the family variables in this analysis differs from that in New York City in the following ways: "Family ties" in Seattle can mean proximity to or responsibility for family members, while the presence or not of dependants in the New York City analysis taps more strongly the degree to which defendants have direct care of and/or economic support for children and/or other dependents. Four interaction terms of sex with defendants' family ties are included in keeping with the hypothesized differences in the treatment of men and women with family ties.

A comparison of the distributions of the dependent and independent variables for men and women (Table 6) reveals that far higher proportions of men (about 40%) receive jail sentences than women (15%). Although there are no differences in the number of initial prosecution charges, there are differences in the charge types: more men are convicted of burglary and robbery while more women are convicted of larceny and forgery; there are no women convicted of robbery. While 37% of men had at least one previous felony conviction, only half that proportion of women (19%) were previously convicted of a felony(ies). Race distributions also differ, with proportionately more non-white women than men, a pattern also seen in the New York City court. Lastly, the distributions for marital status and family ties shows that roughly twice as many men as women have no type of family tie (29% and 16%, respectively). The higher proportions of separated, divorced, or widowed women with ties suggests a higher degree of female parental care for children.

Results. Using the same method as in the New York City outcomes, the results of the regression analysis are shown with and without the inclusion of defendant's family situation and the interaction terms (Table 7). That table reveals that if family variables are not included in the analysis, sex of defendant is strongly related to the more severe jail sentences, with men 16% more likely to receive these sentences than women. Once family variables and interaction terms are included, "sex" becomes statistically non-significant. In particular, single and separated defendants with ties are significantly less likely to be jailed.

None of the interaction terms is statistically significant, but I point out that the positive sign for all of the interaction terms and magnitude for two of them (single and separated with ties) is relatively high and nears statistical significance, suggesting that women in these family situations are less likely to receive jail sentences.

Like the results from New York City, the effect of family ties exerts a greater influence than the marital status of defendants per se, and family ties have consequences in the expected direction for men and women. The fact that the "sex effect" disappears when the sex-family interaction terms are introduced indicates the greater degree of leniency extended to women than men with family ties. These results are discussed with those from New York City in the following summary.

Table 7. Regression results for the Seattle sentencing outcome

	Sentence: 1=more severe (jail & prison) 0=less severe (suspended & deferred)		
	Y_{10A}	Y_{10B}	Y_{10C}
Case factors			
charges	.035	.032	.031
violence	.452****	.447****	.470****
robbery	.590****	.597****	.606****
burglary	.224****	.216****	.214****
larceny	.173****	.172****	.181****
forgery	.142*	.147*	.168*
Prior record			
priors	.095****	.086****	.086****
Characteristics			
sex (1=male)	.162***	.153***	-.017
race (1=non-white)	.023	.021	.020
age	-.004*	-.005*	-.005*
work history	-.067	-.044	-.047
Family situation			
single, ties	--	-.147****	-.347**
married, ties	--	-.165***	-.222
separated, no ties	--	-.028	-.182
separated, ties	--	-.116*	-.333**
Sex interactions			
sex/single, ties	--	--	.233
sex/married, ties	--	--	.048
sex/separated, no ties	--	--	.173
sex/separated, ties	--	--	.284
constant	.054	.198	.339
F	11.85****	9.40****	7.67****
(adj) R^2	.20	.21	.21
N	474	474	474
$\bar{x}$	.335	.335	.335

****$p \leq .001$
***$p \leq .01$
**$p \leq .05$
*$p \leq .10$

Summary

This chapter explored how family ties and familial responsibilities affect court outcomes with differing consequences for male and female defendants. It was hypothesized that where court decisions center on a defendant's loss of liberty, married defendants and more particularly those with familial responsibilities would receive a greater degree of leniency. Further, it was hypothesized that women with familial responsibilities would accrue an even more advantaged position than similarly situated men. Lastly, it was proposed that single defendants evidencing a degree of parental social control would be treated more leniently than those without such control.

Hypotheses (2 and 3) concerning the more lenient treatment of "familied" defendants, and of "familied" women was confirmed for the pre-trial release and sentencing decisions in New York City and the sentencing decision in Seattle. A defendant's family situation did not have a mitigating influence for dismissal decisions, but it did have an impact for the Y_7 conviction decision.

The expectation that married defendants would fare better than those not married (Hypothesis 1) was not consistently born out in the analysis. Rather, the more consistent factor in the direction of leniency was the presence of dependents (New York City) or family ties (Seattle).

The Seattle sentencing outcome suggests that Hypothesis (4) on the degree of parental social control has support. Those single defendants with ties (many of whom presumably live with or support parents or relatives) have an "edge" over singles without such ties. This result indicates that the court works on the assumption that familial controls (via parents) will deter defendants from future criminal involvement. What may also be involved, but for which there is not direct evidence to substantiate in the Seattle data, is that sons or daughters may be contributing in some way to the economic support of the household.

In contrast to court assumptions of parental social control for single defendants, the judicial leniency extended to defendants with responsibilities for their own families is likely justified as indispensible for the maintenance of the family.

Two important aspects of the analysis must be addressed. First, I have demonstrated that the inclusion of "sex" in quantitative analyses comparing differing outcomes for men and women is not enough to understand the sources of differential treatment. For four outcomes in particular (Y_5, Y_7, Y_8, and Y_{10}) initially significant "sex effects" reduced to non-significance with the inclusion of sex-family interaction terms. However, for two outcomes (Y_3 and Y_4) the effect of "sex" increased in magnitude, a result made explicable by the interaction of sex and the offense type of sale (prostitution for women) and the character of cases typically disposed at arraign-

ment. Thus, a defendant's family situation may not consistently reduce the "sex effect" in all court decision-making contexts, suggesting that research on court outcomes needs to be sensitive to the distributional patterns of offenses charged, as well as court contextual features in adjudication, in making sound interpretations.

A second and related issue is that the strength of the defendant's family situation is not as strong for the pre-trial release decision as it is for sentencing outcomes. More specifically, I anticipated that singles with dependents would have an advantage in the pre-trial release decision, but it seems that married individuals with dependents receive more favorable treatment. The sentencing decisions for New York City and Seattle show the strongest effects of the defendant's family situation, and it may be that in the sentencing decision context, familial responsibilities are more likely objects of judicial consideration. Finally, I am surprised by the strong influence of familial situation for the Y_7 conviction decision, particularly for female defendants.

This result undercuts my expectation that the effect of a defendant's family ties would be most apparent when decisions center on one's loss of liberty. The Y_7 conviction decision is an important one, having consequences for the production of a criminal record and being subject to some form of sentence. If "familied" women are better able to evade both, one wonders whether there is judicial concern with not "stigmatizing" these women by a guilty conviction or

any form of sanction. I explore this question in the following chapter with a consideration of how sample selection bias may produce differences in the Y_7 outcomes for men and women.

In this chapter I have focused on how "sex effects" are mediated by a defendant's familial status, arguing that "between-sex" differences arise due to gender-linked types of familial responsibilities and their degree of "indispensibility" for the maintenance of families. There remain other hypotheses that require analysis of "within-sex" differences using separate equations for men and women. That is, it is critical to determine whether those factors predictive of outcomes for men are similar (or different) than those for women. I pursue three features of the differential response among men and among women in the following chapter: (1) the relative strength of familial status and whether this varies for men depending on their employment status; (2) racial and ethnic variation in the mitigating impact of familial status; and (3) how offense types and elements of crimes charged bear on court outcomes.

Notes to Chapter IV

45. The New York City data set was kindly provided by Ilene (Bernstein) Nagel (Indiana University), and the Seattle data set by John Hewitt (Ball State University). The former data set was the basis for four articles senior authored by Nagel: role of defendant attributes in court decision-making (Bernstein et al., 1977a), the charge reduction process (Bernstein et al., 1977b), sex differences in court outcomes (Bernstein et al., 1979; revised in Nagel, 1982), and the bail decision (Nagel, 1981). The analysis presented here differs by including a larger set of offenses, examining more decision points, and defining differing criteria in the construction of independent and dependent variables.

The Seattle data was the basis for three articles by Hewitt and others: effect of personal attributes on sentencing (Hewitt, 1977), the impact of prosecutor and probation officer's recommendations for judicial sentencing (Hagan, Hewitt, and Alwin, 1979), and the effect of "legally irrelevant" factors on sentencing (Lotz and Hewitt, 1977). The analysis here differs with a focus on gender differences in court outcomes, necessitating changes in the construction and inclusion of different independent variables from a gender relations perspective.

46. About 35% of the initial number of cases were missing information on four variables: employment, family situation, probation or parole status, and whether prior arrest(s) resulted in conviction(s) or not. Zero-order correlations on the presence of missing values for these variables was very high (range of .86 to .92), suggesting that these data are systematically missing. With systematically missing data, any approach used will produce bias, and no method is ideal. The equations were run using two approaches: (1) including cases with missing values by creating a "missing data" dummy variable which took on the value "1" if any one of the four variables was missing data and (2) excluding cases that have missing values on any of the four variables.

There were no substantive differences in the results using either approach; thus, option (2) was selected because it afforded the simplest way to interpret the coefficients. Using "missing data" as a dependent variable for the four court outcomes where it was significant as an independent variable (Y_3, Y_4, Y_5 Y_7), it was found that for Y_3 and Y_4 the presence of missing values was associated with younger, non-black defendants, and those with

(Note 46 continued)

fewer initial arrest charges, while for Y_5 and Y_7 missing values were associated with less severe cases (severity and number of initial arrest charges), younger and non-black defendants, and those charged with assault and robbery.

47. I quote at length from a Vera Institute of Justice monograph on the prosecution of felony arrests in New York City's courts (Vera, 1977: 6, 9) a passage on the ACD conviction:

"Under New York Criminal Procedure Law § 170.55, a non-felony prosecution in the Criminal Court may be 'adjourned in contemplation of dismissal ... without date ordered with a view to ultimate dismissal of the accusatory instrument in furtherance of justice.' After a felony charge has been reduced to a misdemeanor, a motion for an ACD may be made by the defendant, the prosecutor, or the court. Using an ACD is conditioned on the defendant's not being rearrested within a six-month period, but theoretically the judge could impose other conditions prerequisite to ultimate dismissal. The court may not order an ACD if the defendant: 'has previously been granted an ACD; has previously been convicted of any offense involving dangerous drugs; has previously been convicted of a crime and the district attorney does not consent to an ACD on the current offense; or has previously been adjudicated a youthful offender on the basis of any act involving dangerous drugs and the district attorney does not consent.' (New York Criminal Procedure Law § 170.56 (1)"

48. Two pieces of information have been combined here into one court outcome, proportion of time pre-trial detained, rather than separating this outcome into whether (1) defendant was released on recognizance (ROR'd) or (2) offered bail or cash surety which the defendant (a) made and was released or (b) did not make and was detained. This analysis was not pursued because Nagel (1981) shows that for this outcome, there <u>are</u> gender differences for ROR'd or not, but there are no gender differences in the amount or type of bail requested. Assuming that there are no differences in the probability that men and women can post bail or a cash surety, the proportion of time spent pre-trial detained is a good reflection of the court's willingness to release some defendants, to make it more difficult for others (posting bail or cash surety), or to make it impossible for still others (no bail and remand to jail). In this analysis, 50% of defendants were ROR'd, 8% made bail and spent no time pre-trial detained, 8% made bail but were remanded for a portion of time, and 34% were remanded for the total pre-trial period.

49. The inclusion of "disorderly conduct" in the omitted category is a problem, since women engaged in prostitution-related behavior can be arrested or convicted on these charges. Thus, the omitted category may contain an unknown number of prostitution-related offenses for female defendants. Note, as well, that disorderly conduct and harassment convictions can, in contrast to other charges, cover a broad range of behavior as a menas of pleading down to violations and class B misdemeanors.

50. In preliminary analyses of the data, another family variable was created: whether the defendant had other dependents not living in the household, a factor it was initially thought would positively affect outcomes for male defendants. The results for all decision points showed no effect one way or the other; thus, this variable was dropped.

    In the construction of the family variables, another approach was initially considered: defendant's household composition (e.g., lives with spouse and child, spouse only, child only, parents or relatives, siblings or friends, alone) and presence of dependents or not. This created problems of multi-collinearity when these two pieces of information were separated, or it meant ten dummy variables if the information was combined. Another approach would have been to code for the type of household dependent (e.g., whether a child or a parent); however, the data did not permit an unambiguous assignment of dependnet type for all cases.

    The final construction of the family variables had to combine marital status and presence of dependents because these two variables are intercorrelated. It is important to point out that in cross-tabulations of the family variables with household composition that for one category, "single, has dependents," men and women differ on the types of defendants" for women, dependents are largely children (70%), while for men, they are largely parents or relatives (50%), with comparatively few men in this category (16%) having sole responsibility for children.

51. When interviewed by the Vera pre-trial services agency, 36% of male and 44% of female defendants responded that they "needed support" (presumably requiring legal aid because they had no economic means). While half of men and women who are not employed said they required "support," the bulk of those needing support are unemployed in the paid labor force. The bad economic and employment situation of defendants is compounded with low proportions who have completed high school: about 30% have 12 or more years of education.

52. The R^2's for the dismissal decisions are quite low (adjusted R^2 of 5% for Y_2 and 4% for Y_6), the lowest for all the decisoin outcomes. As others suggest in research on dismissals (Miller, 1970), other factors are at play in the decision to dismiss cases which these equations do not include (e.g., strength of the evidence, complaintants dropping charges, and victim-offender relationship). The pattern of dismissing assault charges, in particular, has been documented in a Vera Institute of Justice (1977) analysis of the processing of felony arrests in four major New York City boroughs during 1971.

53. Of course, one can argue that "sample selection bias" begins at the point of a criminal event, with as much if not more discretion exercised by witnesses, complainants, and the police in comparison to that of court personnel. Prior record, a variable that has the most consistent effect on sentencing in other studies of court outcomes, might also be viewed as representing the cumulative effects of discrimination in prior "deviance processing." As Bernstein et al (1977a) suggest, there is the problem of "infinite regress" in "separating out" the "pure" effects of discrimination and the prior likelihood of being labeled criminally deviant.

54. No information is available on the file for the racial or ethnic composition of the remaining 20% of the "non-whites."

55. Over three-fourths of male and female defendants had been factory, service, or clerical workers; for men and women, an "unsteady" work history dominated factory and service sector employment.

C H A P T E R V

STRUCTURE OF COURT RESPONSE AMONG MALE AND AMONG FEMALE DEFENDANTS

Introduction

Very little research has been done on the treatment among women and among men in the criminal court (Bernstein et al, 1979, compared court outcomes for men and women separately; and Kruttschnitt, 1981a, analyzed women only). Such research is required to determine whether the same or different set of factors are involved in the court response to male and female defendants. If research yields a pattern of more difference than similarity, then theoretical frameworks will need modification or wholesale re-evaluation to account for this phenomena. Related to the theoretical need for such research are the following statistical problems, which in turn lead to interpretive difficulties when men and women are combined in quantitative analyses:

(1) The disproportionate representation of men yields results that may apply to men only.

(2) Gender differences in distributions of key independent variables, as well as dependent variables, can be overlooked.

(3) Although offense structures of men and women vary,

    (a) analyses typically focus on male offenses (e.g., the response to women charged with prostitution is not studied); and

(b) analyses are not sensitive to the variability of behaviors within offense categories, or within the general categories of "personal" and "property" crimes.

Thus, for theoretical, statistical, and interpretive reasons, it is critical to examine the court response to defendants with separate equations for men and women.[56] This chapter will focus on three dimensions: (1) the comparative structure of familial responsibilities on outcomes (Hypotheses 5 and 6) and whether the mitigating impact of familial responsibilities varies for men depending on employment status (Hypothesis 7); (2) race and ethnic differences and whether the mitigating impact of familial responsibilities varies by race and ethnicity; and (3) the impact of the type of offense charged and selected behaviorial elements of the offense charged (Hypotheses 8 and 10).

The first dimension extends upon analyses presented in Chapter IV; the second explores whether my gender relations framework is applicable for differing racial/ethnic groups; and the third examines more systematically the many claims--as yet unsubstantiated--surrounding the differential response to male and female defendants charged with particular offenses. The purpose of these analyses is twofold: (1) to determine whether the general structure of the court response to male and female defendants is similar or different; and (2) if it is different, what factors or variables are involved. Before turning to the analysis of each dimension, I discuss the constraints involved in the analysis and the hypotheses proposed given these data constraints.

Data constraints and independent variables. I cannot include all of the independent variables used in the Chapter IV analysis because there are too few female cases. Excluded in the analysis in this chapter are independent variables of age, current parole/probation status, and employment (except in testing Hypothesis 7), a decision guided by the two available studies (above) on female defendants. The coding of the independent and dependent variables is identical to that used in the analysis in Chapter IV, except for changes in the offense categories (described below).

Familial situation hypotheses. The analysis in Chapter IV reveals support for the "between-sex" effect of familial situation on court outcomes using interaction terms. The analysis here of "within-sex" differences is carried out to determine the specific structure of the court response to men and women on the basis of familial situation. The possibility that men's familial situation may be mediated by employment status (Hypothesis 7) is important to assess for it may show that "familied" men will have an advantage before the court on the condition that they are providing economic support for family members.

Race and ethnic differences. The exploratory study of the comparative treatment of men and women along color and ethnic lines is pursued with two aims: to assess whether (1) racial and ethnic differences arise in the treatment among men and among women and (2) the mitigating

effects of a defendant's familial status are similar across racial and ethnic groups. Only one study has specifically addressed racial and ethnic variation in the court response to female defendants (Kruttschnitt, 1981a); such research is needed to understand the links between racial and gender discrimination.

Offense-related hypotheses. Although many have suggested that the differential response to men and women before the court is crime dependent, there has been very little research in this area. The offense-related hypotheses attempt to move away from the ill-defined notions of an "evil woman" response to the particular elements of the crime charged and the defendant's rationale for involvement in a crime. The response to women charged with prostitution has not featured in court outcome research, a major oversight given its salience as a "female crime."

From the gender relations framework, I have no basis to expect that women charged with "male-typed" offenses will be treated more harshly than men so charged. That is to say, I assume that the response should be similar for men and women, except as it may vary by gender differences in victim-offender relationships (Hypothesis 8) and the rationale for committing the crime (Hypothesis 9). Finally, I hypothesize that women charged with prostitution will be treated more harshly than those prosecuted on other offenses (Hypothesis 10).

Victim-offender relationship. On the basis of previous research, I expect that assault charges will more likely be dismissed for men and women since these more often involve people known to each other. However, I can further explore the effect of victim-offender relationships on court outcomes by assessing whether there is a different response toward those defendants who live with complainants versus those who do not. This is a limited test of the influence of victim-offender relationships since complainants may be very well known to defendants, but not live with them. Thus, this analysis is constrained by the lack of more detailed information on the character of the victim-offender relationship.

Rationale for involvement in crime. No data are available to examine this hypothesis for the New York City and Seattle courts, but it will be explored from interviews with Springfield court personnel (Chapter VI).

Response to prostitution and other types of offenses charged. To examine the offense-related hypotheses, some of the offense variables required re-coding. For the analysis of the response to women charged with prostitution, a new dummy variable "prostitution" was created, with the analysis confined to New York City women's cases disposed at arraignment only. Too few women were charged with robbery in the early disposed cases, so it was dropped from this analysis. Thus, offense types of prostitution, burglary, assault, and larceny are included in the arraignment disposed outcomes.

For New York City cases disposed after arraignment, the few prostitution cases are excluded from all analyses (as are disorderly conduct charges). In excluding prostitution, the "sale" category contains only sale/possession of drugs, while the remaining categories of assault, larceny, and homicide are coded as in Chapter IV. The omitted category is redefined to include burglary, robbery, and weapons violations--"male-typed" offenses in terms of male-female ratios of crimes prosecuted. As such, I can explore whether there is any support for claims of more harsh treatment toward women charged with these kinds of offenses.

For the Seattle sentencing outcome, robbery offenses were excluded from the analysis because no women were charged with robbery.

These changes in the coding and inclusion of offense types were also made for the racial/ethnic and familial status analyses to maintain uniformity for each of the three dimensions analyzed. With the exception of the impact of prostitution, analyses are confined to New York City later disposed cases and the Seattle sentencing outcome.

Familial situation hypotheses

In Chapter IV we found that family status differentially affects court outcomes for male and female defendants; here, the structure of familial situation is examined in greater detail, as is

the relationship between familial responsibilities and employment status for men.[57]

Structure of response to men and women.

Results. Table 8 displays the effect of family factors for men and women in the New York City later disposed cases and the Seattle sentencing decision.[58] For loss of liberty decisions for men in New York City (Y_5 and Y_9), married men with dependents are significantly less likely to be jailed and 7% less likely to be pre-trial detained. The same pattern is revealed in the Y_{10} sentencing decision for men, where those single and married with ties are less likely to be jailed. In contrast to these court outcomes, there is no significant impact of men's family situation on conviction (Y_7) or the Y_8 sentencing outcome.

Although one sees a similar pattern for women, the following differences are noted: (1) familial responsibilities mitigate more strongly against guilty convictions and against the more severe Y_8 type sentences for women; (2) those married women without dependents accrue an advantage in the New York City pre-trial release decision, but those married women with ties do not accrue an advantage in the Seattle sentencing decision; and (3) the dismissal decision goes entirely against my expectations for the differential impact of familial situation for men and women. For Y_6, women with dependents are less likely dismissed, while married men with dependents are more

Table 8. Comparative effect of family factors for men and women

	New York City[a]					Seattle[b]
	Y_5	Y_6	Y_7	Y_8	Y_9	Y_{10}
MEN						
sindep	-.077	-.030	.088	-.083	-.186*	
marno	-.025	-.056	.080	-.046	.067	
mardep	-.055***	-.063**	.010	-.060	-.084*	
single, ties						-.120*
married, ties						-.210***
separated, no ties						-.067
separated, ties						-.087
WOMEN						
sindep	-.064	.144*	-.084	-.408****	--	
marno	-.162**	.018	-.336***	-.082	--	
mardep	-.196***	.202*	-.223*	-.316*	--	
single, ties						-.294**
married, ties						-.115
separated, no ties						-.123
separated, ties						-.245**

****p ≤ .001
***p ≤ .01
**p ≤ .05
*p ≤ .10

[a] Y_5-Y_9 regression coefficients from the full equations for women (Table A-4) and men (Table A-5) shown in Appendix A. The omitted category for men and women contains robbery, burglary, and weapons violations charges; other independent variables in the analysis are: severity number of initial arrest charges, prior record variables of arrncon and arrc, the four charge type categories, and race/ethnicity.

[b] Y_{10} regression coefficients from the full equations for women (Table A-4) and men (Table A-5) shown in Appendix A. The omitted category for men and women contains drug violations; other independent variables in the analysis are: the four charge type categories (violence, burglary, larceny, and forgery), number of charges, prior felony conviction(s), and race. Men charged with robbery are dropped from the analysis because there were no women charged with robbery.

likely dismissed. It may well be that this difference in the dismissal decision has a bearing on the far stronger effects of familial situation for women, but not for men, in the Y_7 conviction decision. That is to say, the differential impact of familial situation for men and women at Y_7 may in part be due to sample selection bias effects.

Discussion. The following discussion of why family situation more sharply influences the conviction decision for women than men is couched with a degree of uncertainty on how sample selection bias may be involved in these gender differences. If these differences are "real" and are not statistical artifacts, the following questions are raised. Is there judicial protection of certain women (those married with and without dependents) from the possibility of a sentence or the imposition of a "criminal label"? If this is so, why isn't the same rationale considered for similarly situated men? Are there gender differences in motivation, culpability, and rationale for criminal involvement? More subtly, are these differences "real" or imputed?

Like the Y_7 conviction decision for women, the Y_8 sentencing outcome suggests that certain women, those with dependents, are accorded judicial leniency compared to single women. This result, combined with the fact that distinctions between "familied" and "non-familied" men are more strongly evidenced at the Y_9 sentencing outcome suggests

two tiers of "justice." Women, who have a greater degree of informal social control than men via familial responsibilities, may "need" in the court's eyes less formal criminal justice control or sanction. For men, however, such considerations may only occur when sanctions are "more serious," i.e., when judges decide between incarceration or not. As such, one wonders: Is there a court presumption that women do not require "as much" of a sanction as men? Or is leniency extended to certain women because a more harsh sentence of "fine or jail" or probation will in fact cause a greater degree of hardship in their lives?

What might be inferred from the Y_8 sentencing outcome is the stronger court recognition of the indispensibility of women's familial responsibilities, such that a sentence of "fine or jail" or probation is more severe for "familied" women than men. A "fine or jail" sentence may translate to a "short" jail stay of 10-15 days, but when care of children is at issue, no jail stay is "short" enough for the daily requirements of child care, for which women are predominantly responsible. This is not to say that the consequences of a "short" jail stay for men may not also be as severe for their family members: They may lose jobs and their means of economic provision for familial dependents. However, relative to women, men's contribution to the family may be viewed as less indispensible than women's, i.e., a temporary hiatus of economic provision is more easily "replaced" via state supports than that for child care. The fact that single or married men with dependents are

less likely to be jailed suggests that men's contribution to the family is taken into account when their separation will be longer, that is, when jail time reflects a longer-term loss of (potential or actual) economic support to family members.

In the absence of knowing more particularly whether those in the Seattle sentencing outcome "with ties" have responsibilities for dependents or not, I cannot say with certainty whether those married men with ties are responded to for the same reasons inferred for the Y_9 outcome. However, the Seattle outcomes for single men and women with ties is indicative of the court presumption of the informal social controls by parent(s) for whom they may also be contributing economic support.

Mediating influence of employment on men's family situation.

Results and discussion. The sample of men was separated into two groups, those currently employed or not employed (New York City) and those with steady and unsteady work histories (Seattle). I expect that the effect of familial ties will be stronger for men if they are employed or have steady work histories. The results of the analysis for the pre-trial release and sentencing decisions involving jail are shown in Table 9.

In that table one sees mixed support for Hypothesis (7). At the pre-trial release decision, those employed married men with dependents

Table 9. Effect of family factors for men unemployed / employed or with steady/unsteady work histories

	New York City[a]			
	Y_5: proportion time detained		Y_9: 1=jail 0= prob. & fine/jail	
	EMPLOYED	UNEMPLOYED	EMPLOYED	UNEMPLOYED
single, deps	-.066	-.069	-.194	-.179
married, no deps	.020	-.056	.099	.055
married, deps	-.063*	-.018	-.074	-.080
N	752	1013	195	279
$\bar{x}$	.38	.44	.26	.33

	Y_{10}: 1=jail 0=suspended & deferred	
	STEADY	UNSTEADY
single, ties	-.140	-.109
married, ties	-.234	-.196
separated, no ties	-.271	-.003
separated, ties	-.144	-.059
N	108	265
$\bar{x}$	.26	.44

**p ≤ .05
*p ≤ .10

[a] Y_5 and Y_9 regression coefficients are from the full equations for men separated by employed or unemployed; as such, they are net of the other independent variables in the equation (see full equations in Appendix A, Table A-6).

[b] Y_{10} regression coefficients are from the full equations for men separated by steady and unsteady work histories; as such they are net of the other independent variables in the equation (see full equations in Appendix A, Table A-6). (Note that robbery is included in the equations here; the coefficients for the family variables are of the same magnitude and statistical significance with robbery in or out of the equations.)

are significantly less likely to spend time detained, in comparison to "familied" men who are unemployed. The effect of men's family situation is, however, unaffected by employment status for the Y_9 sentencing decision,[59] suggesting that the presence of dependents alone gives men an edge, irrespective of their present employment status. For the Seattle sentencing decision, there is a similar pattern as that for Y_9, i.e., <u>having ties</u>, particularly for single and married men, is only marginally affected by steady or unsteady work histories.

Thus, no strong pattern emerges of a greater impact of men's familial status in the context of being employed or having a steady work history. In another analysis not shown here, I examined differences between unemployed men, separating them into two groups, those presently seeking and not seeking employment. This analysis also revealed little difference in the impact of familial situation between those unemployed who were currently seeking and not seeking employment.

<u>Race and ethnic differences</u>

In Table 10 one sees that among women, there are no statistically significant effects of race or ethnicity on court outcomes, although in New York City, black and hispanic women are 13% less likely than whites to have their cases dismissed, and black women are 16% less

Table 10. Effect of race/ethnicity for men and women in New York City and Seattle

NYC[a]	Y_5: proportion time detained		Y_6: 1=not dism'd 0=dism'd		Y_7: 1=guilty 0=ACD	
	Men	Women	Men	Women	Men	Women
black	.099***	.011	.040	.136	-.060	-.111
latin	.067**	.004	.119***	.134	-.023	.067

NYC	Y_8: 1=prob. & fine/jail 0=susp. & fine only		Y_9: 1=jail 0=prob. & fine/jail	
	Men	Women	Men	
black	-.104	-.159	-.020	(too few
latin	-.129*	-.081	-.067	women jailed)

Seattle[b]	Y_{10}: 1=jail 0=susp. & deferred	
	Men	Women
race (non-white)	.007	.036

****p ≤ .001
***p ≤ .01
**p ≤ .05
*p ≤ .10

[a] Y_5-Y_9 equations from the full equations for women (Table A-4) and men (Table A-5) (Appendix A); omitted charge category contains robbery, burglary, weapons violations; sale contains drug charges only.

[b] Y_{10} results from the full equations for women (Table A-4) and men (Table A-5) (Appendix A); omitted charge category contains drug violations. Since no women were convicted on robbery charges, men so charged were dropped from the analysis.

likely than whites to receive the more severe sentences of probation and "fine or jail." The lack of a significant "race effect" for women in New York City needs to be qualified in light of the fact that white women comprise a very small (numerically and proportionately) portion of female defendants.

When comparing male and female defendants in New York City, however, one finds that black and hispanic men are significantly more likely to spend more time pre-trial detained than whites, and that hispanic men are less likely to have charges dismised and less likely to receive more severe sentences when these do not involve jail (Y_8). Thus, for New York City, there is a greater degree of statistical discrimination along color and ethnic lines for male than female defendants. I note, however, that there is a good deal of similarity between men and women in the magnitude and sign of the regression coefficients for race and ethnicity at the Y_6, Y_7, and Y_8 outcomes. It is at the Y_5 pre-trial release decision where substantive racial and ethnic differences arise between men and women. For the Seattle sentencing outcome, in contrast, there is a negligible impact of race for men and women.

Outcomes for blacks, hispanics, and whites.

Results. Two related lines of analysis are pursued for court outcomes centered on the defendant's loss of liberty: (1) an assessment of the factors associated with the differential handling of black,

hispanic, and white men at the pre-trial release decision; and (2) an examination of the differential impact of familial situation for black, hispanic, and white men and women. The New York City pre-trial release decision (Table 11) and the Seattle sentencing decision (Table 12) are the focus of the analysis.

From Table 11, one finds that:

(1) Among men, the 10 to 15% less time spent detained for white men in comparison to hispanic and black men, respectively, is related to (a) the differential response to homicide and (b) men's familial situation.

(2) Among black and hispanic women, there are negligible differences in time spent pre-trial detained. However, (a) hispanic women prosecuted on drug charges are more likely to spend time detained and (b) there is a stronger effect of some form of family tie (being married or having dependents) mitigating against detention for black than hispanic women.

For the Seattle sentencing results (Table 12), the small number of female cases necessitated a reduced form of the family variable into one dummy variable, "has ties" or not. In Table 12 one sees few differences with respect to offense type for black and white men and women, but there are differences for "has ties." The effect of "ties" mitigating against incarceration is greater for black than white women, while the reverse holds for black and white men.[60] This result, together with that from New York City, suggests that the mitigating impact of having dependents may be somewhat stronger for white and hispanic men than black men, but that such ties or responsibilities have a stronger mitigating influence for black women than hispanic or white women.

Table 11. Regression results for black, hispanic, and white men and women for New York City pre-trial release decision (Y_5)

	New York City proportion time detained (Y_5)				
	BLACK		HISPANIC		WHITE[a]
Case factors	Women	Men	Women	Men	Men
severity	.003	.074****	-.061	.078****	.062***
arrests	.068*	.057****	.146***	.027	.067**
homicide	.139	.126*	b	.376****	.074
sale	.099	-.036	.576****	.037	-.051
larceny	-.284***	-.089**	-.039	-.076*	.059
assault	-.236**	-.078**	-.210*	-.124***	.031
Prior record					
arrncon	.040	.216****	-.073	.136****	.212***
arrc	.181**	.275****	.408***	.340****	.340****
Family situation					
sindep	-.106	-.083	.045	-.032	-.181
marno	-.183	.009	-.070	-.044	-.029
mardep	-.190*	-.040	-.060	-.063*	-.031
constant	.317	-.345	-.377	-.365	-.475
F	3.74****	14.25****	5.98****	18.82****	4.62****
(adj) R^2	.19	.15	.45	.21	.16
N	126	815	63	733	217
$\bar{x}$	.22	.46	.20	.41	.31

[a]Too few white female cases on file for analysis

[b]One homicide case dropped from the analysis

****p $\leq$ .001
***p $\leq$ .01
**p $\leq$ .05
*p $\leq$ .10

Table 12. Regression results for black and white men and women for the Seattle sentencing decision (Y_{10})

	Y_{10}: 1=jail, 0=suspended and deferred			
	BLACK		WHITE	
Case factors	Women	Men	Women	Men
violence	.807***	.493***	.035	.448****
forgery	.305	.124	.124	.057
larceny	.116	.265**	.170*	.143**
robbery	a	.637****	a	.600****
burglary	a	.389**	a	.192***
Prior record				
priors	.240	.108***	.182**	.068***
Family situation[b]				
has ties	-.440**	-.014	-.018	-.129**
constant	.300	.088	-.018	.262
F	5.11***	3.70***	1.22 (NS)	7.45****
(adj) R^2	.40	.17	.02	.15
N	32	91	60	267
$\bar{x}$	.19	.46	.10	.35

****p ≤ .001
***p ≤ .01
**p ≤ .05
*p ≤ .10

[a]Burglary and robbery offenses dropped from the analysis of female cases. Only one black and white woman were charged with burglary, and none was charged with robbery.

[b]"Priors" is dichotomized for women as follows: 1=one or more prior felony convictions; 0=no felony convictions.

[c]Family situation is dichotomized as follows: "has ties" includes those responsible for children, married and living with a spouse, or has close ties/lives with family of origin.

Discussion. These subtle differences in the impact of familial status along color and ethnic lines are important to address. A priori there is little theoretical or empirical grounding to expect a difference or to specify its direction.[61] This initial expectation needs to be qualified in light of the differences found for the greater impact of familial responsibilities and ties for black women, but not black men; and for white and hispanic men, but not white and hispanic women. In discussing this results, I stress the following: (1) the differing impact of familial situation may have some association with the structure of offenses involved in each analysis;[62] and (2) the analysis is exploratory and tentative, particularly for women given their small numbers and the distributions on the dependent variables.[63]

Guided by considerations of the character of familial ties along color and ethnic lines discussed in Note 61, the following interpretations are offered. First, there may well be "real" racial and ethnic differences in the particular character of men's and women's familial responsibilities, e.g., black women may have younger children or be able to show that their familial labor and/or economic support for dependents is more indispensible. Although the distributions of the familial variables are similar among the three groups, there may be important differences in the more particular form of familial responsibility. The possibility of actual differences aside, a second interpretation is that court agent's subjective assessments

of the "quality" and "indispensibility" of familial responsibilities varies among the three groups. Black women may seem more responsible "family women" than white or hispanic women, while black men may seem less responsible "family men" than white or hispanic men. These subjective assessments, in turn, may derive from differing familial contexts of black and non-black "families," with differing degress of "familial connectedness" (actual and presumed) for black men and women.

These racial and ethnic differences suggest that more information may be required on the specific form of familial responsibility that arise for men and women in differing "familial contexts," shaped along racial and ethnic lines. I would argue that these results do not undercut the general proposition that there are differences in the treatment of "familied" and "non-familied" men and women and of the greater "edge" "familied" women have over "familied" men. Rather, the differences alert us to the need for greater sensitivity in the particular familial responsibilities that men and women may have in black, hispanic, and white "familial contexts," particularly those located in urban areas under conditions of ecnomic impoverishment. On the one hand, comparative research is sorely needed on the character of differing "familial contexts" and their implications for variation in the gender division of labor. On the other, research on the assumptions court agents have of racial and ethnic differences in "familial connectedness" is needed.

Offense-related hypotheses

The response to prostitution.

Results. Women's cases early disposed are dominated by an increasing representation of prostitution charges: Prostitutes are 27% of those initially appearing in arraignment dispositions (Y_2), but 59% of those sentenced at arraignment (Appendix A, Table A-3). Arraignment dispositions are characterized by a filtering out of women charged with assault, larceny, and burglary. Along with an increasing representation of prostitution charges are increases in women with a prior record of arrests and convictions.

Examining the regression analysis of women's cases disposed at arraignment (Table 13), one sees that neither race/ethnicity nor family situation is significantly related to any of the court outcomes. Rather, women with a prior record of arrests and convictions are more likely found guilty (plead guilty) and receive more harsh sentences of (predominantly) "fine or jail." Prostitution is the only offense type for which there is a higher likelihood of guilty conviction; by comparison, those charged with burglary and larceny are less likely to receive guilty convictions.

Discussion. The analysis of arraignment dispositions reveals that those charged with the "female crime" of prostitution are more quickly pushed through the court, receive guilty convictions, and are

Table 13. Regression results (women only) for New York City

	Outcomes for cases disposed at arraignment		
Case factors	Y_2 1=case not dism'd	Y_3 1=guilty 0=ACD	Y_4 1=prob. & fine/jail 0=susp. & fine only
severity	-.006	-.070**	.066
burglary	.058	-.572***	a
assault	-.361**	-.244	-.026
larceny	-.215	-.243*	-.402
prostitution	.107	.148	-.006
Prior record			
arrncon	.033	.166	.172
arrc	-.019	.321***	.379**
Characteristics			
black	.079	.132	.004
hispanic	.221	.218	-.032
Family situation			
sindep	.007	.062	-.102
marno	-.021	-.145	.345
mardep	-.099	.082	.191
constant	.812	.816	.006
F	1.92**	7.88****	1.42 (NS)
(adj) R^2	.10	.51	.08
N	104	81	52
$\bar{x}$	.78	.64	.50

****p ≤ .001
***p ≤ .01
**p ≤ .05
*p ≤ .10

[a]No cases

more likely subject to sentencing sanctions than those charged on other offenses. (Because prostitution dominates as the offense prosecuted in these early disposed cases, it is not surprising that women's familial status has no mitigating effect on the sentencing outcome.) Hypothesis (10) is not totally supported, however, because those charged with prostitution receive the same kinds of sentences as those charged with offenses in the omitted category (disorderly conduct). As stated earlier, the "disorderly conduct" charge may include those initially arrested for prostitution, but it also may include those "pleading down" to a violation from a range of other offenses. In a separate analysis not shown here of the sentencing outcomes for women charged with prostitution and disorderly conduct, I found that 60% and 50%, respectively, received the more severe type of sentence. The key factor distinguishing those cases drawing the more severe sentence was the presence of a prior record of arrests and convictions. Thus, it appears that women convicted of prostitution or disorderly conduct who do not have a prior record of conviction(s) receive a "break" with a suspended sentence, rather than one of "fine or jai." This analysis of the response to prostitution suggests that the assertion of more harsh treatment of women charged with "male-typed" crimes is misplaced. Rather, women charged with "female crimes" (such as prostitution and welfare fraud) may be at a greater disadvantage. In the next section, I will explore further whether women charged with "male-typed" offenses are responded to more harshly.

Response to men and women charged with other offenses.

Impact of offense charged. The effect of charge type and severity on court outcomes for men and women in New York City (later disposed cases) and the Seattle sentencing decision is shown in Table 14. For New York City, higher charge severity is generally associated with more severe court outcomes for men, but not for women. (I attribute this to the greater degree of multicollinearity between offense type and charge severity for women than men.) Overall, one finds more similarity than difference in the response to male and female defendants by offense categories.

Recall that the omitted cateogry in the New York City analysis includes burglary, robbery, and weapons violations so that the effect of offense type is in comparison to these "male-typed" offense categories.[64] For New York City cases, men and women charged with assault and larceny are less likely to be pre-trial detained; while those charged with assault are more likely dismissed. As one might anticipate, those charged with homicide are more likely to be detained, adjudicated guilty, and recieve more severe sentences.

Only one substantive difference emerges: Women charged with drug offenses are more likely detained and convicted than men so charged. For Seattle felony sentencing outcomes, women charged with forgery are more likely jailed than men so charged, but all of the remaining offense categories are associated with jail sentences for men and women in the Seattle court.

Table 14. Effect of charge type and severity for men and women in New York City and Seattle

NYC[a]	Y_5: proportion time detained		Y_6: 1=not dism'd 0=dism'd		Y_7: 1=guilty 0=ACD	
	Men	Women	Men	Women	Men	Women
severity	.074****	.005	-.037	-.054	.069****	.063
death	.246****	.273**	.167***	.007	.154**	.505**
sale	-.009	.257***	.070*	.022	-.098***	.310*
larceny	-.066**	-.148**	.050	.082	.039	.226*
assault	-.078***	-.149*	-.131****	-.192*	.018	.164

NYC	Y_8: 1=prob. & fine/jail 0=susp. & fine only		Y_9: 1=jail 0=prob. & fine/jail	
	Men	Women	Men	
severity	.043**	.024	.110****	(too few
death	--	--	.215***	women
sale	-.043	-.104	.001	jailed)
larceny	-.122**	-.291*	.068	
assault	-.008	-.724****	-.060	

Seattle[b]	Y_{10}: 1=jail 0=susp. & deferred	
	Men	Women
charges	.042	.039
violence	.459****	.490***
burglary	.209***	.679****
larceny	.189***	.166*
forgery	.127	.233**

****p ≤ .001
***p ≤ .01
**p ≤ .05
*p ≤ .10

[a] Y_5-Y_9 results from the full equations for women (Table A-4) and men (Table A-5) (Appendix A); omitted charge category contains robbery, burglary, weapons violations; sale contains drug charges only.

[b] Y_{10} results from the full equations for women (Table A-4) and men (Table A-5) (Appendix A); omitted charge category contains drug violations. Since no women were convicted on robbery charges, men so charged were dropped from the analysis.

Basis for dismissal and victim-offender relationship. An initially odd result for the Y_2 and Y_6 dismissal decisions found in Chapter IV is that cases with a higher charge severity were more likely dismissed. This occurs because assault charges--even severe ones--are far more likely dismissed than other charges. To analyze the dismissal decision, cases disposed at and after arraignment are combined here to increase the number of cases available for analysis. Because there is similarity in the Y_2 and Y_6 dismissal decisions, this will pose no problem for the analysis.

Recall that the data available to explore Hypothesis (8) are limited to victim-offender relationships where defendants and complainants live with one another. Overall, 5% of offenses prosecuted involved complainants who lived with defendants, and about 55% of these incidents were assaults. Table 15 presents three cross-tabulations of the household relationship of defendant and complainant and the likelihood of dismissal.

When considering all offenses (Table 15A), there is some support for Hypothesis (8). Just over 40% of charges are dismissed for defendants who live with complainants, while the corresponding proportion for those not living with complainants is 31%. However, turning to the middle and lower tables (15B and 15C), one sees that this difference is due primarily to the handling of assault charges. For assault cases, about half are dismissed and 17% involve people who live together. By comparision, about one-third of all other

Table 15. Dismissals and victim-offender relationship

All offenses (N=1853): Table 15A

DEF LIVES WITH COMPLAINANT

	yes	no
dism'd	42 (41%)	550 (31%)
not dism'd	60 (59%)	2101 (69%)
	102 (100%)	1756 (100%)

5% of all cases involve people living with each other

Assault only (N=317): Table 15B

(Includes only 1st, 2nd, and 3rd degree assault, menacing, endangerment).

DEF LIVES WITH COMPLAINANT

	yes	no
dism'd	26 (47%)	132 (50%)
not dism'd	29 (53%)	130 (50%)
	55 (100%)	262 (100%)

17% of assault cases involve people living with each other

All other offenses (excludes assault) (N=317): Table 15C

DEF LIVES WITH COMPLAINANT

	yes	no
dism'd	16 (34%)	418 (28%)
not dism'd	31 (66%)	1071 (72%)
	47 (100%)	1489 (100%)

3% of other offenses (excluding assault) involve people living with each other

offenses are dismissed, and only 3% of these involve people living with one another. Of those charged with assault, there are no differences in the likelihood of dismissal for those living or not living with complainants. Of those charged with other offenses, there are only slight differences on the basis of defendants' and complainants' proximate living situation.

Thus, there is mixed support for Hypothesis (8): on one hand, charges are more likely dismissed for defendants living with complainants; but on the other, this is because assault charges are more frequently dismissed and more typically involve proximate victim-offender relationships. One also imagines that a significant number of assaults occur between people well known to each other or between family members who do not live with the defendant. The available data do not contain this information on the degree of familial or intimate closeness of defendant and complainant, which Hypothesis (8) was particularly formulated to address.

Victim-offender relationship and injury. One feature that can be explored further, however, is the victim-offender relationship and whether the victim was injured. This analysis can expose whether judges, prosecutors, or complainants are more inclined to dismiss charges when the offense involves victims and offenders who live together, but where the victim was not injured. Table 16A tabulates the rate of case dismissal by the household situation of defendants

Table 16. Dismissals, victim-offender relationship, and injury

All offenses: Table 16A

	MALE			FEMALE		
	N total	N dism'd	% dism'd	N total	N dism'd	% dism'd
Defendant lives with complainant and injured complainant	26	14	54%	8	4	50%
Defendant lives with complainant but no injury	59	22	37%	4	2	50%
Defendant does not live with complainant, but injury to victim	80	48	60%	23	9	39%
Defendant does not live with complainant, and no injury	1452	444	31%	201	49	24%
Total and average %	1617	528	33%	236	64	27%

Assault only: Table 16B

Male (N=277)

DEF LIVES WITH COMPLAINANT

	yes	no
dism'd	22 (47%)	117 (51%)
not dism'd	25 (53%)	113 (47%)
	47 (100%)	230 (100%)

Female (N=40)

DEF LIVES WITH COMPLAINANT

	yes	no
dism'd	4 (50%)	15 (47%)
not dism'd	4 (50%)	17 (53%)
	8 (100%)	32 (100%)

All other offenses (excludes assault): Table 16C

Male (N=1340)

DEF LIVES WITH COMPLAINANT

	yes	no
dism'd	14 (37%)	375 (40%)
not dism'd	24 (63%)	927 (60%)
	38 (100%)	1302 (100%)

Female (N=196)

DEF LIVES WITH COMPLAINANT

yes	no
2 (50%)	43 (29%)
2 (50%)	149 (71%)
4 (100%)	192 (100%)

and complainants and whether incidents involved injury to victims. Due to the small number of female cases in each cell, a regression analysis was not appropriate; and their numbers are also small for this more simple tabulation.

In Table 16A, one sees that incidents involving victim injury are in general more likely to be dismissed. This is due in part to the higher probability that assault charges involve victim injury than many other charges. For male defendants who live with complainants, there is a higher probability that charges are dismissed when victims sustain injury, whereas there are too few female cases to warrant a comparison.

A noteable male-female difference emerges for incidents involving injury between defendants and complainants not living with other another. In this situation, men's cases are more likely dismissed than women's. Because there are negligible male-female differences in the likelihood of assault dismissals for those not living with one another (Table 16B), this result suggests that offenses other than assault involving injury to victims are more likely dismissed for men than they are for women.

Discussion. Two general features are seen from this analysis of the relationship of offense type and outcomes for male and female defendants. First, there is no support for claims that women charged

"male-type" offenses are treated more harshly than men so charged. Rather, one finds more similarity than difference in the structure of court outcomes by offense type for men and women. However, the analysis of the dismissal decision reveals that one element of incidents, victim injury, may have a differential impact on the likelihood of dismissal for male and female defendants, particularly those involving victims not living with defendants. It is not possible to provide a clear interpretation for this result, but it suggests that there may be gender differences in victim-offender relationships and the degree to which complainants differentially wish to press their cases against male and female defendants.

Summary

This chapter focused on the structure of the court response to male and female defendants along three major dimensions. The results of the analyses suggest that the case factors predictive of court outcomes for women are similar to those for men. More specifically, a prior record of arrests or arrests and convictions is associated with more harsh outcomes; offense categories of larceny and assault are associated with more lenient outcomes; and offenses of homicide, more harsh outcomes. The results of early disposed women's cases in New York City, however, show that prostitution charges are associated with a lower likelihood of case dismissal and a higher likelihood of guilty conviction than any other offense.

The analysis of victim-offender relationship and victim injury showed that male and female defendants who live with complainants more likely have their cases dismissed, and this occurs primarily because assault charges, which more often involve defendants living with complainants, are more likely dismissed. Victim injury did not distinguish the likelihood of dismissal for those male or female defendants where complainants lived in the same household. However, those cases of victim injury for complainants not living in the same household were more likely dismissed for male defendants.

Overall, no support is found for claims of a more harsh response to women charged with "male-typed" offenses; one finds instead that women charged on the "female-typed" crime of prostitution may be more harshly treated.

In comparison to these case factors, the structure of response to male and female defendants is more varied for background factors of race/ethnicity and familial status. Although familial ties or dependents mitigating against more harsh outcomes in the manner expected for men and women at the Y_5, Y_9, and Y_{10} outcomes, the effect of being married and/or having dependents mitigated far more strongly against guilty convictions and "more severe" (Y_8) sentences for women than for men. This latter result suggests that "familied" women may have an "edge" over "familied" men even when decisions may not affect their loss of liberty.

The possibility that the mitigating impact of familial responsibilities may be stronger for men if they are employed was supported in the pre-trial release outcome, but not for the sentencing outcomes involving jail. From this latter result, it appears that having dependents for men is clearly associated with non-jail sentences, independent of their employment status.

In exploring whether familial status similarly affected outcomes for black, hispanic, and white men and women, the analysis suggests that "familied" men and women may not be treated alike. "Familied" black women (those with dependents) had an advantage over similarly situated hispanic women in the New York City pre-trial release decision; and black women "with ties," an advantage over white women in the Seattle sentencing decision. This pattern is reversed for "familied" men. In comparison to hispanic and white men, black men accrued less advantage because of familial responsibilties in the pre-trial release decision; and the mitigating effect of "having ties" is stronger for white men than black men in the Seattle sentencing decision.

Other questions remain regarding the differential treatment of men and women in the criminal courts which the quantitative analyses in this and the previous chapter cannot address. Comparing the court response to men and women is in many respects comparing two quite different populations of "criminals." Although one can "hold constant" factors of case severity, charge type, prior record, and the like, there is a point at which the creation of statistical

equivalence masks substantive differences between male and female defendants. Specific features of cases before the court have not been considered in the analyses, e.g., the degree of criminal involvement, culpability, and rationale for committing an offense. Whatever the character of these "real" differences, we do not know the extent to which they are combined with a subjective overlay of imputed difference and whether this varies with the gender-linked structure of familial responsibilities.

For example, does the fact that women have responsibilities for the care of dependents not only denote their material indispensibility to "maintain the family," but also connote other considerations for court agents, i.e., is it "hard" to equate "motherhood" and "maternalism" with criminal deviance? Do women "appear" to be less criminal, less "hardened" than men? Does the general constellation of factors involved in women's cases elicit judicial considerations that they do not "need" as much of a punishment as men? If, as Harris (1977: 3) argues, the conceptual neglect of gender in criminological theory is indicative of "everyday assumptions of who does what, including deviance," then it is plausible that such typifications and attributions also surround the court response to male and female defendants.

In addition to these questions, there is the more fundamental issue of the degree to which "familial paternalism" explicitly features in court decision-making. Are the specific court

rationales used in the treatment of "familied" and "non-familied" male and female defendants congruent with the interpretations given thus far? Is there a connection between "familial paternalism" and a gender-linked structure of typifications and imputations made of male and female defendants more generally? These questions are pursued in the following chpater, where I shift methodological gears from quantitative statistical patterns to a more fine-grained qualitative understanding of court agents' rationales and practices in the differential handling of male and female defendants.

Notes to Chapter V

56. Another method of pursuing this kind of analysis is to create interaction terms of "sex" and selected variables, as was done in Chapter IV for familial status. This approach allows for a better means of determining whether male-female differences are statistically significant. However, separate equations for men and women are conceptually easier to interpret, and they afford a better means of comparing the structure of the court response to male and female defendants.

57. I note that a parallel kind of analysis for women is whether their familial responsibilities are mediated by considerations of the "quality" and "indispensibility" of parental care.

58. Caution is required in making male-female comparisons. Specificaly, comparing the statistical significance of the regression coefficients is misleading because the higher number of men's cases produces lower standard errors around the estimates, hence a greater likelihood of their being "statistically significant." The approach taken here is (1) to compare changes in sign and statistical significance for men's and women's outcomes; and (2) to compare the relative magnitude of the coefficients when it is apparent that there are substantive and significant differences.

    The same approach is used in the two subsequent dimensions comparing male and female outcomes.

59. Note, however, that age and employment share a relationship to the impact of men's familial responsibilities for the Y_9 sentencing outcome. Compare the lack of statistical significance of "married with dependents" for men with employment status and age in the Y_9 equation (Appendix A, Table A-1) with the statistical significance of "married with dependents" when age and employment are dropped from the equation (Appendix A, Table A-5).

60. Notwithstanding the stronger effect of "ties" for black women in Seattle, higher proportions of black women are jailed than white women.

61. The theoretical constraints on this analysis are particularly troublesome. There is very limited evidence to specify in advance what differences might arise in the treatment of "familied" and "non-familied" men and women along racial and color lines. Two aspects are considered, as follows.

(Note 61 continued)

First, are there differences in the degree and form of men's and women's familial responsibilities along racial and ethnic lines? Second, do court personnel assume that there is a difference in the degree and form of men's and women's familial responsibilities on the basis of race and ethnicity, a difference that translates (for them) to "deficiency"?

In addressing the first consideration, there has been no comparative study of black, white, and hispanic familial organization, particularly for the urban poor. For example, one would want a similar kind of study like Carol Stack's (1974) of black urban poor families carried out for hispanic and white families. Without such comparative work, one doesn't know whether economic conditions promote racial/ethnic similarity in familial organization with similar implications for men and women's familial responsibilities, or whether there are differences.

Stack shows that the "disorganization of the black family" thesis is belied by the strongly adaptive features of female-centered domestic networks and "swapping" arrangements. Her study suggests that black men's relations to domestic networks are via their female kin and/or kin of women with whom they have children. An outsider viewing these arrangements might interpret black men's familial obligations as peripheral to the female-centered households, when in actuality black men are enjoined to provide economic support and to care for children, although they may not be living in the same household with their children.

While there is no comparable study of hispanic (and Chicano and Puerto Rican variation among hispanic) and white familial arrangements in an urban poor setting, it is possible that household arrangements for these groups are relatively less female-centered with the appearance of greater male involvement in family life, both in terms of co-residence and a greater degree of female dependence on men. The implication of these consideration is twofold: (1) for hispanic, white, and black men, blacks may show a lesser degree of "familial connectedness" and (2) black women may be more likely to show that they have <u>sole</u> responsibility for childcare and economic support.

62. Men's offense structures are rather similar across race and ethnic lines, but women's are not. In New York City, hispanic women were more likely charged with drug offenses (13%) than

(Note 62 continued)

black women (3%), while there were more black women charged with offenses of burglary and robbery (17%) and homicide (6%) than hispanic women (21% and 1%, respectively). In Seattle, more black women were convicted of "violent crimes" (9%) and forgery (25%) than whites (5% and 15%, respectively), while more white women were convicted on drug charges (28%) than blacks (19%). In both New York City and Seattle, black women had more developed prior records than hispanics or whites.

63. The logit analysis for the Seattle sentencing outcomes for black and white women reveals the same pattern; however, the coefficients only neared statistical significance.

64. There may be important male-female differences in the content and involvement of those charged with robbery or burglary offenses. For example, women may more often be implicated in these crimes, i.e., driving the getaway car or acting as a lookout. There is no data on the file, however, to ascertain these potential differences.

C H A P T E R VI

ORDER IN THE COURT: GENDER AND JUSTICE

Introduction

"This case has been traumatic for my client and her family. It has caused her much anxiety. She comes from a family with strong ties to Springfield; her parents work in Springfield, and she has four sisters in Springfield. One sister comes to court with her. She is 25 years old and a high school graduate."

"Her first child was born within a month of graduation time. He is now 6 years old. She was a mother as a primary activity. Over the years she has taken care of eight children for others. She had another child of her own, now 1-1/2 years old. In addition to taking care of her baby, she also takes care of another child for a mother. The fact that people could leave children with her means that she is a responsible person."

****

"My client is 21 years old. He was born in Springfield and has lived here all his life. He has a 7th grade education. He was living with his mother and father, and he has five brothers and three sisters. He has always worked. He is not married, but has had a child, 1-1/2 years old. He has dutifully made payments to the mother of $10 per week. He has a minimal income of $100 per week."

****

(Springfield, Massachusetts
superior court, November, 1981)

In any given day in the Springfield courthouse, defense counsel summations like these are argued before a judge prior to sentencing, introducing factors of age, work history, family situation, prior record, and mitigating life circumstances of defendants. Depending on the seriousness of the case before the court and a defendant's prior record, such arguments can make the difference between incarceration or not, or the judicial acceptance of an "agreed recommendation" between prosecutor and defense counsel.

These defense summations contain not only a defendant's background characteristics but also an explanation of the incident. Such arguments may or may not evoke judicial sympathy and leniency for defendants, and some background factors may be "taken into account" more than others, depending on the persuasiveness of defense counsel and the predilections of the judge. Whatever their particular impact, they are the discretionary criteria recognized by court agents which "individualize" defendants and foster the sensibility that, in the words of one judge, "Every crime has a different set of facts."

The "individualization of defendants" is composed of three major elements: (1) features of the alleged incident, including the circumstances and rationale that led to it; (2) the defendant's prior record; and (3) the present and past life situation of the defendant. These elements form a composite image of the degree to

which defendants are tied to the normative social order, shaping court agents' decisions of whether to give a defendant a "break" or not. With respect to a defendant's life situation, the critical link to the normative social order, stressed repeatedly, was "family support" and "familial responsibilities."

In this chapter, I shall concentrate on how family ties and familial responsibilities are brought into the adjudication process and the consequences of familial relations for the response to male and female defendants. I draw upon observational data collected in the Springfield District Court and interviews with 35 District and Superior Court judges, probation officers, prosecutors, and defense lawyers over a three-month period. Appendix B presents an overview of the legal aspects of court adjudication in a Massachusetts court; the particular rhythm and practices in the Springfield court; and an analysis of the dispositional activity, crimes prosecuted, and types of information presented to the court about the defendant's life situation. The observational data sheets and interview schedules used to collect the data are shown in Appendix C.

As suggested in Chapter III, court interest in a defendant's familial status is sensible in light of (1) limited resources to punish offenders and (2) an ideological emphasis on maintaining the "family unit." As such, the court seeks to determine whether

the "family unit" will be jeopardized. Depending on the family situation of defendants, the following considerations are given:

(1) For "non-familied" defendants, i.e., those not married and without dependents, the court wants to know whether (a) an adult authority figure is present in the defendant's household and (b) the defendant has a job.

(2) For "familied" defendants, i.e., those who have economic or child-care responsibilities, the court wants to know whether (a) defendants are in fact fulfilling familial responsibilities and (b) the "family unit" will be harmed by its decisions.

In making these determinations, justice for defendants is "familialized," having distinct consequences for the response to "familied" and "non-familied" defendants, and to "familied" male and female defendants. Thus, <u>two</u> forms of discrimination are evident: (1) that between those with and without familial responsibilities and (2) that between men and women with familial responsibilities. With respect to the first form, men and women with familial responsibilities are accorded more lenient treatment because they are understood to be "more stable" and "more responsible" in fulfilling the normative expectations for social adulthood.

In response to why "familied" defendants might be given a break, a prosecutor and judge, respectively, expressed it this way:

> There's the idea, the maxim, that there's more stability in this defendant because they have a family. The chances are more likely that they won't get in trouble again.

> Generally, I am more loathe to incarcerate the family men and women. It is harder to send someone off to jail who has family responsibilities. The are already conforming to society a great deal. They are showing some responsibility.

If "familied" men and women appear to show more "responsibility" than their single counterparts, court agents also assume a gender structure to the responsibilities that "familied" men and women do have and "should" have. The following reflections of another judge tap this difference in responsibility, a gender division of labor "in the family" so deeply structured and self-evident, that he gave his description with impatience:

> Male and female, mother and father. Are you following through on that responsibility? There are different responsibilities depending on whether you are male or female. Automatically you get different characteristics. The responsibilities they assume when they bring children into the world are different. Are they fulfilling those responsibilities? ...
>
> For men, I want to know, is he holding the home together as best he can? Does he contribute to the support of the family? Is he giving it a shot? Is he trying? A woman has a different function. Is she fulfilling her obligations as a mother?

This difference in the expected responsibilities of "familied" men and women, combined with the profile of defendants who come before the court, sets the stage for the rationales used by court

personnel in the second form of discrimination, the differential treatment of "familied" men and women. One probation officer stated it this way:

> The treatment of males and females balances out. If the guy is working, you try to help him keep his job, and with a female, you try to keep her with the kids.

Although this probation officer believed that the treatment of male and female defendants "balanced out" on the basis of the responsibilities expected of men (working, supporting a family) and those of women (taking care of children), note that "being a male" is qualified by "<u>if</u> a guy is working," in contrast to "being a female" which includes his <u>unqualified</u> assumption that she will have and will be taking care of children.

This probation officer's assumption is based on actual differences of men and women before the court: Most women do have children, and although most men have familial responsibilities, many are unemployed. There is already an imbalance here: "Having children" for women is "showing responsibility," whereas for men, "having a family" must be tied to economic support to demonstrate their "responsibility."

Court personnel openly acknowledged that these two forms of discrimination played into their decision-making, and they believed these were <u>legitimate</u> criteria in the treatment of defendants. However, a defendant's family ties and familial

responsibilities were set against two other elements: (1) features of the alleged incident and (2) prior record. These elements may outweigh the mitigating inference of a defendant's familial situation, such that court leniency for defendants with familial responsibilities was less likely extended when:

(1) Male or female defendants are charged with more serious or violent offenses (murder, sexual assualt, drug dealing, and robbery); and when female defendants are charged with prostitution.

(2) Male or female defendants have a developed prior record, i.e., when the latest incident before the court is their 3rd or 4th offense.

These two elements form additional overlays on the "family profile" differences noted earlier for male and female defendants. Men are more likely than women (1) to be prosecuted on serious property and violent crimes and (2) to have more developed prior records. With the exception of these women charged with prostitution, court personnel find it difficult to disentangle these homologous features of male and female cases; the three work together in their explanations for gender differences in the court outcomes. Although factors of greater familial responsibilities, lesser prior record, and involvement in less serious offenses were cited by court personnel as giving women an "edge" over men, the majority of defense lawyers, prosecutors, and probation officers believed women "as women" were given a break by the judges.

One of the more interesting findings from the interviews is the apparent contradiction between the (1) acknowledged practices of court agents toward defendants (the two forms of discrimination discussed above) and (2) explanations for the outcomes of such practices. All court personnel said that "familial paternalism" oriented their decision-making in the handling of male and female defendants. But when defense lawyers, prosecutors, and probation officers were asked whether judges treated women more leniently than men and why, most responded that women were treated more leniently because of "chivalrous attitudes" or "paternalistic" reasons, i.e., "female paternalism." Thus, court personnel (except judges) accounted for gender differences in court outcomes as arising from judicial female paternalism at the same time that they contended that familial paternalism oriented their considerations in plea bargaining, defense summations, and recommendations to judges for sentencing. Their perceptions of judical female paternalism were formed from a well-remembered case or two, guided by a working assumption that "everyone knows women are treated more leniently than men."

Thus, court agents explanations for male-female differences in court outcomes are parallel to those found in the criminal justice literature. In both cases, gender differences in court

outcomes are explained as an effect of sex, rather than an effect of the contemporary gender division of labor in the family.

The following major insights from the court observations and interviews with court personnel can thus be summarized:

(1) Family background and familial responsibilities weigh importantly in the adjudication process, where "familied" defendants have an "edge" over those without familial responsibilities.

(2) Women with familial responsibilities have an "edge" over "familied" men.

(3) "Non-familied" defendants (male and female) who can show they have "family support" (i.e., parental social control) have an "edge" over those who cannot.

(4) The familial and employment situation of defendants is attenuated or ignored for certain types of offenses and for defendants with heavy prior records.

(5) Differences in the treatment of defendants along familial lines arise most dramatically when decisions concern a defendant's loss of liberty, i.e., jail time rather than fines, suspended sentences, or probation.

(6) A contradiction is apparent between court agents' practices in handling cases and their explanations for male-female differences in outcomes.

These insights will be illustrated with the interview material and observational data collected in the Springfield court, with the aim of refining and expanding upon my theoretical assumptions and expectations.

Let's make a deal: Gender and bargaining

"Just because she was stealing the pampers for the child doesn't make her a good mother."

Plea bargaining is widely practiced in the Springfield court, as it is in other courts. The form it takes is "sentence bargaining," where defense lawyers and prosecutors negotiate the terms of a sentence on a plea. Once a sentence is agreed upon, a "change of plea" in superior court or a "submission" in district court may be to a lesser included offense. From the analysis of district court dispositions (Appendix B, Table B-3), I found that identical proportions (80%) of male and female defendants' cases were disposed of by "submission." This proportion of cases disposed by guilty plea is very much in line with that found in other courts (e.g., Blumberg, 1979).

What factors play a role in the negotiations between prosecutor and defense lawyers? More particularly, how are background characteristics brought into the "agreed recommendations" for defendants? These questions were asked of Springfield prosecutors; their response was that a defendant's prior record, family situation, and employment situation were the salient background factors taken into account, and that women may receive better bargains because they had responsibilities for children.

For both male and female defendants, however, strong interest was expressed in knowing their family situation as reflected by the following exemplary comments by two prosecutors:

> The characteristics that are important are: Responsibilities, who are the people dependent on the defendant? Family contact, do they have concern from parents or siblings? Family contact makes an impression on a judge. Now it is even more important.

> You have someone with a stable home life versus someone from a broken home, the defendant from a stable home life will end up with a better deal.

Here one sees that considerations of a defendant's familial situation were given for both "non-familied" and "familied" defendants. The prosecutors' comments above indicate that they were interested to know:

(1) The degree of parental social control ("concern from parents" and "family contact") for single defendants in families of origin; or

(2) Whether defendants had dependents and were fulfilling their familial responsibilities.

For "non-familied" male and female defendants, there were few differences in the background factors "taken into account." Rather, it was between the "familied" men and women where differences emerged more sharply.

Most prosecutors believed that the presence of dependents weighed evenly for male and female defendants, one prosecutor saying, "As long as there are dependents in the picture, they

will help men as well as women." However, they also suspected that because women more actively took responsibility for dependents, they were more often given a break. Therefore, questions of the indispensibility and quality of fulfilling one's familial responsibilities featured in their assessment of defendants. "Familied" women were more frequently typified as satisfying both dimensions than were "familied" men.

However, the majority of prosecutors were skeptical of defense lawyers who "use the mother situation," characterizing this as a defense tactic for female defendants to "hide behind the children." Four prosecutors conveyed it this way:

> Women can use children as an excuse. There are alot of women who are not good mothers. If I could prove that she was a lousey mother, then I would prove it. You have to think of the welfare of the children.

> Defense lawyers do use the tactic of women with children to prevent the incarceration of the defendant or holding before trial. But in some cases, it is really just a tactic. For example, I saw a woman brought in for stealing hubcaps at 3 AM with her boyfriend. Her lawyer said she needed to care for a 1-month old baby at home. Well, I really wondered why she was out at 3 AM if she had to care for an infant.

> I can argue it (woman with children) away in my remarks. For example, I'd say: "Just because she was stealing the pampers for the child doesn't make her a good mother." I will tell the judge that I have taken the fact of family responsibilities into consideration, and I don't think it's appropriate. I'll tell the judge the reasons why it's not appropriate. Sometimes it might hurt an attorney more if he or she argues the mother issue.

> Frequently I can recall that I have said to the judge that she has not been a responsible mother, and she should go to jail.

These comments show that prosecutors want to know whether women "with children" are in fact taking care of them, or caring for them in a "responsible" way. Thus, while many women with children may have an "edge" in sentence bargaining, additional questions of the age of children (degree of indispensibility) and quality of parenting may also be raised.

Although the "good mother" issue arose from time to time in the courtroom, there were too few comparable female cases to reliably assess its impact on court outcomes. The interview material suggests, however, that prosecutors and defense lawyers will contest each other in this area. Prosecutors more frequently introduced doubt on the quality and indispensibility of a female defendant's familial responsibilities, while defense lawyers more often argued its importance. If "good mothering" was contested, "being a mother" conveyed a forceful legitimacy in and of itself. One lawyer explained how this shaped his arguments in the courtroom:

> If there are children, it is much easier to say "mother" for a woman. There is a presumption about her, that she's a good mother. Mothers are supposed to automatically take care of the children, spend more time at home. Theyare the primary educators. If a man has custody, I would have to emphasize that. I would have to spell things out more to the court for fathers where I wouldn't have to for mothers. ...Men are at a disadvantage when they can't be mothers.

Thus, from this lawyers perspective, "being a father" required elaboration, while "being a mother" did not, at least not consistently.

If familial responsibilities give an "edge" in bargaining, they operate in the context of gender differences in crimes prosecuted and prior records of defendants. In general, the Springfield female defendants had less developed prior records, and they were typified as less active participants in crimes. One prosecutor believed that these two factors were decisive in plea bargaining negotiations:

> Women may get more lenient bargains, not because she's a woman, but because of her role in the offense. She kept the heroin, but didn't make the sales. The degree of culpability and participation are different. Females may have more going for them. They are less likely to have a prior record, less likely to be an active participant in the crime, and that is what you go on.

Thus, for all three of the major factors orienting court agents' evaluation of defendants (prior record, nature of the offense, and familial situation), females may generally "have more going for them." However, a counterveiling tendency was noted by prosecutors, and as we shall see by judges, probation officers, and defense lawyers: Familial responsibilities (for male and female defendants) are less likely viewed as mitigating factors when prosecuted offenses are "serious" (such as murder, drug dealing, and robbery) or when women are prosecuted for prostitution.

Therefore, the defendant's familial situation is weighed against prior record and the character of the offense charged. From a prosecutor's perspective, prior record and the nature of the offense (i.e., considerations of "protecting society") are more often emphasized. From a defense lawyer's perspective developed in the following section, we shall see that the defendant's familial situation and other mitigating factors (i.e., "social costs") are more often stressed.

Mitigating life circumstances and social costs: defense lawyer summations

"Who is going to pay the price if we send them away?"

Defense counsel have an important role in making their arguments to the court before sentencing: Judges rely on defense counsel to learn, as one judge said, "a little something" about defendants in district court; while in superior court, more formal and longer dispositional arguments are expected. Judicial variation exists in the degree of reliance placed on defense counsel and/or probation before deciding a sentence. Although not typical of all judges interviewed, two judges said that a "good lawyer" could make a difference in their sentencing, but that most couldn't be relied upon to be "good lawyers:"

> I expect a defense lawyer to be prepared for the disposition (sentencing) part of the case as well as he is for the testimony stage. The lawyer has to be very well versed in the background of the defendant, the education, work history, age, and family. ... (However), in this county many attorneys don't spend as much time on good dispositional arguments as they should.
>
> (Defense counsel) is supposed to say stuff that looks good for the defendant. A good lawyer will put the defendant in the necessary programs. This may prevent incarceration for the defendant. A talented, creative lawyer can make a difference. I will rely on a good lawyer, but most lawyers can't be relied on.

What is "taken into account" by judges before passing sentence varies, depending on the judge and the degree of judicial reliance not only on defense counsel, but also on the probation officere. Some judges "have a mind of their own--they don't care what you recommend," recounted one probation officer. Other judges rely heavily on the probation officer, specifically for prior record information, while still others trust certain defense counsel more than probation officers and want to hear more about the defendant's background. From observing court interactions and from the interview material, I found little corroboration of Hagan et al's (1979a) quantitative study which suggested that prosecutors' recommendations dominate judge's sentencing decisions. Rather, sentencing decisions in the Sprinfield court were more often interpersonally negotiated among prosecutors, defense lawyers, probation officers, and judges, based on past "rep" and

performance, not a "resolution" of the positional (or role-taking) features of each of the four parties involved.

The interpersonal dynamics involved in sentencing outcomes played importantly into how defense lawyers' summations were presented before the court. When defense lawyers were asked what kinds of background characteristics of clients they stressed in their arguments, most prefaced their responses by noting the unique character of each case, and more particularly, how their arguments were guided by who the judge was, as the following responses reveal:

> You argue what you have to argue. You may want to stress bad characteristics in certain situations; and sometimes you want to ignore certain characteristics. You argue each case differently.

> All individual judges react differently. The defense attorney has to know what the judge is looking for, and you adopt your tactics to those of the judge.

This "selective and contextual employment" of a variety of case and defendant background factors by defense lawyers underscores Maynard's (1982) point that court outcome "variable research" overlooks the tailoring involved in each case. Defense lawyer summations are tailored to the specific features of the crime and some form of explanation in light of the defendant's background; this "tailoring" is further altered depending upon who the judge is.

Notwithstanding the general principle that "each case is unique," lawyers did stress a common array of background characteristics and mitigating factors on behalf of their clients, drawing upon family, work, schooling, age, and problems (if any) with drug dependency or mental health. The lack of a prior record was stressed; if the defendant had a prior record of arrests or incarceration, this was brought up, if only briefly, to assuage the court that defense counsel was aware of it. The background of the defendant was then fitted into the circumstances of the crime. For example, where counsel felt it would "work," the defendant's poor economic circumstances, past childhood incidents, or drug dependency were cited as mitigating factors. Illustrative of the "mitigating life circumstances" arguments are the following comments by two defense lawyers:

> If there are mental problems, drug or alcohol problems, then I really go into great detail, stressing that this person is diagnosed as having a disease. Or I'll stress that the person was raped as a child or had a hard life. If a person has a criminal record, I will just say that he done time and it hasn't helped him.
>
> I give an explanation as to why they did something. The guy is poor, can't get skills, so he steals a loaf of bread out of poverty.

Defense lawyers were aware, however, that the "mitigating life circumstances" argument had to be handled with care, one lawyer pointing out that:

> Judges don't like to hear anything that sounds like an excuse. They want an explanation. They want to hear that a person is able to reconcile his acts with society. They want to know how it came about.

If the "mitigating life circumstances" mode of argumentation might be effective, most defense lawyers said that they liked to stress the positive features of a defendant's family situation (i.e., "family support" or "familial responsibilities"). The familial situation can, in turn, be strengthened for "non-familied" and "familed" male defendants and for "non-familed" female defendants if they have a job or are involved in job training. The following comments by four lawyers illustrate the importance placed on familial situation:

> I like to say that they have alot of family support.
>
> Who does he or she take care of will be important.
>
> If you can say they had a good family, you say it. This is good.
>
> I stress the family situation. If he's supporting the household and a couple of kids, you are trying to show the judge that he will be hurting other people. He should pay for it, but not other people.

When probed on whether different background characteristics were stressed depending on whether their client was male or female, all defense lawyers displayed a similar gender-linked structure to their arguments, citing the presence of children for women and the degree of familial economic support provided by men. Three lawyers' responses exemplify this:

> If a male defendant has a family, but pays no support, for example, for woman on AFDC, then it is easier for the court to put him in jail. They do not care about emotional support. Employment history for men is important because it means support or non-support. For female defendants, the question is if she is the sole caretaker of children or older family members.
>
> In behalf of women, you can always stress children in the woman's custody. Judges are very reluctant to incarcerate women. The reaction is the same if the male has a family. It helps, but the impact is different than if it's a mother.
>
> I don't really stress different things. But here again is the family situation: Who is going to pay the price if we send them away? Does he pay the price or does the family? Do the kids pay the price?

These responses illustrate two features of the arguments made about a defendant's familial situation. First, economic support (for men) and care of children (for women) weigh positively on behalf of defendants because there are social costs entailed in separating economic providers or caretakers from the family. This is exemplified by one lawyer's question, "Who is going to pay the price?" Second, it is "easier" to argue the importance of women's familial responsibilities because the social costs are higher in separating women from children or others they care for.

Like prosecutors, the defense lawyers' comments suggest that the average "familied" male defendant is less apt to provide support for family members, the critical work-family link for

showing that they are "taking responsibility." In fact, a few lawyers said that when men do have dependents, but are not supporting them, they will leave this out of their summations, acknowledging that this kind of information would hurt their male clients. If, however, a male defendant is trying to be a "good family man," he has a chance of impressing the court. The following example shows, from one lawyer's experience, how being married and "settled down" helped his male client:

> I told my guy to get married, have a kid, settle down. You usually know what the judges want. I could say to the judges, "Look, this kid has been trying, so give him a break." If he were single and unemployed, he'd be in jail now.

This lawyer's comment suggests another factor that a quantitative analysis can miss: Changes in the defendant's familial situation may occur over the period of time the case is in the court and have a bearing on the impression a defendant makes by the sentencing stage.

For female defendants, the impact of "having a family" is different. As a mother, her responsibilities are assumed to be more indispensible, entailing higher social costs if separated from her child(ren). One defense lawyer said, for example, that when representing female defendants who have children, no mention will be made that there is an aunt or grandmother in the household. This omission by the lawyer thus imparts the significance of the woman as the sole caretaker of the children.

One again sees problems with using a "laundry list" of defendant attributes in quantitative analyses, for it's not so much what's possible to know, but what is selectively emphasized and brought to the attention of the court.

From my observations in district court, I found that a critical aspect of defense counsel representation was that a defendant's family and work background could be positively conveyed to the court. A somewhat higher percentage of female defendants (83%) were represented by counsel than male (68%), leading to an overall higher frequency of background information brought into the adjudication process for female defendants (Appendix B, Table B-3). It is difficult to know precisely why male defendants were less likely to have lawyers without interviewing the defendants themselves. However, a related court-room phenomenon helps to interpret this difference. Male defendants without lawyers attemped to act as lawyers in their own defense but none of the non-represented female defendants attempted to do this. Thus, male defendants more likely assume that they can successfully handle their own cases and don't "really need" a lawyer.

When defendant background characteristics were introduced (which occurred for similar proportions of 80% of men and women with counsel), female defendants' familial situation was

introduced with higher frequency than males' (75% versus 54%), while male's work situation was cited somewhat more often (71%) than female's (58%) (Appendix B, Table B-6). Thus observations of in-court defense summations corroborate their interview accounts of the information brought to the court's attention, and the differential emphasis placed on employment and family background for men and women. Further, one sees from the interview the advantage "familied" defendants, particularly "familied" women, may have in the adjudication process, which is justified by the social costs of separating defendants from familial obligations.

Rehabilitation and deterrence: probation recommendations

> "Females are easier to intimidate ... I guarantee her jail if she is not clean. Females are impressed with this more than males."

In district court, with the scheduling of about 60 defendants per day in the pre-trial conference and trial courtrooms, courtroom probation officers largely provide prior record information in making their sentencing recommendations to defense counsel and to the judge. Basic information about a defendant's background is collected by district court probation on an in-take form. The form (Appendix C, Exhibit 8) has categories for the following background characteristics: marital status; occupation; place of

employment; children; and names of the defendant's father, mother and spouse. (Here one finds institutionalized recognition of a defendant's work and familial situation as salient background characteristics.) However, given the number of cases disposed on any given day and the fact that sentencing outcomes rarely involve jail, district court probation officers consistently stated that the defendant's prior record was the primary basis for their sentencing recommendations. After prior record, factors of family situation or other "intangibles," as one probation officer put it, figured into their recommendations.

In this section, I shall focus on the work of superior court probation officers because their recommendation do center on a defendant's loss of liberty (i.e., to recommend probation or prison). As I shall suggest at the end of the section, the mitigating effect of familial obligations and of the "edge" for "familied" women is most apparent for this kind of sentencing decision, and not those sentences of fines, suspended, or probation.

In superior court, with the more slow moving nature of cases and their greater seriousness, more information is collected on a defendant's background. At a minimum, judges have superior court probation's in-take form (Appendix C, Exhibit 9) which calls for detailed information on the defendant's family and marital status, employment record, educational level, and financial record.

In recent years, pre-sentence reports have been more frequently supplied by probation officers at the request of judge and defense counsel. These reports contain a 5 to 10-page review of the defendant's background, together with the defendant's version of the incident, and the probation officer's recommendation. As is the case in district court, but in a far more elaborated fashion, the information presented about defendants is filtered through and differentially taken in depending upon the probation officers' "reps," the known inclinations of judges, and the persuasiveness of defense lawyers' and prosecutors' dispositional arguments. Judicial reliance on one or more of these key court agents depends on the particular combination of the four courtroom actors and the degree to which a judge has a "pro-prosecutor" leaning or not. Probation officers' interests in a defendant's background concern whether defendants can be "rehabilitated," and whether conditions of probation can deter them from future involvement in crime. Their assessments are formed from knowledge of the defendant's family background, employment and educational history, medical problems, nature of the offense, and prior record, combined with the probation officer's evaluation of the "attitude" of defendants, his or her honesty, and degree of contriteness about the incident.

Like defense counsel and prosecutors, probation officers place a great deal of emphasis on knowing the defendant's familial situation, ranging from problems or difficulties in a family of origin to responsibilities in a defendant's own family. As the following probation officer stated, the considerations given for "familied" men and women centered on maintaining the "family unit," particularly when the offense charged was not serious:

> (For family), I am looking for support. With a wishy-washy case where there's no bodily harm or drug trafficking which might be treated as probation, I ask: Are there small children that would be better with parents? Will they need social services? Is the person employable? Is he supportive of the family? Will the incident happen again with the same family situation?
>
> For women with children, there may be special consequences for the family unit. I'm afraid to continue the defendant's problems if children are there. Most people, men and women, do have children, although many are really not at-home children. With a husband in a household, when he is the defendant, you still treat the male defendant the same way as the female, that is, you are trying to continue the family unit.

Like defense lawyers, probation officers were concerned with the social costs of "breaking up the family" by removing an economic provider or child minder. There were, however, two added elements that probation officers brought up in the differential treatment of male and female defendants: (1) "good mothers" were more frequent than "good fathers" and (2) women were more easily intimidated by jail time than men.

Quality of parenting and assuming familial responsibilities. Probation officers believed that the "edge" that "familied" women had over "familied" men was associated in part with the higher social costs of taking mothers away from children. But in addition, this was linked to the knowledge that many "familied men" were not "good fathers." One probation officer illustrates the differential calculus at play in separating "familied" men versus "familied" women from their families:

> If a female is a mother of a child, we overlook certain weaknesses she may have in alot of areas. Alot of girls get jammed up in serious offenses, but if she is a good mother of small children, this is very, very important. It has a neutralizing effect on seriousness. You do more harm to the community by locking them up. Alot of female defendants are good mothers, but not many male defendants are good fathers.
>
> For male defendants, we see them after they have failed in school and the marketplace. In every area, including family, he is a total failure. You check probate and you know he is not doing his duty as a father, though they often cry about how they have to support kids.

Thus, whatever degree of emotional or affective support "familed" men may provide, this is not sufficient: "Familied" men are not considered "good fathers" unless they are employed and providing economic support to family members. Thus, Hypothesis (7) on the dual consideration of dependents and employment for "familied" men is strongly supported from the accounts of Springfield court personnel, although the New York City and Seattle quantitative

analyses revealed mixed support for this hypothesis. The interviews provided an additional insight into the problems some men can face even if they do provide economic support for wives and children. If their families are receiving AFDC payments and the court learns that these men are contributing economic support, welfare payment levels could be lowered or welfare fraud charges may be levied. A parallel situation exists for women with children, specifically those charged with prostitution. They are less willing to tell the court that they have children, fearing that their children will be taken away from them. (In a subsequent section I discuss the treatment of prostitutes who tend not to have an "edge" in court outcomes even if they have responsibilities for the care of children.)

Deterrence. Although probation officers believed that defendants with familial responsibilities were more easily deterred from future criminal involvement, they also believed that women generally were more easily intimidated by jail time than men. As a consequence, they expected that women were more easily "rehabilitated" than men. Two probation officers stated it this way:

> Women have more fear of prison than men. (They) are exceptionally cooperative (as probationers). They have more fear of incarceration, for all types of women, married or single.

> Females are easier to intimidate. ... I guarantee her jail if she is not clean. Females are impressed with this more than males.

Their statements suggest that women need a lower level of punishment (or threat of punishment) than men to "go straight." Based on their probation experiences with male and female defendants, they believed there was a higher likelihood that women were "more easily reformed than men," and that men didn't seem to "want to help themselves."

Thus, for superior court probation officers, "equality of punishment" for men and women was not necessarily required to achieve the same "rehabilitation" or deterrent effect. This point needs to be stressed for it suggests that there is a gender structure to "substantive justice" in considering probation or jail for men and women, validated by experience with and exposure to defendants over time. Recall that in the discussion of the New York City outcomes, I speculated that there may be court presumption that women do not require "as much" of a negative sanction as men. The Springfield superior court probation officer's comments reflect this belief. Yet, it was a belief substantiated in the "real differences" between male and female defendants before the court where an inequality of sanctions could be expected to yield an equality of deterrence.

Although this sentencing logic may be employed in superior court for loss of liberty decisions, it was not evident in district court. A bivariate analysis of sentencing outcomes (Appendix B, Table B-5) reveals striking similarity in sentencing outcomes for men and women. I did not anticipate this similarity, given the consistent bivariate gender differences in sentencing outcomes from other research.

What appears to have occurred during the 6-week observational period in district court was: (1) a severity and crime type homogenization of male and female cases that were more likely disposed and sentenced (more severe cases, which more often involved male defendants, were continued); and (2) minimal gender differences in sentencing outcomes for the typically less serious types of charges prosecuted and disposed. Thus, the question of whether women "need" as much of a sanction to deter them from future criminal involvement may arise when decisions center on probation or incarceration, not on fines, suspended sentences, or probation.

Best interests of society and protection of society judicial considerations in sentencing

"With the male you consider putting away the provider, but with the female, you take the caretaker away."

The background factors "taken into account" for defendants and whether these varied for male and female defendants--questions

asked of probation officers, defense counsel, and prosecutors--were also asked of the 11 judges interviewed. Their responses were consonant with those of the other court personnel. These factors, summarized by the following two judges, represent what other judges said:

> Age, education, employment hisotry, prior record, nature of previous offenses and what penalties were imposed, what problems they have with drugs or alcohol, mental history, likelihood of repeating offenses, what might deter his repetition of the offense.

> You want to know the family background, as a youth and the present situation. Is he married? What is he doing for the kids? Are there kids? What is the work background and training? What is the past history of criminal violations? Any special considerations of why this happened?

The general considerations that judges gave in sentencing defendants centered on sentences that "will help society and help the individual in front of me." They wondered: "What can we do so this person won't come back?" The consideration of "helping" versus "protecting" society was most dramatically illustrated by their responses to background factors they considered differently for female defendants. All judges spoke of their concern for care of children, and the fact that childcare responsibilities were typical for female defendants. As one judge put it:

> You've got to look at the cold facts. Female defendants have someone more dependent on them than male defendants. The family situation is a different thing for men and women.

All judges suggested that they use the "same categories" of work, family, and schooling in sentencing male and female defendants, but that the family factor was more important for female defendnats. Some also acknowledged that their deliberations reflected the gender division of labor in the "wider society." Three examples of how judges viewed the differential impact of family responsibilities for men and women illustrate the "cold facts" which the previous judge alluded to:

> I wouldn't think I would take different things into account. But given our stage in society, not quite as many women are the support of other people as are men. It's not that they are women and men, but it's who they are supporting. If a man is supporting a wife and two children, I hate to incarcerate unless jail is demanded. The same is true for females.
>
> There is only one thing (that is different for women) and this is a form of discrimination. Well, not really discrimination since we don't get too meny men caring for children. Most judges are concerned with whether a woman is caring for kids. You don't wnat to punish the children or take her away from such an important function. I don't see any men who care for children.
>
> With the male you consider putting away the provider, but with the female, you take the caretaker away. You have to ask what will be the impact on society and on the psychology of the children. I may be more inclined to put the woman on probation.

These statements represent the general theme echoed by judges that familial responsibilities were weighed <u>for both</u> men and women, but that there was a greater likelihood that female defendants had responsibilities for the care of children. In their sentencing

decisions, all judges took into account a defendant's familial responsibilities and believed it both important and legitimate that they do so, as one judge put it: "Are you punishing an innocent victim?" Another judge was asked whether it was disturbing that "single" and "familied" defendants were treated differently, and he replied:

> Family responsibility is something you have to recognize. It weighs against incarceration or the difference between a long versus a short incarceration. Women are more likely to have kids and dependents than men. It is more difficult to send a woman with a kid to prison than a man. But if the man was taking care of a child, it would be the same thing, but this has never happened to me in the court.

Hypothetically, this judge suggests that a man with childcare responsibilities would be treated "like" a woman, but this situation was rare or non-existant. There is a hint from the judges' responses that while economic support for family members is a positive factor mitigating against incarceration, the primary care of children was even more important. Two aspects of the treatment of female defendants can be analytically distinguished here although they are often merged in courthouse discourse. First, women are more likely to have dependents (children) than are men. They are typified as more tied to familial obligations and fulfilling them in a responsible way. Second, women's familial labor is more important; it is "harder" to replace and therefore "harder" to separate women from children.

Like prosecutors and probation officers, however, a minority of judges also wanted to know whether woman were "good mothers." Thus, the sheer presence of children in the lives of female defendants may not be enough, as the remarks from the following three judges indicate:

> For women, if a woman has children, but she in fact has no childcare responsibilities, that won't impress me.
>
> If she has family obligations, is she assuming them or ignoring them? Quite often you find that a woman has one or two children, and she has deserted them.
>
> I have seen women with two kids and no parenting skills. The social service agency would love to take the kids away from them. Thus, the presence of children is not enough. It depends on her lifestyle and her skill as a parent.

While I have stressed thus far the judicial importance placed on familial responsibilities and how this affects gender differences in court outcomes, there is another consideration that looms large on the agenda of judicial sentencing: prior record. Judges differed in the relative importance they placed on prior record and family situation; for a few judges, the first consideration they had was prior record, while others attempted to balance prior record with familial responsibilities.

Sentencing vignette. In order to take judicial sentencing considerations a step further, I asked judges to consider a hypothetical

case before them and what their sentence would be, varying the sex and familial situation of defendants. The following case was read to the judges:

> A defendant was in the trial court with a larceny over charge, a larceny of $125. The defendant was found guilty. The record showed two prior convictions, one for selling a small amount of marijuana and the other for a larceny under. This latest larceny-over represented a violation of probation. If found in violation of probation, the defendant could get 3 months direct.

The judges were asked what their sentences would be if the defendant was (a) a woman with two young children, (b) a woman who was single and living with friends, (c) a man with a part-time job who had a wife and two children whom he supported, and (d) a man who was single and living with friends. All four defendant "types" were presented to each judge, and their order of presentation was varied.

This sentencing situation was one where judges had discretion to jail or not jail defendants. It was a borderline case, involving three incidents, but not "major" serious criminal incidents; and the types of crimes were "neutral," i.e., victim injury or a form of violence was absent from the incidents. To summarize the sentences judges gave in this hypothetical case:

(1) They were hesitant to incarcerate male and female defendants with familial responsibilities.

(2) There was far less reservation to incarcerate, if only for a relatively short time, the single man and woman without familial responsibilities.

Thus, judges' sentences reflected differences in the treatment of "familied" and "non-familied" defendants, not sex of defendants. One small difference did emerge for the "familied" male and female defendants: Judges considered a weekend jail sentence for the males, but did not consider this a viable alternative for females.

Of particular interest in the judges' responses to the case was that most required more information on the latest incident: (1) how the larceny occurred and (2) the motivation for the larceny.

Questions of context. On how the larceny occured, they asked:

> Was the property stolen from a person or from a store?
>
> I need to know about the larceny, the circumstances. Was he stealing from a girlfriend he was living with or from a woman in a church?

Thus, information was sought on the victim-offender relationship, the implication was that theft from a friend or person well known to the defendant was far less serious than that from a stranger. Their responses suggest that Hypothesis (8) on the consideration of victim-offender relationships has merit, not only for dismissals, but also for sentencing. From my observations of court proceedings, victim-offender relationships pose one of the most important criteria in determining case seriousness, which in turn shapes the kinds of sentences imposed. With some exceptions (e.g., Myers, 1980),

sociological studies of court outcomes rarely consider victim-offender relationships. It is likely that this and other kinds of information on the behaviors involved in incidents more powerfully distinguishes outcomes for defendants, rather than the "crime categories," typically employed in quantitative research.

Questions of motivation. For motivation, most judges asked whether the theft was necessitated in the "interests of the family" or out of economic circumstances, as illustrated by the responses of four judges:

> Was there a need for the family or not? What were they stealing, and how did it come about?
>
> If it's stealing milk for children, I wouldn't send to jail. If it's pure greed, that is something else.
>
> What were the details of the crime? Was she stealing toys for the kids?
>
> Was she doing something morally necessary for the support of the family?

The questions concerning the motivation for the crime are revealing: They suggest that judges will be more compassionate toward economic crime that "helps family members" than that arising out of "pure self-interest." Therefore, Hypothesis (9) on defendant's rationale for committing an offense has support, albeit of an indirect nature.

Questions of familial indispensibility. For the woman with two young children, there were preliminary questions of "Who will take care of the children?," the important factor being whether the woman was the sole caretaker of the children:

> Alot will depend on what will happen to the children. The chances are that if there is no one to take care of the children, I won't punish the children. I feel no sympathy toward her, but I do feel that the children are entitled to sympathy. I don't think that at this stage you take the kids away from the mother.

The same type of consideration was given to the man with familial responsibilities:

> If he is a vital support of the kids or vital to the kids, I would not punish the kids because of his stupidity.

Judges consistently stated that they would treat the "familied" man in the same manner as the "familied" women, that is, they could not justify incarcerating a man who would lose his job and economic support to a wife and children. Note, however, that the alternative weekend sentence, cited more frequently as an option for the "familied" man than woman, was in fact not an "option" for either. Judges wished that weekend sentences were a viable alternative, but they had recently been advised by the Department of Corrections that these types of sentences created problems for the correction staff in controlling the flow of drugs into the jails.

Familial considerations. The judicial rationales for not incarcerating "familied" men or women were tied to the unnecessary victimization of the family and the additional burden on state resources (such as AFDC and unemployment) that an incarceration sentence would bring. A sampling of the judicial considerations in sentencing men with family responsibilities is as follows:

> If it has a side effect on innocent people, you have to take that into account. If it's not a violent crime, then leniency is called for. You don't hurt a group because of just one guy.
>
> You have got to balance keeping him in society as supporter of the family and to protect society. I don't want to create severe hardships, and I am trying at the same time to mete out justice.
>
> It's very difficult. I would not want to interfere with the children. This is hard. You might consider a split sentence. ... But you do take into consideration that you don't want him to lose his job.

For all judges interviewed, there was great difficulty in deciding how to sentence the "familied" man or women, as reflected in the words of one judge: "It's a tough one." In their effort to mete out justice, balancing the "best interests of society" (keeping families together) with the interests of "protecting society" (punishment and segregation), "justice" for the "familied" defendants elicited a greater degree of soul-searching on the priority of "social interests." Their responses reflect the manner in which justice is "familialized," in this instance, they were well aware that their sentences could also punish innocent family members.

Their reaction to male and female defendants without familial responsibilities was more swift and decisive: With one exception, all judges believed that some jail time was in order, and they did not distinguish men and women in the length of time sentenced. The following responses illustrate that judges had little difficulty in sentencing the "non-familied" defendants:

> With less question, I would put her in jail. I would not try to pursue the background of the case as much.
>
> You don't have the same concern (as you do for those with family responsibilities). She would have to pay restitution. Maybe I would consider a short jail sentence.

In this sort of hypothetical sentencing situation where it was highly unlikely that judges would show any hint of favoritism without some cause they could justify, a defendant's family responsibilities posed a legitimate consideration in their decision-making, one they reconciled in abstract terms as in the "best interests of society."

The exception to the rule: the response to prostitutes

> "Any argument about care of children does not work for prostitutes. The double-standard is really used against them.

If women have an "edge" over men in judicial decision-making, an advantage stemming from familial responsibilities, there was an exception to this rule. In the Springfield courthouse, the "evil woman" was not the bank robber or the woman charged with a "male-type" crime, but the woman chared with the "female crime" of prostitution.

A direct question on the treatment of prostitutes was not asked, but 40% of those interviewed brought up prostitution during the interview. Three lawyers believed that judges may be lenient to women overall, but not to prostitutes. As one put it, "judges treat prostitutes ridiculously." This type of evaluation of the judicial treatment of prostitutes was also expressed by a probation officer who said, "Some judges hate prostitutes."

Most of those court agents who offered an opinion felt that they were more sympathetic toward prostitutes than other court personnel. One male probation officer, for example, felt that "There may be more women (in the office) who think prostitution is terrible; to me a victimless crime is not a priority." Similarly, three judges stated that they weren't as bothered by prostitution and didn't think it was as serious as other judges did. Thus, a harsh response toward prostitutes is clouded with disagreement among court workers over how these cases should be handled.

In the face of such "disagreement," one statistic bears mention: A significant proportion of women incarcerated in Massachusetts are

convicted of prostitution. A Department of Corrections publication shows that over 25% of female court commitments to Framingham in 1979 were convicted of prostitution and "common nightwalker" charges (Publication No. 12035, 1980: 24). As noted earlier, few woman received direct jail time during the 6-week observational period in district court. However, two of the three women receiving jail time were convicted of prostitution, and both had young children. Prostitution cases stand out from others that come before the court in two ways:

(1) They have, in general, more developed prior records. Probation officers said it was difficult to "rehabilitate" prostitutes, one noting that "We can't compete with the money involved."

(2) They do not elicit judicial leniency because of their familial responsibilities, one lawyer saying:

> They tend not to want to talk about their background in the first place. Children may not be living with them, or they may be living with them but under the care of a friend. Many judges might get the Welfare Department to take the kids away from her, and they (prostitutes) don't want that. The prostitutes are usually different. They want their cases to go through faster. It's almost understood that they don't want to present a sob story because judges won't want to hear it.

Another lawyer stated more briefly that:

> Any argument about care of children does not work for prostitutes. The double-standard is really used against them.

These statements reveal that the handling of prostitution cases--over 15% of female cases beforedistrict court during the

6-week observation period--differs from the treatment of women charged on other crimes. Even with respect to the presence of family members in the courtroom (presented in the following section), one judge noted that prostitution cases were different from other female cases:

> More people show up for female defendants than for male. With the exception of prostitutes, most females have support.

My speculation from the New York City quantitative analyses that prostitutes were a different "breed" of female defendants, those who want to get their cases through quickly and who may not accrue an advantage due to familial responsibilities, holds for prostitution cases in the Springfield courthouse. Thus, an understanding of gender discrimination in court decision-making should include an examination of prostitution cases, where one finds a noteable absence of judicial leniency extended to women.

The familialization of justice

"Any family member helps--the more the better."

A major assumption guiding this research is: Although a person appears as an <u>individual</u> before the law, court agents assume that he or she is more or less connected to a <u>family</u>; and its decisions are shaped accordingly. If defendants' cases are "individualized"

to fit the crime and the particular life circumstances of defendants in the Springfield court, this "individualization of cases" is embedded in the broader context of the "familialization of justice." I have shown how justice is "familialized" with differing considerations in the handling of "familied" and "non-familied" male and female defendants. In this section, I consider an additional feature of the "familialization of justice": the role and impact of family members as courtroom spectators.

Family presence in the courtroom. Quantitative studies of court decision-making have not considered the impact of courtroom spectators on court outcomes. Observational and interview material from the Springfield court reveal that the courtroom presence of a defendant's family members is an important source of variation, particularly for the sentencing decision. The presence of family members verifies that a defendant (1) has "family support" and thus is (or will be) subject to forms of familial social control or (2) has familial responsibilities (spouse and/or children).

Defense counsel acknowledged the effectiveness of family members in the courtroom. They advise their clients to have family members present, and during summation (or dispositional) arguments they will direct the judge's attention to the presence

of a defendant's family members. The following comments from three lawyers show how family members can strengthen a lawyer's arguments on behalf of defendants:

> I always tell women to have children in court and put them in their laps. ... You cannot ignore family and employers who may be present in the courtroom; especially pregnant wives (of male defendants).
>
> For the young defendant, the most important thing is being in school or working, and having a wife in the courtroom. You want to stress that maybe the family can take care of this guy, especially in easy (less severe) crimes.
>
> I have my clients bring in family members in the court. Judges have a hard time sentencing with family present.

Thus, defense lawyers draw upon the presence of family members in the courtroom to impress the judge. To what extent then are judges impressed by the presence of family members?

The following question was asked of the judges interviewed:

> If you see that a defendant's family members are in the courtroom, does this affect your finding or your disposition?

With the exception of two superior court judges, who said that "I have never felt distracted by the presence of family or the victim's family" and "All I am concentrated on is the trial and the case in front of men," all the remaining nine judges replied that the presence of family members in the courtroom had an impact on their sentencing decisions. The presence of family, however, did not

affect their adjudication of guilt, innocence, or "facts sufficient." A sampling of judicial responses illustrates why a defendant's family members can make a difference:

> If I see wives, mothers, and fathers, I may think there is hope for this guy because they take an interest in him. And if I was impressed with him during a trial, I'll be more lenient. You have got to think of the family too. What you do is going to affect them.
>
> It affects my disposition, but not my finding. Definitely. You feel that you have got somebody here who will get some support from his family in an attempt to rehabilitate him or herself. It makes the chances of success better.
>
> If there is a case, a borderline case, probation or a jail sentence, if the family is there and it seems to be supportive, you may go with probation.
>
> Yes, it does in terms of sentencing. Because family support means a great deal as to whether they are likely to be "rehabilitated," put that in quotes. Any family member helps, the more the better.

The presence of family members in the courtroom thus affects judges in two ways:

(1) They have visible evidence that their sentencing will affect "innocent others;" and this can sway their decisions toward leniency.

(2) They expect that the defendant has a better chance of going straight by familial controls rather than by criminal justice controls and penalties.

I will illustrate in more detail how the presence of family members in the courtroom affects "familied" and "non-familied" defendants by drawing upon observational and interview materials of cases before the Springfield court.

"Familied" defendants. A male defendant was "submitting to facts sufficient" for charges of driving an uninsured, unregistered car without a Massachusetts license. His lawyer conveyed to the court that he and his family had recently moved from Florida, and the defendant was unaware of the motor vehicle laws in Massachusetts. The courtroom was empty except for a woman and young boy sitting in the first spectator's row, and the judge assumed (but was not explicitly told by the lawyer) that this was the defendant's family. The usual finding and sentence for a submission of these charges is "facts sufficient" and "court costs" of about $175. In this case, the judge placed court costs at $60; he then said to the defendant:

> One other comment I want to make. You have a very, very well-behaved youngster.

This direct exchange between judge and defendant about the defendant's family members does not occur routinely. It does exemplify, however, how defendants can "impress" the court via their familial relations. In this instance, the "well-behaved youngster" suggested to the judge that his father too respected authority, and that he was a "good family man."

A second example involves the superior court sentencing of a female defendant convicted of possession of heroin with intent to distribute. In superior court, judges have reviewed background information on defendants and have more time to determine what

a sentence will be. Yet, as the following example reveals, the presence of family members on sentencing day changed the judge's mind. A defense lawyer recounted this change of heart:

> I understood that the judge wanted to give her jail. But on the morning of the sentencing, all her family, all of the kids came into the court for the first time. The kids weren't there during the trial. From the bench, he said, "It's a horrible thing she is doing." But he learned that the children depended on her and her husband recently die , so he gave her probation. He was moved by her family circumstances.

Both of these examples suggest that in addition to the knowledge of familial responsibilities, the in-court presence of family members can "move" judges toward greater compassion of defendants.

"Non-familied" defendants. Thus far, I have alluded to the importance of parental social control in the differential handling of "non-familied" defendants. This section provides more direct evidence of how such controls can influence court decision-making.

Judges spoke in general terms of positive impressions formed of defendants if there were "concerned" parent(s) in the courtroom. This made it "easier" for judges to give a defendant a break with the expectation that parent(s) (or other close relatives) will provide supervision--in essence, a form of "familial probation." One judge suggested, for example, that "Many kids feel the parents give worse punishment than the court."

In describing the role of the "concerned parent," another judge replied in some detail that he was concerned not only with the presence of family members, but also which family relation was present:

> Sometimes you can see the glib young man with his mother present, and you may say to yourself that he has been conning her for 25 years, and this is a con. The family I like to see for men is their father or uncle, an older responsible male.

None of the other judges responded with the same degree of detail as this particular judge, so it is difficult to know whether judicial interest in a particular familial relation is typical. However, the response shows that for this particular "non-familied" male defendant, the judge believed that a female relation (the mother) could not provide the necessary social control that a male relation could. This judicial consideration is indicative of the familial calculus at play in decision-making: If the court considers giving the "non-familied" defendant a break, it will do so with the condition that another authority figure can be counted on as a substitute. In this particular example, the judge believed that the young man's mother would not be an effective authority figure, in essence acknowledging the character of male-female power relations, specifically the mother-son relationship. (Note here the reverse imagery of "good mothers:" As defendants, their childcare is viewed in positive terms as indispensible to the maintenance of family life; but as parents of defendants, they are ineffective authority figures.)

Another example of the way in which parents may be key in the processing of "non-familied" defendants is of an 18-year old female charged with prostitution. The probation officer and prosecutor recommended 3 months direct time because she had violated probation for serious drug charges. Her defense attorney argued at length for a suspended sentence:

> The record of this young lady is not long or serious. Her record does not warrant incarceration. At this point she is living with her family, and she is actively seeking employment, but it's tough.
>
> She successfully completed the course for the G.E.D., and now she needs to take the exam. She is Skills Center eligible, and she can go there and start right away, except she can't because of this case. Miss ____ is rehabilitating herself well and able to begin residence at the local drug rehabilitation house. She herself is the victim of this charge. This gal can learn responsibility by taking the G.E.D. exam and getting a job. I vigorously urge some disposition, but not incarceration.

Note that in his summation, the defense lawyer stressed the <u>employment</u> potential of his client. This is a typical mode of argumentation for "non-familied" female defendants, and it underscores the point that the salient attribute for women <u>without</u> familial responsibilities is employment status, as one finds for "familied" and "non-familied" male defendants.

The lawyer went through his argument a second time, hoping that by repetition he might impress upon the judge the seriousness

with which he took the possibility of the young woman's incarceration. Finally, he concluded with a new piece of information:

> Your honor, I know this girl's folks, and I have known them for some time. They are respected people in the community. I am just not convinced that incarceration is necessary given her record, and I ask for a suspended sentence.

The judge took a long time to decide, but ultimately gave the woman a suspended sentence.

This is the sort of case--a combination of drugs and prostitution charges--that women typically get jail time for. Although I cannot be certain what the judge was specifically influenced by, the defense lawyer successfully finessed jail time by pointing to two things that distinguished this woman from other prostitutes: (1) she currently lived with her parents and (2) the lawyer knew her parents and termed them respected members of the community. Thus, he implied that as "respected people in the community," (1) they could be relied upon as effective agents of social control and (2) they should not be punished for their daughter's transgressions. This kind of argument also represents the way in which class background of defendants can be introduced to the court by stressing the "respectability" of a defendant's parents.

From both the interviews and court observations, there are more stringent criteria in giving "non-familied" defendants a "break." Most singles are "living with parents," and this by

itself does not necessarily impress the court. Rather, the presence of an active familial authority figure, combined with holding a job or being in school, distinguishes the handling of "non-familied" male and female defendants. For defendants who "have a family," however, there are self-evident "familial controls" (in particular, for female defendants) in assuming responsibility for the care and economic support of other family members.

Gender discrimination: female or familial paternalism?

"They're girls. Judges get a little twinge."

If my observations in the court and interviews with court personnel confirmed the importance placed on "maintaining the family unit," with differing consequences for "familied" male and female defendants, then it seemed likely that court personnel would interpret gender differences in court outcomes along these lines. This turns out to be only partly the case.

Of the 22 prosecutors, probation officers, and defense lawyers asked if "judges are more lenient to female defendants," less than one-fifth (N=4) replied that female defendants did not receive preferential treatment, and 18 responded that they did. These 18 court agents gave the following reasons for judicial leniency toward female defendants, with some providing more than one reason:

(1) Female paternalism: Judges respond to women "as women," women are viewed as "weaker," and protection of women (N=14 responses)

(2) "Familial paternalism:" Women's family responsibilities (N=7 responses)

(3) Image and appearance: Women have a better demeanor and courtroom appearance; judges find it hard to think of women as "bad" or as vicious (N=7 responses).

These responses show that most court agents explain gender differences in court outcomes as arising from judicial "female paternalism," although as shown earlier, most court agents say that "familial paternalism" orients their practices in the treatment of male and female defendants. Before analyzing this apparent contradiction between court agents' practices and explanations of gender differences in court outcomes, I turn first to a discussion of the third dimension identified from the interviews--image and appearance.

Image and appearance. I make a distinction here between "female paternalism" and women's better "image and appearance" in the courtroom because the latter suggests that female defendants more actively engage in imparting a "better image," which in turn elicits greater judicial sympathy. At the same time, as we shall see, this "better image" explanation is similar to "female paternalism" insofar as both reflect a guiding courtroom mythology that women "as women" receive preferential treatment.

Defense lawyers believed that dress and demeanor were important not only for female, but also male defendants, as the following comments from two lawyers suggest:

> I always tell both male and female defendants to look sweet.
>
> Young kids that are well-dressed leave a good impression.

The idea of being "well-dressed" has an obvious class and ethnic bias, and defense lawyers needed at times to be quite specific on the kinds of "appropriate" clothing for courtroom appearances, particularly for female defendants.

Two dimensions are apparent from the interviews on gender differences in "appearance and image":

(1) In general, women seem to be "better dressed" than men; but

(2) Women who dressed "neatly and demurely" had a better chance impressing the court

More emphasis is placed on what in fact female defendants wear in the courtroom: It can convey "more messages" to the court than a man's dress can. Thus, a woman's appearance is double-edged: They are expected to "look good," and will be advised to wear <u>certain</u> clothes--not just a dress, but a "frilly dress." The implication is that if they don't do this, their chances may not be as good. Female defendants are advised to wear clothes that capitalize on their feminity, that make them seem "more innocent."

Note how this is in contrast to what female lawyers or other professionals are expected to wear in the courtroom--clothes that are not "too" feminine--so that they will be taken "more seriously," i.e., treated "like" men.

Although I found that more emphasis is placed on what women wear in the court, particularly those prosecuted in superior court, it's highly uncertain whether this more "innocent" appearance in fact translates to more lenient outcomes. The following example illustrates how dress and appearance were used to explain differences in the treatment of female defendants, when other factors were more likely involved. A defense lawyer compared the different outcomes for two female clients:

> There was a woman convicted of dealing drugs. She was a white woman. I asked to have her dress in a frilly dress. She did, and she got probation.
>
> There's another example of a woman charged with three to four armed robberies. She was a junkie, and she used a gun in the crime. She was tough as nails, but a sweet person. She pled guilty, and on the day of sentencing, she had a t-shirt on that said, "I'm so happy I could shit." She got a Walpole (incarceration) sentence.

The obvious problem with equating the two women is that the first, while "better dressed," also had a relatively less severe case before the court. The second woman, wearing a t-shirt that flew in the face of court decorum, was involved in more severe, gun-related offenses, with a history of such incidents. Thus, although

the lawyer believed that the comparison illustrated the importance of dress and appearance for women, it is unlikely that it could or did make a difference, given the disparate nature of the two cases. Whatever the actual difference that dress can make for female defendants, defense lawyers work on the assumption that it does make a difference and advise their clients accordingly. Moreover, as we shall see in the following section, such beliefs shape perceptions of outcomes for cases in a manner comparable to the "female paternalism" explanation.

"Female" and "familial paternalism(s)." One of the major problems in sorting through court agents' perceptions of the differential treatment of male and female defendants is their selective recall of a case or two that confirms beliefs already in place. Most court agents who responded that women "as women" were treated more leniently than men, over and above familial responsibilities, quickly drew upon a well-remembered case. (Indeed, one particular case of a female defendant "getting off too easily" was repeatedly cited by different court agents.)

The following responses by two probation officers and two prosecutors, respectively, exemplify how court agents define the judicial "female paternalism" factor:

> In some cases judges treat women more leniently. It's human nature. They're girls. Judges get a little twinge. It's harder to be an SOB to a female.
>
> The average judge, most of whom are males, and the probation officer or any informal decision-maker want to give females an edge, even if the females have no children. It's probably natural. Sex roles were very well-defined for years. Even with a change in the last 10 years, the effect of the thinking is still there.
>
> Judges treat women more leniently because they are women. Women are seen as the weaker sex, you know what I mean, they are not <u>really</u> weaker, but that's how they're seen. They shelter them with variables of family and culpability without gender, but it's gender.
>
> I think the difference stems from the way they (judges) like to view women, maybe a sense of courtliness. It's partially sympathy and partly paternalistic. They are responding to women as women.

I stress here that when court personnel reflected upon judicial leniency toward women, they invariably focused on the more serious cases--those prosecuted in superior court--comparing sentences of (1) incarceration or probation or (2) if incarcerated, the length of the sentence. They did <u>not</u> discuss or recall those cases involving less severe sentences (fines, suspended, suspended with probation). This corroborates my contention that gender differences in court outcomes are largely confined to particular court decision-making contexts, those involving a defendant's loss of liberty.

If court agents selectively recall "loss of liberty" decisions, and if as we have seen, "familial paternalism" orients their practices toward defendants for these particular decisions, why then do they explain judicial leniency toward female defendants as arising from "female paternalism?" It is apparent that court agents are unable to separate "female" from "familial paternalism(s)." On the surface, it appears that women "as women" receive preferential treatment, but what structures apparent "sex" differences are gender-linked differences in familial responsibilities of defendants. Because "female" is more strongly associated with "family," the two overlap without a detectable dividing line, with judicial leniency ultimately explained as "female paternalism."

If most prosecutors, defense counsel, and probation officers believed that judges treat women more leniently because of "female paternalism" factors, the judges' reactions were different. Judges were asked to respond to the following:

> I'd like to get your response to the following statement which is more or less the prevailing view in the research literature on how judges respond to male and female defendants:
>
> > "Judges treat female defendants more kindly or protectively than they do male defendants because female defendants remind them of their daughters, or wives and sisters--women close to them. Or just in general, judges find it hard to be as tough on a woman as a man."

Although judges were not informed of it, the statement is the (female) "paternalism" thesis. The judges were split in their reaction to it, with 60% saying "It does not apply to me," and 40% replying that "It may have some truth." One judge explained why he thought the statement had some validity:

> I think that it's passed down from the centuries, the idea, "Let the big male take care of you, the little female." Although the reverse is actually true, the female has more guts than the male. There is a little sex involved. You can have an unattractive woman in the court ... (pauses) and well, the male judge is a male animal. It is easier to attribute maliciousness of men toward men than of men toward women. You think: Some guy made her do it, in terms of a woman being involved in a hold-up. It's easier for me to attribute intent and maliciousness to a man. ... As co-conspirators it might be different. If they both came in with the same charge of shoplifting, if it were a female, I might give her more of a break, 15 days suspended for one year. (Why?) (laughs) ... I don't know, it's probably different because I am afraid she'd cry.

Note that this judge's reaction combines many factors: (1) a societal view of women as "weaker;" (2) sexual attractiveness of women; (3) difficulty in viewing women as malicious or as criminally intentioned; (4) "male-behind-the-female" involvement in crime, and (5) a <u>slightly</u> reduced level of punishment for a female defendant, the idea being that "she'd cry" if she received the same sentence as a male defendant.

For the judges who believed the (female) "paternalism" thesis had some truth, the more lenient treatment of women was also tied

to the lack of incarceration facilities and the "different behaviors" of women charged with the same crimes as men. Incarceration facilities posed both institutional and psychological constraints on their sentencing of female defendants.

Institutionally, there are no houses of correction (county jail) facilities for holding women on bail or sentencing to jail time in the Western Massachusetts region. Instead, all women held or sentenced to county jail serve time in the Framingham State Prison, located 70 miles away. Thus, detention or jail time for women actually means "more harsh" time than it would for men, a longer journey for visitations by lawyers, family, and friends. Psychologically, incarceration elicited judicial considerations of the lesbian "problems" they had heard went on at Framingham, an environment they feared might be more damaging to women since they believed that women had more difficulty coping with sexual violence. While most judges felt that the jail environment "did nobody any good," and that sexual violence occurred in male incarceration facilities, they believed that women would suffer more psychological trauma by being in jail.

For a number of judges, there was a more fundamental problem of thinking one could treat male and female defendants "equally" since their involvement in crime, type and features of the offense, prior record, and familial responsibilities were so often unequal

to begin with. As well, the "taking of each case on its own merits" hindered their ability to think in ceteris paribus terms about thier handling of male and female defendants. This was made all the more difficult since female defendants represented a small minority of cases they heard.

Given the political importance of an aura of judicial impartiality, I expected some discrepancy between judges' and other court workers' perceptions on the judicial handling of male and female defendants. However, the degree of dissensus between judges and the other court personnel is of interest (recall that over 80% of other court personnel believed that judges treated women more leniently due to "female paternalism" while four of ten judges believed this might have "some truth"). Although other court personnel identified factors of children and the less severe nature of women's offenses as important factors in the more lenient judicial handling of female defendants, they also imputed from judicial decision-making a partiality toward women "as women." If the majority of judges said this is not in fact the case, then how can these competing perceptions be reconciled?

We may explain the perceptual distance between the two by (1) assuming that judges are not as even-handed as they think (or say) they are and/or (2) assuming that other court personnel

impute more "female paternalism" to judges than actually exists. One implication is that future research on gender discrimination should include not only judge interviews, but also those of other court workers. A second implication is that there is much myth-making surrounding the differential handling of men and women before the court: "Female paternalism" is used to explain gender differences at the same time that court practices more consistently reflect considerations of "familial paternalism." The contradiction between court agents' stated practices toward male and female defendants ("familial paternalism") and their explanations of gender differences in court outcomes ("female paternalism") is an important finding. It suggests that qualitative research on gender discrimination must focus on both as <u>interactive</u> elements in the subjective construction of gender discrimination. At the same time, we should not lose sight of the <u>structural</u> basis for these subjective constructions, specifically how the contemporary gender division of labor not only promotes gender differences in the profile of defendants before the court, but also inscribes a different "value" on the loss of male and female familial labor. If the statistical analysis pointed to the mediating influence of family ties and responsibilities in court outcomes for men and women, the qualitative study suggests that the "female-equals-family" identity is so strong that it is interpreted as "female paternalism."

Summary

Springfield court agents view a defendant's familial status as a legitimate factor in their differential treatment of male and female defendants. This was evidenced by their willingness to explicitly articulate how and why a defendant's familial status shaped their decision-making: Judges were loathe to take a (male) breadwinner or a (female) child-tender away from a family because this meant innocent family members would be punished; prosecutors and probation officers were willing to give "familied" defendants another chance in the interests of "maintaining the family unit" and because such defendants were viewed as "more stable" and better probation risks. Defense lawyers, in turn, argued the importance of their client's familial responsibilities to prevent pre-trial detention or incarceration.

With respect to assuming familial responsibilities, women were frequently typified as "more responsible" than men. Moreover, this typification was based on actual differences between male and female defendants: The "typical" female defendant had children; and while the "typical" male defendant may have been a biological father, he was not providing economic support to family members, i.e., being a "social father." Few court personnel could recall male defendants who had primary responsibilities for childcare.

While "being a mother" appeared to convey a legitimacy for female defendants in and of itself, some court personnel were interested to know whether women were "good mothers." They wondered whether they were in fact taking care of their children and if the were doing a "good job" of it. The question of child care invariably focused on the care of younger children who were dependent on an adult, not on grown children. As found for the New York City outcomes, it was the presence of dependents, not the marital status of defendants that had a bearing on court decisions. Court personnel have become used to the single parent and placed little importance on whether a defendant's familial responsibilities were embedded in a marital context.

Although defendants with familial responsibilities had an "edge" over those without such responsibilities, those singles who had a "concerned parent" (or other family member) may also have an advantage, <u>if</u> in the court's view, such "concern" can be relied upon to deter the person from future criminal involvement. Apart from what is <u>known</u> of a defendant's familial status, the interview and observational data suggest that the courtroom presence of family members of defendants can influence judicial sentencing.

"Familied" defendants have an "edge" in the adjudication process primarily when decisions centered on a defendant's loss of liberty. Few difference were found in the sentencing outcomes of male and female defendants for less serious types of crimes prosecuted in

district court, over 90% of which did not involve jail time. When court personnel reflected on "more lenient treatment of female defendants," they focused only on "loss of liberty" decisions (jail sentences a pre-trial detention).

From the observational data collected in district court, no gender differences were found in the types of findings defendants received. Significant majorities of defendants "submitted to facts sufficient;" and of those who went to trial, almost all were found guilty of at least one of the charges against them. However, some gender differences were found in how cases were handled by defense counsel and prosecutors: Higher proportions of male cases were continued, particularly those charged with more serious assaultive and property crimes. Multiple requests for continuances can, in turn, lead to case dismissal, particularly when prosecutors are not ready to try the case because of witness "no-shows" or evidentiary problems.

If prosecutors, defense counsel, and probation officers emphasized the importance of a defendant's familial responsibilities in <u>their</u> treatment of male and female defendants, most also believed that judges were lenient to women "over and above" familial responsibilities. (Some did wonder, however, whether young and female judges fit this conception, and a few said that it wasn't just judges, but the court as a whole.) The popularity

of the "female paternalism" explanation of gender differences in court outcomes--evidenced both in the criminal justice literature and in the courthouse--needs to be reckoned with.

In accounting for Springfield court agents' use of "female paternalism," I point to two related features of men and women before the court which provide apparent confirmation of the "female paternalism" explanation, even if this explanation is ultimately incorrect.

First, male and female defendants are in many respects quite distinct groups before the court. Men are more often charged with more serious and more violent offenses, have more developed prior records, and exhibit fewer responsibilities for other family members. These features of the "typical" male defendant at base call for different treatment than that for the "typical" female defendant. Court workers cannot disentangle these homologous features of male and female cases.

Second, gender differences in court outcomes, reflecting these initial male-female profile differences, promote the belief that, in the words of one defense lawyer: "Everyone knows that women are treated differently." If "everyone knows" this is "true," court personnel act on this principle and interpret court outcomes on the basis that women "as women" have an "edge" over men. They don't see how an apparent "female paternalism" is the tip of the iceberg, structured by the contemporary gender division of labor.

The irony of gender discrimination in court decision-making compared to that in other social institutions is that "Men are at a disadvantage when they can't be mothers." In the institutional context of criminal justice, with the importance placed on "maintaining the family unit," primarily via women's child care responsibilities and secondarily by men's economic support, the "edge" for "familied women" is not one as "excusing" or "protecting" women. Rather, court personnel are concerned with the protection of children or "innocent others." This was reinforced with the (1) knowledge of limited state resources for foster care of children and (2) concern that children should not suffer separation from a primary parent(s).

The more lenient treatment of "familied" than "non-familied" men and women, and the greater emphasis on maintaining women's rather than men's familial labor were rationalized as in the "best interests of society."

However, there were times when the "protection of society" superseded the "best interests of society." Male or female defendants convicted on more serious or violent crimes with a prior record of criminal involvement evoked little court compassion because of familial responsibilities. Indeed, while judges said they had difficulty "sending women with children away," all added

that at one time or another they had done so. Further, women charged with prostitution, especially those with a record of such arrests, did not evoke judicial sympathy even if they had children. This is suggestive of an unspecified, though shared ideology of a "good mother;" and it is indicative more generally of court agents' considerations of the "quality" with which defendants assume familial responsibilities.

C H A P T E R VII

SUMMARY AND IMPLICATIONS

Overview of major findings

The research literature review suggests that gender differences in criminal court outcomes arise most consistently and dramatically when decisions center on a defendant's "loss of liberty." Holding relevant factors constant, women are more likely to be released on recognizance than men, and women are less likely to receive jail time. For decisions on whether a case is prosecuted or dismissed, or for thos bearing on the type of conviction, one finds inconsistent or no "sex effects." Thus, leniency may be extended to women in some, but not all court decision-making contexts.

In seeking to account for the sources of gender differences when they arise, I introduced a gender relations framework, identifying defendants' familial ties and responsibilities as the central factors that distinguish the handling of male and female defendants. Quantitative analyses of court outcomes for New York City and Seattle revealed that initially significant "sex effects," favoring women in "loss of liberty" decisions, were mediated by a defendant's familial status. However, defendants' familial status may also be involved in other court decision-making contexts: Springfield prosecutors suggested that it affected their plea

bargaining recommendations, and the New York City sentencing outcome which did not necessarily involve jail time showed "family effects." If, as the Springfield interviews show, a defendant's family situation poses a legitimate criterion for "loss of liberty" decisions, the same kinds of considerations may spill over in other court--and perhaps pre-court-- decision-making contexts. At the conclusion of this chapter, I consider how a gender relations perspective may be applied to pre-court discretionary practices, in the promotion of large gender differences for those initially subject to criminal court adjudication.

Although the primary research focus was on gender differences in criminal court outcomes, I argued that familial status has implications for the differential treatment of defendants more generally. I label this phenomena in court decision-making the "familialization of justice," and suggest that court decision-making is guided and constrained by knowledge of a defendant's familial ties and responsibilities.

For male and female defendants without familial responsibilities, the court seeks to determine whether defendants have a degree of parental control. Given scarce criminal justice resources, the court may fall back on "the family," hoping that such familial controls will deter individuals from future criminal involvement. For those male and female defendants with familial responsibilities,

the locus of court attention is on maintaining the "family unit" by keeping intact a defendant's economic provision or care-taking responsibilities.

"Familied" male and female defendants are typified as "more responsible" and "more stable" than their "non-familied" counterparts because they are fulfilling expected productive and familial responsibilities of social adulthood. From court agents' perspectives, "maintaining the family unit" is viewed as a social good, as in the "best interests of society." The continuation of the "family unit" is related to a second crucial consideration in the handling of "familied" defendants. Punishment can be socialized insofar as "innocent family members" of defendants can also be punished by a defendant's sentence.

That punishment can be socialized is <u>not</u> embodied in the structure of criminal justice penalties "on the books." Such penalties assume that <u>individuals</u> breaking the law pay a particular price for their transgressions. In practice, court agents bend the rules, acknowledging that their decisions for "familied" defendants may unjustifiably punish "innocents." The response to the sentencing vignette by the Springfield court judges revealed how difficult it was for them to jail the "familied" male or female defendants. With less reservation and with more certainty, it was "easier" to jail the "non-familied" male or female. "Familied" defendants are treated more leniently than those who are "non-familied" because greater social and state

costs are entailed in jailing "familied" defendants. Judges cannot justify the social costs of "breaking up the family" with its related state costs of "replacing" the loss of (male) economic provision to the family or (female) child-care responsibilities.

Although "familied" male and female defendants are treated more leniently than their "non-familied" counterparts, "familied" women are treated more leniently than "familied" men. I have argued in theoretical terms that his occurs because women's familial labor is ideologically and materially more indispensible than men's. The parental care of children is not easily "replaced" via state supports or intervention, while the economic provision to the family is more easily "replaced" by an array of extant state benefits, however minimal. Thus the differential treatment of "familied" men and women is related to their differing responsibilities for "the family" not to sex per se. Hypothetically, court agents said that if a man took care of children, he would be treated "like" a woman. The interview and observational material in the Springfield court provided additional insights on why "familied" men and women are responded to differently.

Meaning of gender difference. On the basis of court agents' recollections, "familied" women more often fulfilled their responsibilities for family members than "familied" men. Although

most men and women have dependents (largely children), this took on differing meanings for men and women, meanings derived from the expected structure of male-female relations "in the family." "Having a family" is not enough of a mitigating factor for male defendants unless it was tied to breadwinning responsibilities for family members. Biological fatherhood was separated from social fatherhood. For women who "have a family," the boundaries between biological and social motherhood overlap: A priori women with children are considered social mothers.

One exception was court interest in the quality and indispensibility of a woman's child-care responsibilities. Specifically, there was a tendency to question whether women were "good mothers" or whether other adults were available to take care of the children in the mother's absence. I could not assess how often this secondary consideration of "quality" and "indispensibility" of women's familial labor actually arose in court decision-making. However, a qualitative difference exists in the discourse over "social fatherhood" and "social motherhood."

This difference takes the following form. Court agents assume that women are "good mothers" unless shown otherwise; they do not initially assume that men are "good fathers." More than any other court agent, it was prosecutors who introduced doubt on the quality of women's parenting. In their arguments they had to demonstrate to the court that women were not "good

mothers," after having considered the implications of taking a woman away from children. Arguments on behalf of men with familial responsibilities were different. Defense lawyers had to show that their male clients were responsible fathers by describing in greater detail what fathers did for their families. Thus, a set of assumptions already in place for "mothers" had to be argued for on behalf of "fathers."

This kind of asymmetry in argumentation is best illustrated by the asymmetry of meaning in "family man" and "family woman." "Family man" connotes a particular kind of man, whereas "family woman" suggests a redundancy. Although there may be a secondary consideration of the quality and indispensibility of women's parenting that is roughly comparable with the quality and indispensibility of men's economic provision for family members, the consideration of "how well" "familied" men and women fulfilled their responsibilities arose more frequently for the "familied" men.

My expectation that "familied" women's labor is understood as more indispensible than men's was born out from the interviews. At the same time, definitions of women's "indispensibility" were combined with a working "objective" knowledge that "familied" women assumed their responsibilities more frequently than "familied" men.

Exceptions to the mitigating influence of family situation. The mitigating influence of familial ties and responsibilities is not consistently applied in all cases. Rather, it is selectively deployed and set against features of the case and a defendant's prior record. Women prosecuted on prostitution do not have much hope of eliciting court sympathy, whether they have children or not. For prostitutes with children, some may not even convey this information to the court, fearing that their children will be taken away from them.

Springfield prosecutors, probation officers, and judges said that for serious violent offenses and for defendants with heavy prior records, "familied" defendants will not be as likely to receive a break. In these instances, they will be treated more like "non-familied" defendants, although some judges considered giving a shorter period of jail time to "familied" defendants.

Three-court comparison and problem of generalizability

Gender differences and court jurisdictional levels. Defendants' familial status did have an impact on court outcomes in two state courts, one adjudicating pleas to misdemeanors (New York City) and the other, sentencing of convicted felons (Seattle). The

Springfield district court cases were on average even less serious than those in New York City. Here I consider whether gender differences vary by court jurisdictional level, a possibility suggested in Pope's (1975) research.

A bivariate comparison of sentencing outcomes for men and women in the Springfield court showed no difference, a result I owe to the types of crimes prosecuted in this court. Traffic violations and drunken driving offenses were highly routinized with neglible gender differences. Assaults, disorderly conduct, and larcenies were also predictable, typically involving suspended sentences, court costs and/or fines, and the replacement costs of destroyed or stolen property. If these sentencing outcomes for a 6-week period bear a resemblance to a longer time frame, it may well be that few gender differences will be found when less serious cases like these are adjudicated.

My research does not bear out Pope's (1975) conclusion of the variability of gender difference in sentencing, depending on the level of court jurisdiction. (Recall Pope's finding that women were significantly less likely to be jailed in the lower California courts, but male-female differences were not apparent in the higher courts.) Arguably, these jurisdictional differences may arise because more severe crimes prosecuted in higher courts may eclipse the effect of a defendant's family situation. Outcomes for the three courts examined here show a different pattern. When the

character of crimes prosecuted is of a less serious nature, as in the Springfield District Court, sentencing outcomes for men and women are similar because they are more highly routinized and very rarely involve jail sentences. In comparison, the New York City lower court and the Seattle felony court showed large bivariate differences in the likelihood of incarceration for men and women. Therefore, a focus on court level *per se* may be misleading, particularly if inter- or intra-state variation exists in what crimes are typically prosecuted in lower and upper courts.

Generalizability. My theoretical expectations and interpretations of the impact of familial situation in the adjudication of defendants in the Seattle and New York City courts were highly consonant with descriptions that Springfield court agents gave for *why* defendants' familial status counted, and *when* it counted in the adjudication process. Thus, the plausibility of the gender relations framework for understanding the sources of gender discrimination (when it arises) has been established in the research. However, if the three state criminal courts studied show the strength of defendants' familial status in the adjudication process, it is important to consider whether this holds more generally in other state courts' decision-making. In addressing this question, I note two factors.

First, Levin (1977) and subsequently Maynard (1982) have suggested that court decision-making can be of two types: (1) "personalized," i.e., concerned with substantive rationality or (2) "strict application of the law," i.e., concerned with formal rationality. Courts employing the former mode of decision-making would be expected to routinely "take into account" a defendant's background attributes--family situation being a major one--in arriving at sentencing decisions, while courts employing the latter approach would not. At present, no one knows the extent to which substantive rationality, formal rationality, or some combination of both prevails in American courts.

Second, notwithstanding this lack of knowledge on decision-making variability, one may try to infer if familial situation weighs importantly in the adjudication process by using other means. If courts use the pre-sentence report for sentencing decisions, they will likely employ the Federal Pre-Sentence Investigation (PSI) guidelines. Past and current family situation is one of the major descriptive categories in the PSI's. Another clue is whether states have adopted the Federal bail statute in whole or part. This statute explicitly "takes into account" a defendant's family ties as one criterion in determining flight risk; one might expect, further, that family ties would also be considered in the sentencing decision. Lastly, although one might anticipate some state court variation in the importance placed

on a defendant's familial status, Federal district courts explicitly use family background and ties as criteria in sentencing and pre-trial release decisions. Thus, there is indirect evidence that state courts draw upon family situation as a salient defendant attribute, and direct evidence that Federal courts do.

Female and familial paternalism(s)

The quantitative analysis of court outcomes showed that gender differences are mediated by familial situation, and the qualitative study revealed that court agent practices strongly reflected considerations of "familial paternalism." Gender differences arise in the treatment of "familied" men and women, with women having an "edge." This "edge" should not be construed as "sympathy" or "protection" of female defendants, but rather a "sympathy" and "protection" of familial dependents. Such leniency occurs given the contemporary gender division of labor where women have primary responsibilities for childcare, and men do not. Moreover, "familial paternalism" not only accounts for "familied" male-female differences, but also for differences in the treatment among men and among women. This understanding of the differential handling of men and women, and more generally of "familied" and "non-familied" defendants moves the conceptualization of gender

discrimination to a new arena. From a gender relations perspective, "female paternalism" is a quaint and misleading anachronism.

It is instructive to compare explanations of gender difference using "familial paternalism" and female paternalism" since the latter prevails in research interpretations. In the most recent issue of the American Sociological Review, Wheeler et al (1982) concluded from a study of white-collar offenders in 7 Federal districts that they had "no special insight" to explain the "strong effect of sex" (i.e., women were far less likely to be jailed than men). However, they surmised that

> There is something about the specter of women behind the bars and walls of the prison that leads many judges to a kind of protective paternalism. A protective response is understandable in the face of traditional cultural stereotypes of women as soft, vulnerable, 'the weaker sex,' and of prisons as cold, harsh, forbidding environments. In short, women are deprived of their rightful place in the masculine setting of the prison, just as they have been deprived of their rightful place in the male-dominated world of business executives. (Wheeler et al, 1982: 656) (emphasis added)

I quote their interpretation at length because of the disturbing political implications that a "female paternalism" explanation holds. First, one finds the usual interpretation that judges are responding to women "as women" independent of familial responsibilities (but see below on their analysis of number of dependents). Second, this is extrapolated in making the dubious claim that "women are deprived of their right place ... in prison."

If one interprets gender differences as stemming from "familial paternalism," one sees that given the contemporary gender division of labor, women's familial labor has "value" in the context of criminal justice adjudication. Familial labor expected of women, but not of men, acts as a break in "retaining" women in the criminal justice system as in the corporate world. If the gender division of labor produces these apparent "sex differences," one is then hard-pressed to revert to explanations of women as "soft, vulnerable, 'the weaker sex.'"

Moreover, given the contemporary gender division of labor, it is exceedingly problematic to view the lower likelihood of jail time for "familied" women as a deprivation of their rightful place in prison. Rather, such outcomes are reflective of asymmetrical gender relations. Although differences in male-female ratios as "business executives" or "criminals" may stem from the same socio-structural base, it is spurious to equate a woman's "right to succeed" (as business executive) with a "right to be punished" (as a prisoner).

To Wheeler et al's credit, they explore whether "woman's role as mother" can explain the large "sex effects" in the rates of incarceration. Alluding to an analysis of the relationship between number of dependents and the incarceration rate, they report that this analysis showed "no relationship for men or women." I remain skeptical of the "lack of effect" reported here

because the reader is not apprised of how this relationship was examined. If sex-family interaction terms were used, and the "sex effect" were not reduced, then I might be more impressed (and disheartened).

One of the more distressing features of past research and what can be expected in the future on gender differences in court outcomes is that the kinds of familial variables identified in this research are not usually collected or subjected to analysis in court outcome research. For example, the Prosecutor Management Information System (PROMIS), a court record-keeping system used in many U.S. cities to manage their court case load, does not contain <u>any</u> information on a defendant's familial situation. Unfortunately, these data are currently being analyzed to assess gender differences in court outcomes. I say "unfortunately" because there will likely be "sex effects" which researchers will have no other recourse but to interpret as stemming from "female paternalism."

Although I have cited "familial paternalism" as the operating principle in court decision-making, it is important to assess <u>why female paternalism was more likely given by Springfield court agents as the explanation for the differences in outcomes</u>. Recall that 4 of 10 judges believed that "female paternalism" had "some truth," while <u>twice</u> that proportion of other court agents felt that judges were more lenient to women "as women." (I stress here that

when reflecting on the "more lenient" treatment of women, Springfield court agents primarily considered the likelihood that women would be jailed or pre-trial detained compared to men.)

I have questioned court agents' explanations of gender differences in court outcomes, suggesting that they are not able to (1) "hold factors constant" or (2) separate "female" from "family." I have argued that "female paternalism" is a court mythology, characterized by the commonsense knowledge that "Everyone knows that women are treated more leniently than men." Because most court agents (except judges) believe this is so, they interpret court outcomes for men and women along these lines, citing a particular case that supports their view.

One important implication that I draw from court agents' explanations of gender differences in court outcomes is that if interview material is soley relied upon, one runs the risk of reproducing this court mythology, without subjecting it to closer scrutiny. For example, Simon's (1975) summary of interviews with 30 Midwestern judges shows that over half said they treated women more leniently than men at the sentencing stage, being more inclined to give a woman probation than a jail sentence.

The Springfield court judges who responded that "female paternalism" had no relevance for their decision-making cited the differing kinds of male-female criminal involvement, the lesser

degree of viciousness of female crime, the less harm done to victims and property by females, and the less developed prior records of female defendants. Comparing the "treatment" of male and female defendants, particulary those adjudicated in the Springfield Superior Court, was like comparing apples and oranges; there was little basis for comparability. One might say that this subjective assessment of women as "less vicious" or "less evil" is just another example of "female paternalism" in the form of "excusing" women's criminal involvement more readily. However, I would counter that in the aggregate, there currently are "objective" gender differences in the types of criminal behavior prosecuted in the criminal courts.

Two sources of disparate treatment should, however, be addressed. The first concerns whether a gender structure to "appropriate punishments" exists. While not directly asked of respondents, a minority of those interviewed believed that women in general were more fearful than men of a jail term and thus could more easily be "scared straight." If this kind of consideration is involved in court agent decision-making, then a form of gender discrimination, independent of "familial paternalism," is at play. Note, however, that this is not a form of female paternalism. Rather, it reflects the belief that an inequality of punishment or threat of punishment can achieve a subjective equality of results. This subjective calculus of

"appropriate punishments" for men and women is one that calls for future research.

A second source of disparate treatment which arose in the Springfield court was institutional in nature: The lack of nearby jail facilities served as a constraint on jail sentences for women. Any jail time for women must be served in the Framingham prison located 70 miles away; therefore, jail time for women was subjectively a "more harsh" sentence than it was for men. Men could serve time in country jails closer to home, with a lesser degree of separation from the community that afforded a greater ease of visitations by friends and family.

Problems for quantitative research on gender discrimination

The qualitative-quantitative polarization between sociologists is a false one insofar as both methodologies have limitations in comprehending the complexity, range, and predictability of social phenomena. After having observed court decision-making, I am tempted to dismiss as futile any attempt to quantify or to "model" the adjudication process. At the same time, had I not analyzed statistical patterns, some the results of the qualitative study would have been misleading. In this section, I discuss current problem areas in court research and suggest how quantitative

research on gender differences can be improved on the basis of the insights gained from the qualitative study.

Social phenomena of "discrimination." "Discrimination" is a social phenomena that cannot be pinned down to a particular event or kind of interaction; rather it is a selective, definitional process having conscious and unconscious elements. In the qualitative study, I attempted to see how gender is "socially constructed" by court agents to identify the social factors that discriminate between "male" and "female." I identified a gender structure to familial responsibilities as the explanation for "sex effects," and found that court agents in fact discriminate among defendants along these lines. However, I remain troubled by a tendency in quantitative research (including my own) to not take as problematic the epistemological problems inhering in the study of "discrimination."

That problem concerns how "unique effects" (or "no effects") of particular defendant attributes are interpreted from quantitative analyses. If one has a "race effect" or "sex effect," this forms the basis for an interpretation of "discrimination." Similarly, "no effect" is interpreted as showing "no discrimination." The substantive differences in the character of male and female cases before the court can present major difficulties in the interpretation of "sex effects." These could arise due to

differences in the content of the offense charged or the degree to which a defendant was principally involved in a crime, even though offense categories or crime severity have reputedly been "held constant." Because "discrimination" has such highly charged political meaning and because quantitative models of the adjudication process are crudely specified, researchers should be less facile in their claims of the presence or absence of "discrimination."

Improving quantitative research on gender differences

The qualitative work clarified two dimensions of court decision-making that may improve future analyses of gender differences in court outcomes. These are the type of offense charged and the particular character of a defendant's familial situation.

Offense charged. Offense type is often introduced as an important variable in analyzing gender differences in court outcomes. Some argue that women are treated more harshly (as "evil woman") if they are prosecuted on "male-typed" offenses; others argue that an "evil woman" response will arise when female criminal behavior is at variance with "appropriate sex-role behavior." Since there is great intuitive appeal for exploring this phenomena,

it is critical that researchers begin to specify what behaviors are to be termed "male-typed" or in violation of "sex-role expectations." Offense categories alone may be necessary, but they are not sufficient in making sense of potential gender-offense type interactions in the response to male and female criminality.

The quantitative analysis revealed no support for the "evil woman" thesis that women charged on "male-typed" offenses (specified as burglary and robbery in the analysis) are responded to more harshly than men so charged. Granted, this analysis was crude and not one I espouse since it examined offense, not behavioral, categories. However, in order to get beyond offense categories, I attempted a limited exploration of the role of victim-offender relationships in the likelihood of case dismissal in the New York City court. I found that there was a similar rate of dismissal for men and women charged with offenses in which victims lived in the defendant's household and in which household victims suffered injury.

One offense type deserves further attention in research on court outcomes: My analysis suggests that the "female crime" of prostitution is one that women may be responded to more harshly insofar as these cases are less likely to be dismissed and more likely to draw guilty convictions than other offenses with which women are charged.

For most offense types, however, more detail on the particular content of the offense is required. Wheeler et al's (1982) research is exemplary in this regard. Their analysis included features of crimes that judges identified as salient for their determinations to jail white collar offenders or not. These included: dollar loss attributed to the offense, amount of complexity or sophistication shown in the commission of the offense, the "spread of illegality" (whether local or more national), the type of victim (person or business), the number of persons victimized, and the defendant's role in the offense. These kinds of offense descriptors say far more about the "seriousness" of an offense than can crude crime categories or even crime severity.

For comparison of male and female defendants from a gender relations perspective, the following behaviorial descriptors are salient: the defendant's role in the offense (primary instigator or secondary role) particularly for drug-related offenses, robbery, and burglary; the character of victim-offender relationships (family members, acquaintances, or strangers); and the defendant's motivation for involvement in a crime. For this last element, the interview material suggests that crimes motivated in the "interests of the family" are viewed more sympathetically than those motivated out of pure "self-greed."

Familial status. Although familial ties and responsibilities generally affected court outcomes in the expected direction for the New York City and Seattle analysis, the results were at times contrary to my expectations or not as consistent as I would have hoped. The qualitative research helps to illumine why this was the case.

When to expect "familial paternalism." A defendant's familial situation does pose an important criterion of justice in court deliberations, but it is not isolated from features of the offense or a defendant's prior record. Although defendants with greater familial obligations are less likely to be retained in the criminal justice system, familial responsibilities pose constraints on detention or incarceration, but do not prevent such retention.

The influence of familial status should be strongest when judges must decide between jailing defendants or not. This is the toughest decision for judges, more so than less ambiguous decisions at either "tail" of the sentencing continuum (e.g., fines or mandatory jail). The Seattle felony sentencing outcomes for men come the closest to this "probation-or-jail" decision. Here the expected structure of responses by familial status of defendants was revealed in the analysis.

However, a defendant's familial situation did exert an influence, mitigating against "more severe" sentences of "fine or jail" and probation, particularly for women, in the New York City court. This sentencing outcome suggests that even when decisions do not center on a defendant's loss of liberty, familial responsibilities may pose a constraining effect (note, however, the problems in not knowing whether a "fine or jail" sentence ultimately entailed some jail time for defendants).

Ideally, gender differences in sentencing outcomes should focus on the jail/probation dichotomy, for it is this particular decision where one often finds substantive "sex effects," and where discretionary judgements to "maintain the family" can be expected. Like these kinds of sentencing decisions, the pre-trial release decision is also one where defendants' familial status will be most apparent. An implication for future research is that dependent variables constructed by forming an "interval" sentencing scale (n-point scales ranging from fines to jail time) may be inappropriate for assessing the impact of familial situation mitigating against jail time.

Given the typical bivariate distributions of sentencing outcomes for men and women, with very low numbers of women receiving jail time, the use of interval sentencing scales can produce uninterpretable and ambiguous results. Skewed as women are at the lesser severe ends of a sentencing scale, relative to

the distributions for men, a common result reported for such analyses is that women receive "more lenient" sentences. It is imperative that researchers pay attention to distributions (and N's of persons in sentencing categories) in forming sentencing outcome dependent variables if the results of statistical analyses are to be meaningful.

Lack of attention to distributions (and particularly to N's in sentencing categories) can also lead to a spurious result of "no difference" in sentencing outcomes for men and women. Hagan and O'Donnel's (1978) finding of "no difference" in the likelihood of receiving jail time was based on 6 women who were in fact jailed, a problem also featuring in Hewitt's (1977) study.

Distinctions among "familied" and "non-familied" defendants. Although "familied" defendants may be treated more leniently than "non-familied" defendants, variation exists in the response to those who are "non-familied" depending on the degree to which parental control features in the life of a defendant. The Seattle sentencing outcome suggests that this is the case, if one interprets "single, with ties" as a category of "non-familied" defendants who live with parents or relatives. In the New York City analysis the omitted category contained all "non-familied" defendants, an unknown proportion of whom may have had a degree of parental social control. In hindsight, it would have been

preferable to have created a fourth family variable, "single, non-familied, living with parents," and identified "non-familied, not living with parents" as the omitted referent category.

In the Springfield court, distinctions were made among "familied" defendants who have dependents and those who were in fact fulfilling their responsibilities to dependents. Dependents who "counted" were children or spouses who depended upon the defendant for economic support and/or parental care. Thus, grown children (or even older adolescents) do not "count" as dependents. The qualitative research suggests that "having dependents" was not enough for "familied men" unless they were providing economically for the family. The joint consideration of having dependent(s) and being employed for "familied" men received mixed support in the quantitative analysis, however. For "familied" women, "having a family" was undercut to some extent by whether they were "good mothers" or whether there was another adult prepared to take care of the children.

Family in the courtroom. A factor which is never found in research on court outcomes is the role and impact of family members as courtroom spectators. How much of an impact and how often it alters court decisions could not be assessed in the qualitative study. However, all court agents, particularly judges, acknowledged that the presence of family members in the courtroom could act as a constraint on their sentencing.

Family as master symbol. One wonders whether court interest in a defendant's "family background" reflects a more general interest in the "respectability" of defendants and their families. "Family" may be a master symbol for a range of implicitly middle-class criteria that court agents consider in determining how well defendants are tied to the normative social order. For example, for "non-familed" defendants, who the defendant's parents are may be at issue. For "familied" defendants, I heard comments concerning "How well-behaved are the children?" and "How well is the house kept?" Thus, for "familied" defendants, "fulfilling one's familial responsibilities" may translate to fulfilling them in a particular way.

This may in part explain why racial and ethnic variation was found in the effect of familial responsibilities for white, black, and hispanic men and women. Of special interest in this analysis was the differing impact of familial ties for black and white men, which mitigated against incarceration for white, but not black men. One may thus speculate: Are black men considered "less responsible" family men from the perspective of court agents who assume a particular household arrangement in fulfilling one's familial responsibilities? The particular configuration of a defendant's familial relations may help to explain racial differences in sentencing or pre-trial release outcomes, more than "race" per se.

Implications of the character of court decision-making for other deviance-defining contexts

Given the highly selective nature of pre-court discretionary decision-making (citizen discretion to report to the police, police discretion to arrest and book a suspect, prosecutor discretion to go ahead with a case), the fact that a defendant's familial status does have a significant impact on court outcomes suggests that this defendant "attribute" may be a very potent on in the selection of individuals who become subject to criminal justice processing. Currently, we do not know how much pre-court selection of defendants is based on familial status given the form in which pre-court data are collected. Uniform Crime Report data do not include the familial status of those arrested; and unless victims know offenders, LEAA victimization data can only tap the visible markers of offenders--perceived age, sex, and skin color.

A person's "family background" is obviously not a new criterion in understanding the likelihood of involvement in criminal behavior. Criminologists have long pointed to problems of "poor family life" as correlated with the likelihood of orientation to crime. The central problem is that such "general etiologies" have been confined to males, and more specifically, to juvenile males. From a gender relations perspective, familial

social controls--both those associated with parental control and those associated with obligations for dependents--may have a bearing on aggregate age and gender differences in involvement in crime, its likelihood of report to police, police arrest and booking, and initial screening by prosecutors.

Available studies and official statistics suggest an age-based structure to male-female criminal involvement and probability of arrest. If age is used as a surrogate for the probability of being "familied" or "non-familied," one might see how a gender relations framework makes sense of these adult-juvenile differences. First, consider that juveniles and young adults constitute the overwhelming group of those caught up in the criminal justice system: Those 24 and under were over 60% of all those arrested in 1980 (those 24 years and under are 41% of the general population). This pattern is commonly interpreted as one of the "young" acting out against authorities and understood as a transitional "maturational" stage. If "having familial responsibilities" acts both as a break against involvement in crime and a constraint on the discretion of others (police and citizens) to report crime and to arrest individuals, then these age differences seen in official statistics may be reflective of differences in an individual's familial situation.

Turning to male-female differences, one finds that self-reports of involvement in crime and of crime risk-taking for

juveniles show fewer "sex differences" than those for adults (see, e.g., Harris and Anderson, 1983). Thus, while familial responsibilities may pose constraints on male and female criminality and its likelihood of detection and arrest, such "constraints" may operate more powerfully for "familied" women than men.

Changing arrest rates offer some substantiation for this idea. The large increases in female arrest rates over the past two decades have largely been confined to increases in arrests for juvenile, not adult, females. A problem in interpreting this trend is that we cannot be sure whether these changes reflect cohort differences and changes in police practices toward young women or whether they suggest an underlying dimension of age-dependent differences in familial responsibilities. One plausible interpretation of this trend is that the "loosening of the sexual double-standard" has made it possible for juvenile females, but not adult females, to act more "like males." That is to say, in the face of the reputed "liberation of women," the contemporary gender division of labor for adults has remained unchanged. Although increasing proportions of adult females are entering the paid labor force (i.e., taking on a more "male-like" breadwinning capacity with paid labor performed outside the home), they remain primarily responsible for the care of children and for other family dependents.

A counterveiling trend, however, is one of increasing proportions of women heading households, a trend that others suggest is leading to the "feminization of poverty." It remains to be seen whether this trend acts to increase "familied" women's involvement in crime (and its report to police and police arrest), although one suspects that if increases do occur, they will be confined to welfare fraud and other forms of accessible economic crime for these women.

From a gender relations perspective, I expect less change in the future ratio of adult male-female criminaltiy than the ratio of juvenile male-female criminality, given that familial controls via familial responsibilities for adult women are greater than those for adult men. To change the adult male-female ratio, not only would more adult women have to be in a position to be "like men" (and be responded to "as men"), but also, more men would have to be in a position to be "like women" (and responded to "as women"). Therefore, both components of the gender division of labor would have to be altered to achieve "equality" of criminal involvement and likelihood of being caught up in the criminal justice system.

Thus, Adler's (1975) and Simon's (1975) thesis that the "liberation of women" has led to greater female involvement in crime is misleading in its one-sidedness. Future changes in male-

female arrest ratios or rates for particular crimes should be viewed as a function of both increasing female involvement and decreasing male involvement. Few contemplate the potential for decreasing male involvement because the guiding one-sided assumption is that "women's liberation" means expanding opportunities for women to be "like men," ignoring the fact that equivalent changes and opportunities are required for men to be "like women."

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Table A-1. Regression results for New York City

	ALL CASES			CASES DISPOSED AT ARRAIGNMENT		
	1=case not disp'd at arraignment			1=case not dismissed		
	Y_{1A}	Y_{1B}	Y_{1C}	Y_{2A}	Y_{2B}	Y_{2C}
Case factors[b]						
severity	.121****	.121****	.121****	-.037***	-.037***	-.034**
arrests	.006	.007	.007	.044**	.043**	.039**
homicide	.016	.012	.016	--a	--a	--a
robbery	.042	.043	.043	-.170	-.182	-.197
burglary	-.043	-.045	-.045	.016	.016	.005
sale	-.134****	-.137****	-.113	.082	.077	.191**
larceny	.023	.022	.021	.001	-.001	-.007
assault	.035	.034	.036	-.181***	-.184***	-.190***
Prior record[c]						
arrncon	.019	.019	.019	.017	.017	.011
arrc	.012	.010	.011	.068*	.068*	.060
probpar	.065***	.068***	.067***	.031	.031	.032
Characteristics						
sex (1=male)	.011	.010	.065	.019	.099	.048
black	-.001	-.003	-.002	-.012	-.015	-.016
hispanic	.018	.012	.013	.017	.011	.010
age	-.001*	-.002**	-.002**	.0003	.0003	.0003
employ	.010	.002	.003	-.053	-.058*	-.058*
Family situation[d]						
sindep	-	.015	.121**	-	-.022	-.001
marno	-	-.038	.017	-	-.031	-.027
mardep	-	.047***	.041	-	.037	-.053
Sex interactions						
sex/sindep	-	-	-.181***	-	-	-.036
sex/marno	-	-	-.060	-	-	-.005
sex/mardep	-	-	.006	-	-	.096
sex/sale	-	-	-.026	-	-	-.144
constant	-.160	-.148	-.197	.881	.902	.866
F	36.37****	31.24****	26.21****	3.87****	3.30****	2.80****
(adj) R^2	.17	.17	.17	.06	.05	.04
N	2748	2748	2748	717	717	717
$\bar{x}$	.74	.74	.74	.75	.75	.75

****p ≤ .001
***p ≤ .01
**p ≤ .05
*p ≤ .10

Table A-1 (continued)

	OUTCOMES FOR CASES DISPOSED AT ARRAIGNMENT					
	1=guilty 0=ACD			1=more severe 0=less severe[e]		
	Y_{3A}	Y_{3B}	Y_{3C}	Y_{4A}	Y_{4B}	Y_{4C}
Case factors						
severity	-.018	-.020	-.005	.041*	.044*	.047**
arrests	.088****	.087****	.068****	.033	.032	.038
homicide	--a	--a	--a	--a	--a	--a
robbery	.273	.265	.168	-.118	-.147	-.162
burglary	-.265****	-.261****	-.330****	-.115	-.142	-.157
sale	-.325****	-.332****	.171*	.133	.126	.131
larceny	-.160***	-.161***	-.200****	-.030	-.044	-.052
assault	-.126*	-.133*	-.180***	-.126	-.123	-.124
Prior record						
arrncon	.339****	.338****	.307****	.032	.032	.025
arrc	.468****	.466****	.421****	.271****	.282****	.280****
probpar	-.007	-.006	-.009	-.248***	-.254***	-.258**
Characteristics						
sex (1=male)	-.062	-.064	.153**	.140	.106	.205*
black	.031	.023	.002	-.090	-.070	-.074
hispanic	-.027	-.039	-.058	-.147*	-.129	-.128
age	.007****	.006***	.005***	.002	.003	.004
employ	-.016	-.028	-.032	.120**	.128**	.132**
Family situation						
sindep	-	.011	.041	-	-.133	-.112
marno	-	-.005	-.152	-	-.103	.367*
mardep	-	.081*	.047	-	-.033	.175
Sex interactions						
sex/sindep	-	-	-.015	-	-	.049
sex/marno	-	-	.198	-	-	-.573***
sex/mardep	-	-	.035	-	-	-.240
sex/sale	-	-	-.672****	-	-	-.024
constant	.385	.420	.267	.094	.104	-.029
F	17.11****	14.44****	14.75****	3.95	3.43***	3.20****
(adj) R^2	.31	.31	.36	.12	.12	.13
N	536	536	536	313	313	313
$\bar{x}$	.61	.61	.61	.65	.65	.65

Table A-1 (continued)

	OUTCOMES FOR CASES DISPOSED AFTER ARRAIGNMENT					
	% time spent pre-trial detained			1=case not dismissed		
	Y_{5A}	Y_{5B}	Y_{5C}	Y_{6A}	Y_{6B}	Y_{6C}
Case factors						
severity	.056****	.056****	.057****	-.038****	-.038****	-.038****
arrests	.055****	.054***	.055****	.014	.014	.016
homicide	.222****	.225****	.224****	.144*	.145*	.147*
robbery	.036	.034	.034	-.002	-.003	-.006
burglary	-.136****	-.136***	-.137****	.015	.016	.015
sale	-.016	-.017	-.019	.046	.047	.048
larceny	-.128****	-.130****	-.132****	.081*	.079*	.076
assault	-.121***	-.123***	-.123***	-.126***	-.124***	-.127***
Prior record						
arrncon	.171****	.172****	.171****	-.033	-.031	-.039
arrc	.303****	.306****	.305****	.006	.010	.012
probpar	.072**	.071**	.070**	-.020	-.021	-.022
Characteristics						
sex (1=male)	.075***	.067**	.023	-.011	-.002	.087
black	.066**	.070**	.068**	.059	.064*	.066*
hispanic	.060**	.066**	.065**	.121***	.129****	.131****
age	-.003**	-.002**	-.002**	-.001	-.001	-.001
employ	-.032*	-.024	-.026	-.023	-.017	-.016
Family situation						
sindep	-	-.031	-.043	-	.020	.126*
marno	-	-.020	-.121	-	-.066	.030
mardep	-	-.039*	-.218***	-	-.035	.170*
Sex interactions						
sex/sindep	-	-	-.024	-	-	-.147
sex/marno	-	-	.114	-	-	-.105
sex/mardep	-	-	.190**	-	-	-.220**
constant	-.267	-.226	-.224	.904	.880	.799
F	33.31****	28.19****	24.64****	5.19****	4.58****	4.17****
(adj) R^2	.21	.21	.21	.04	.04	.04
N	2004	2004	2004	1681	1681	1681
$\bar{x}$	.40	.40	.40	.66	.66	.66

Table A-1 (continued)

	OUTCOMES FOR CASES DISPOSED AFTER ARRAIGNMENT					
	1=guilty 0=ACD			1=more severe 0=less severe		
	Y_{7A}	Y_{7B}	Y_{7C}	Y_{8A}	Y_{8B}	Y_{8C}
Case factors						
severity	.059****	.059****	.059****	.016	.019	.021
arrests	.041***	.040***	.040***	.016	.015	.009
homicide	.090	.086	.058	.197	.214	.198
robbery	-.057	-.056	-.066	.138	.122	.106
burglary	-.168***	-.168***	-.177***	-.045	-.046	-.043
sale	-.180***	-.178***	-.184***	.011	.004	.001
larceny	-.071	-.074	-.084	-.160**	-.160**	-.146**
assault	-.102*	-.100*	-.102*	-.050	-.065	-.062
Prior record						
arrncon	.228****	.226****	.219****	.085	.085	.076
arrc	.330****	.330****	.322****	.156****	.158****	.142****
probpar	-.010	-.011	-.012	.073	.075	.077
Characteristics						
sex (1=male)	.025	.053	-.105	.189***	.118*	-.070
black	-.065	-.066	-.071	-.149**	-.138**	-.143**
hispanic	.005	-.004	-.007	-.156**	-.141**	-.142**
age	-.0002	-.0004	-.0005	-.002	-.001	-.001
employ	.031	.031	.030	.005	.023	.028
Family situation						
sindep	-	.065	-.082	-	-.182***	-.436****
marno	-	.047	-.413***	-	-.028	-.088
mardep	-	-.007	-.225**	-	-.057	-.517***
Sex interactions						
sex/sindep	-	-	.160	-	-	.358**
sex/marno	-	-	.531****	-	-	.067
sex/mardep	-	-	.235**	-	-	.486***
constant	.081	.056	.223	.506	.533	.707
F	13.74****	11.69****	10.86****	4.45****	4.08****	3.94****
R^2	.16	.16	.17	.09	.10	.11
N	1095	1095	1095	537	537	537
$\bar{x}$	.68	.68	.68	.67	.67	.67

Table A-1 (continued)

	Y_9 1=jail 0=fine or jail and probation [f]
	MEN ONLY
Case factors	
severity	.062***
arrests	-.001
homicide	.369****
robbery	.276***
burglary	-.064
sale	.092
larceny	.110
assault	.0002
Prior record	
arrncon	.133**
arrc	.159****
probpar	-.026
Characteristics	
black	.010
latin	-.046
age	-.003
employ	-.002
Family situation	
sindep	-.169*
marno	.086
mardep	-.049
constant	-.284
F	6.35
R^2	.17
N	478
$\bar{x}$	.30

Table A-1 (continued)

[a]Only one case involving homicide charges was disposed at arraignment; thus, the homicide category was eliminated here.

[b]Case factor variables are operationalized as follows:

severity: severity of most severe arraignment charge
arrests: number of initial arrest charges

Charge types are self-explanatory; the omitted charge type category contains disorderly conduct, harassment, and weapons violations.

[c]Prior record variables coded as follows:

arrncon: prior arrest(s) no convictions
arrc: prior arrest(s) and conviction(s)
(omitted category: never arrested)

probpar: presently on probation or parole

[d]Family situation is coded as follows:

sindep: single, separated, or divorced; has dependent(s)
marno: married or common-law; no dependents
mardep: married or common-law; has dependent(s)
(omitted category: single, separated, or divorced; no dependents)

[e]Y_4 and Y_8 sentence as dichotomized as follows:

more severe: 1= probation and "fine or jail"
less severe: 0= suspended and fine only

Note that the lack of significance for charge type(s) and severity at the Y_8 outcome is due to the higher degree of collinearity among these variables by this particular court point. When the Y_8 equation is run, dropping charge types, severity is strongly and positively associated with the more severe sentence ($b=.05$, $p \lesssim .01$). If severity is dropped, charge types of robbery and homicide are positively and significantly related to the more severe sentences. The same procedure was carried out for Y_4, dropping charge severity, but none of the crime types was statistically significant.

[f]If the dependent variable is recoded such that "1" is jail and "0" is all else, there are no differences in the results for men. Thus, the reader can assume a similar set of predictive variables using differing methods of coding sentence severity.

Table A-2. Means of independent variables at selected court points

Case factors	Y_2	Y_4	Y_6	Y_8
severity	6.47	6.32	7.60	7.67
arrests	1.86	2.04	1.96	2.05
homicide	--	--	.033	.051
robbery	.014	.016	.137	.148
burglary	.159	.143	.171	.167
sale	.232	.196	.106	.102
larceny	.303	.324	.277	.302
assault	.170	.140	.204	.145
Prior record				
arrncon	.211	.240	.223	.231
arrc	.335	.502	.372	.475
probpar	.055	.069	.110	.105
Characteristics				
sex	.852	.838	.882	.898
black	.496	.523	.487	.455
hispanic	.365	.340	.395	.433
age	26.95	28.44	26.92	26.97
employ	.390	.346	.402	.403
Family situation				
sindep	.089	.084	.084	.092
marno	.106	.112	.090	.093
mardep	.218	.252	.278	.279
Sex interactions				
sex/sindep	.047	.034	.034	.041
sex/marno	.082	.094	.077	.089
sex/mardep	.203	.234	.263	.269
sex/sale	.186	.103	.094	.090
N[a]	710	321	1626	688

[a] The N's here differ from those in each of the Y equations to make the distributions comparable: those awaiting sentence are excluded from Y_2 and Y_6, and all those receiving sentences are included in Y_4 and Y_8.

Table A-3. Means of independent variables at selected court points (women only)

Case factors	Y_2	Y_4	Y_6	Y_8
severity	5.54	4.69	7.74	7.69
arrests			1.83	1.82
prostitution[a]	.269	.591	--	--
burglary	.039	--	--	--
larceny	.308	.115	--	--
assault	.154	.058	--	--
homicide	--	--	.031	.042
sale (drugs)	--	--	.086	.099
larceny	--	--	.498	.620
assault	--	--	.208	.113
Prior record				
arrncon	.192	.230	.152	.225
arrc	.269	.442	.147	.197
Characteristics				
black	.721	.750	.629	.535
hispanic	.183	.173	.284	.352
Family situation				
sindep	.289	.308	.411	.507
marno	.163	.115	.117	.042
mardep	.106	.115	.127	.099
N[b]	104	52	197	71

[a] Y_2 and Y_4 omitted offense category includes disorderly conduct and weapons violations; Y_6 and Y_8 omitted offense category includes burglary, robbery, and weapons violations.

[b] The N's may differ from those in each of the Y equations to make the distributions comparable: those awaiting sentence are excluded from Y_2 and Y_6, and all those receiving sentences are included in Y_4 and Y_8.

Table A-4. Regression results (women only) for New York City and Seattle

	NYC OUTCOMES FOR CASES DISPOSED AFTER ARRAIGNMENT					SEATTLE
Case factors	Y_5	Y_6	Y_7	Y_8	Case factors	Y_{10}
severity	.005	-.054	.063	.024	charges	.039
arrests	.084***	.019	.005	.157***	violence	.490***
death	.271**	.007	.505**	--	burglary	.679****
sale (drugs)	.257***	.022	.310*	-.104	larceny	.166*
larceny	-.148**	.082	.226*	-.291*	forgery	.233**
assault	-.149*	-.192*	.164	-.724****		
Prior record					Prior record	
arrncon	.094	-.088	.411****	.235	priors	.291****
arrc	.216***	-.046	.376***	.156		
Characteristics					Characteristics	
black	.011	.136	-.111	-.159	race	.036
hispanic	.004	.134	-.067	-.081		
Family situation					Family situation	
					single, ties	-.294**
sindep	-.064	.144*	-.084	-.408****	married, ties	-.115
marno	-.162*	.018	-.365***	-.082	separated, no ties	-.123
mardep	-.196***	.202*	-.222*	-.316*	separated, ties	-.245**
constant	.124	.846	-.073	.516		.034
F	5.66****	1.51 (NS)	3.52****	4.95****		3.44****
(adj) R^2	.22	.03	.20	.43		.21
N	209	203	134	64		101
$\bar{x}$	.23	.67	.57	.39		.15

****p ≤ .001
***p ≤ .01
**p ≤ .05
*p ≤ .10

Y_5: proportion time spent pre-trial detained

Y_6: 1=case not dismissed
0=case dismissed

Y_7: 1=guilty
0=ACD

Y_8: 1=probation and "fine or jail"
0=suspended and fine only

Y_{10}: 1=jail
0=suspended and deferred

Table A-5. Regression results (men only) for New York City and Seattle

	NYC OUTCOMES FOR CASES DISPOSED AFTER ARRAIGNMENT					SEATTLE SENTENCING	
Case factors	Y_5	Y_6	Y_7	Y_8	Y_9	Case factors	Y_{10}
severity	.074****	.037***	.069****	.043**	.110****	charges	.042
arrests	.046****	.015	.043***	-.004	-.002	violence	.459****
death	.246****	.167***	.154**	--	.215***	burglary	.209***
sale (drugs)	-.009	.070*	-.098***	-.043	.001	larceny	.189***
larceny	-.066**	.050	.039	-.122**	-.068	forgery	.127
assault	-.078***	-.131****	.018	-.008	-.060		
Prior record						Prior record	
arrncon	.182****	-.025	.196****	.054	.131**	priors	.084****
arrc	.309****	.009	.322****	.137***	.137***		
Characteristics						Characteristics	
black	.099***	.040	-.060	-.104	.020	race (black)	.007
hispanic	.067**	.119***	-.023	-.129*	-.067		
Family situation						Family situation	
						single, ties	-.120*
sindep	-.077	-.030	.088	-.083	-.186*	married, ties	-.210***
marno	-.025	-.056	.080	-.046	.067	separated, no ties	-.067
mardep	-.055***	-.063**	.010	-.060	-.084*	separated, ties	-.086
constant	-.442	.865	-.064	.483	-.632		.188
F	31.38****	5.45****	14.67****	2.07***	6.43****		5.33****
(adj) R^2	.18	.04	.15	.03	.13		.12
N	1765	1533	990	468	474		348
$\bar{x}$	.42	.66	.69	.70	.30		.35

****p ≤ .001
***p ≤ .01
**p ≤ .05
*p ≤ .10

Y_5: proportion time spent pre-trial detained

Y_6: 1=case not dismissed
0=case dismissed

Y_7: 1=guilty
0=ACD

Y_8: 1=probation and "fine or jail"
0=suspended and fine only

Y_9: 1=jail
0=probation and "fine or jail"

Y_{10}: 1=jail
0=suspended and deferred

Table A-6. Comparative effect of variables for men employed/unemployed or with steady/unsteady work histories

NEW YORK CITY PRE-TRIAL RELEASE & SENTENCING					SEATTLE SENTENCING		
	Y_5		Y_9			Y_{10}	
	% time spent pre-trial detained		1=jail 0=prob. & "fine/jail"			1=jail 0=susp. & deferred	
Case factors	EMP	UNEMP	EMP	UNEMP	Case factors	STEADY	UNSTEADY
severity	.070****	.075****	.062**	.143****	charges	.065	.026
arrests	.056****	.039***	-.006	.006	violence	.600***	.433****
death	.282***	.228****	.269	.189*	burglary	.155	.231***
sale (drugs)	-.084	.033	-.021	-.027	larceny	.156	.209***
larceny	-.071	-.060	.083	.061	forgery	-.118	.201
assault	-.079*	-.076**	-.082	-.032	robbery	.478*	.643****
Prior record					Prior record		
arrncon	.180****	.186****	.084	.178**	priors	.027	.071***
arrc	.267****	.343****	.098	.166**			
Characteristics					Characteristics		
black	.077*	.107***	-.027	.069	race (black)	-.029	.023
hispanic	.073	.051	-.073	-.051			
Family situation					Family situation		
					single, ties	-.140	-.109
sindep	-.066	-.069	-.194	-.179	married, ties	-.234	-.196**
marno	.020	-.056	.099	.055	separated, no ties	-.271	-.003
mardep	-.063*	-.018	-.074	-.080	separated, ties	-.144	-.059
constant	-.420	-.444	-.213	-.969		.215	.196
F	12.16****	19.56****	1.62*	5.02****		1.46 (NS)	5.56****
(adj) R^2	.16	.19	.04	.16		.05	.17
N	752	1013	195	279		108	265
$\bar{x}$	.38	.44	.26	.33		.26	.44

****$p \leq .001$
***$p \leq .01$
**$p \leq .05$
*$p \leq .10$

Appendix B

THE SPRINGFIELD COURT: PROCEDURES AND PRACTICES, DATA COLLECTED, AND STATISTICAL BASE

Introduction

In this Appendix, the larger picture of courthouse activity is described before turning to the types of data collected and statistical patterns of case adjudication. Courthouse procedures are documented in some detail to (1) draw some comparisons with other courts previously studied and (2) place in perspective the kinds of data that were collected.

In-court observational data were collected from the district court (which handles misdemeanors and some felony charges) pre-trial conference and trial courts. A total of about 100 observational hours were spent in these courtrooms. In addition to observations in these courtrooms, data were collected from district court arraignment and a few selected trials and sentencing in superior court. Following this 6-week period of observation time, interviews were conducted with 35 district and superior court judges, probation officers, defense lawyers, and prosecutors. With the assistance of Aida Rodriguez, who made court observations and conducted interviews, the research efforts involved two pairs of eyes and ears on any given day in the courthouse.

Courthouse procedures and practices

Two aspects of courthouse activity are interwoven in this overview: (1) the legal features of Massachusetts criminal court procedures and (2) the rhythm and pattern of courthouse practices in processing cases. For the legal procedures, I draw upon District Court Practice: A View from the Bench (1979) and The Basic Structure of the Administration of Justice in Massachusetts (1973). The former publication outlines recent changes stemming from the Massachusetts Court Reform Act (1978), while the latter provides an overview of the Massachusetts criminal justice system and its historical development.

The Springfield courthouse, officially called the Hall of Justice, is a very modern facility, with construction completed in 1979. It is a four-story, poured concrete affair, architecturally similar to many other Massachusetts State buildings of this period. Set less than 100 years from the old courthouse (which is now the Juvenile Court), the Hall of Justice remains close to the infra-structure of the legal community. It is a block away from the two major law office buildings and three blocks from the public defender's office (termed the Massachusetts Defenders Committee--MDC). All criminal and civil matters (except those pertaining to juvenile offenders) are centralized in the Hall of Justice, together with all legal records.

The ambience of the Hall of Justice is in marked contrast to the New Haven misdemeanor court described by Feeley (1979), one of the few studies available of lower court proceedings. Each courtroom is equipped with telephones and an intercom paging system, and there are microphones for judges, prosecutors, defense lawyers, and witnesses. Although delay can be identified as a common feature of the Springfield and New Haven court proceedings, the crowded conditions, noise and bustle, lack of order and decorum noted by Feeley are in sharp contrast with Springfield's orderliness, courtroom spaciousness, and ease of following the proceedings.

District Court. On any given day, four courtrooms are simultaneously conducting business in District Court: arraignment, pre-trial conference, bench trial, and jury-of-six trial.

Arraignment. Monday's are very busy arraignment days, with an average of 50-60 persons arraigned; on other weekdays about half this number are arraigned. The four days of observations in this courtroom (four successive Monday's) revealed that with a few exceptions, those where persons could plead "responsible" or "not responsible" to minor motor vehicle violations, none of the arraignments involved pleas of guilty. This is in contrast to procedures in other court jurisdictions noted by Downie (1971) and in the New York City court outcomes analyzed in Chapter IV.

The bulk of the business in this court concerns the following: a summary reading of the charges by the Clerk to the arrestee, a judicial determination in consultation with the court probation officer of the indigency of the person to warrant the appointment of a Bar Advocate (for less serious charges involving county jail time) or counsel from MDC (for more serious charges involving state prison time), and the reading of defendant's rights to a jury-of-six trial in the first instance. If defendants waive this right (virtually all do), a date for the pre-trial conference is set, usually 5-6 weeks hence.

The observations in the arraignment courtroom confirmed the general contours of Mileski's (1971) qualitative study: arraignments were quick, and many of those arraigned did not know the purpose of this court appearance. Some wanted to get their case over with or to explain their side of the story to the judge, which the court did not allow. Mileski's research in a "middle-sized eastern city" revealed that in one-fourth of lower court cases, the judge did not apprise the defendant of his/her rights at all, while half were given rights in groups of one type or another. This type of procedure was not at all evident in the Springfield court, where of the over 200 defendants arraigned, <u>all</u> were individually apprised of their rights by the judge. In addition, unlike many other urban court jurisdictions, most of those arraigned (80%) were <u>not</u> in "lock-up" pending their arraignment. For those held in overnight "lock-up," stationhouse

bail (set by a Court Clerk the previous afternoon or evening)* is reviewed by the judge on arraignment day. Family members or friends may come forward with bail money to release the defendant, or there may be arguments by prosecutor and/or defense counsel over the bail amount and release status. Defendants can appeal the arraignment judge's bail decision to the superior court at a bail hearing that afternoon and any subsequent time while in detention.

Pre-trial conference. The pre-trial conference courtroom was established in 1978 as part of the Massachusetts Court Reform Act to reduce the district court trial case load. It therefore embodies an institutionalized means to plea bargain cases and to clear court dockets of cases where defendants do not contest the state's charges. Thus, the only qualitative study of Massachusetts criminal court procedures (Buckle and Buckle, 1973), research which focused on plea bargaining in the Boston courts, is dated given procedural changes enacted by the 1978 court reform legislation.

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*Four of the nine District Court Clerks have 24-hour duty one week per month. During this week the Clerk on duty makes the rounds to Springfield and suburban police stations in Hampden County to review the charges and prior record, setting bail or releasing on recognizance. Whether the suspect is released or bail is set, the Clerk charges $20/person for those bailed/released between midnight and 6 AM, and $15/person for those bailed/released during other hours. These Clerk's fees are non-refundable. Prior to November, 1981, the fee was based on the number of charges against the suspect. Clerks thus augment their salaries with the collection of these Clerk's fees.

About 35 defendants are scheduled for pre-trial conference on any given day. Defendants, in consultation with their lawyers, may "submit to facts sufficient to warrant a finding of guilty"--termed a "submission." This is a form of guilty plea (but not technically a guilty plea) that can draw a sentence. For those defendants without lawyers, prosecutors confer with the defendants over the possibility of a "submission."

Judicial findings on a submission are of two forms: facts sufficient to warrant a finding of guilty: (1) with a case continuance without a finding ranging from 3 months to 1 year, during which time a reappearance of the defendant for a new charge may constitute an immediate guilty finding; or (2) with a finding of guilty. The difference between the two is that the latter immediate guilty finding can involve a sentence (ranging from fines to jail), and the defendant can appeal both the finding and the sentence. The former type of finding, usually used for first or second offenders, involves conditions for a successful continuance without a finding and "court costs." Defendants with multiple charges may have a combination of these findings, with sentences and court costs imposed.

A typical day in the pre-trial conference courtroom goes as follows. At 9-9:15 AM the pre-trial conference list is read, a quick "first call" of defendants' names to determine their (or their lawyers') presence. Some court business may be handled immediately after "first call" (e.g., continuances requested, some submissions),

following which there is a recess of 30 to 45 minutes for "conferencing." During this period, lawyers talk with their clients (often for the first time particularly when a Bar Advocate has been assigned), consult with the one to two prosecutors and the one to three probation officers assigned to the court over their "recommendations" for disposition. If there is an "agreed recommendation" between the lawyer and prosecutor, then a submission occurs. If agreement is not reached (because the prosecutor's recommendation is too stiff or the lawyer believes there is sufficient cause to try the case), then the case is continued for trial, with a date set for 5-6 weeks hence. Defendants without lawyers are sought out by prosecutors at this time to determine their willingness to "submit" or continue the case for trial. The defendant without a lawyer is obviously in a vulnerable position here, but I did not collect data on the nature of the prosecutors' conversations with defendants and the likelihood of a submission outcome. However, I did note that from time to time there was a "judicial override" for defendants without counsel, who were subsequently assigned counsel (by defendant's request or by judicial insistence) with the case continued for a future pre-trial conference date.

Typically, pre-trial conference business is completed for the day by 12:30 PM. Delays arise when defense counsel are not present (they may be handling business elsewhere in the courthouse), when a Spanish interpretor is required and must be paged, or when defendants cannot be located.

Trial. Bench trials are conducted in the large trial court room, with an average daily case load of 27 defendants scheduled. Starting at 9 AM, subpoenaed witnesses check in with the court officer to determine their presence. "First call" of the trial list begins at 9:15-9:30 AM, at which time defendants' attendance is noted, lawyers announce that they are "ready for trial," or prosecutors and/or lawyers request a continuance of the case to another date. After first call, a recess is taken for 45 minutes to an hour. During this time prosecutors determine which witnesses (civilian or police officers) are present and the nature of their testimony for the trial. Defense lawyers confer with court probation officers and prosecutors over dispositional (sentencing) recommendations. Defense lawyers may then advise their clients to go ahead with the trial or to "submit" on the basis of the sentencing recommendations. (From interviews with defense counsel, I learned that no matter what the sentencing recommendation, defense counsel will go ahead with a trial when police reports and the state's evidence is shaky and contestable.) The Court Clerk is an important figure during the recess period, managing the scheduling of trial business by responding to prosecutors' and defense lawyers' requests for scheduling cases.

When the court reconvenes, the Clerk calls up those cases which he has determined are ready for trial or submission. Perhaps five cases are serially dealt with, some lasting 5 minutes, other for 45 minutes, depending on the number of witnesses, the amount of evidence

required to establish the elements of the crime(s), and the time taken by defense counsel to establish reasonable doubt on the state's case. Depending on the court time taken on cases, some may be moved to another courtroom for trial.

The most frequent trial court business, however, is prosecutor and/or defense lawyer motions to continue the case to another date because witnesses have not appeared, laboratory evidence is not ready, or defendants/witnesses are not available for some reason (e.g., medical problems). Although no systematic data could be collected on the average number of continuances per case, defense counsel and prosecutors have a rule of thumb: At least one or two continuances on both sides are routinely granted without opposition. When cases have been continued three to four times, however, and a fourth or fifth continuance is sought, prosecutors and defense lawyers request that no future continuances be allowed; defense lawyers request case dismissal if prosecutors ask for a continuance at the next court date. Judges normally go along with two continuances, but when a case has more than this number they express concern over the length of time from the date of the alleged incident.

Typically a second recess is called later in the morning. "Second call" of the list is made after this recess, primarily to determine whether "no-shows" on the first call have appeared. If defendants are not accounted for on the second call, they are defaulted and an arrest warrant is issued by the judge (a similar

procedure also occurs in pre-trial conference court). The backlog of arrest warrants is such that defendants defaulting may not appear in the arraignment court on the warrant some two to three months subsequent to their trial (or pre-trial conference) date, unless they are subject to an arrest on a new charge.

Court delays typically feature in the trial court because a case requires a minimum of four people (defense, prosecutor, police officer, defendant) and can often involve more people as witnesses, all of whom must be physically present in the courtroom at one time. Often, the Clerk must page prosecutors and defense counsel to come to the court for trial, and the Spanish interpretor may also be needed.* When these delays occur, further court recesses are taken. Trial court often ends by 1 PM; on some days, a few trials may be continued or begun following the lunch hour at 2 PM.

Jury-of-six. Trial in the first instance or appeals of bench trials occur in the jury-of-six courtroom, where defendants can elect to have either a bench or jury trial. Usually no more than ten defendants are scheduled to appear in this courtroom for trial or pre-trial conference on any given day. Massachusetts began the six-person jury procedure on an experimental basis in 1964, and it is

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*For example, on one particular day, the trial court Clerk inquired, "Is the Commonwealth ready to proceed on any matters?" looking up from his desk to the prosecutor's table which was virtually empty. In obvious frustration, the Clerk picked up his phone to issue an intercom page for "any prosecutor to come to the trial court."

now a permanent fixture in all of the larger District Courts. As far as can be determined, Massachusetts may be unique in having this adjudication option open to defendants. The jury-of-six was primarily designed to relieve superior court dockets of district court appeals, but secondarily, it can provide the defendant two trials on the same charge(s). This adjudication procedure takes the following forms.

A defendant may elect to have a six-person jury trial "in the first instance," i.e., after arraignment. All of the defendants arraigned on the four observation days in arraignment court waived this right. More often, this court deals with appeals on pre-trial conference dispositions and trial findings and dispositions. The "appeal," however, is not based on testimony or rulings in the previous trial/submission, but on the facts of the case. As such, it is a trial de nuovo, i.e., a new trial on the facts; thus, defendants have "two bites of the apple," if they waive jury-of-six trial in the first instance. If the defendant is found guilty in the jury-of-six court, the judge may impose a sentence that is greater than the previous sentence imposed, a possibility that also holds for appeals on sentences. Although a trial may be scheduled before a jury, defendants may enter a submission or elect to have a bench trial on the day they are scheduled to appear. Court business normally ends by 1 PM in this courtroom.

Since there were so few cases disposed on any given day, in-court observations of the form taken in the pre-trial conference and trial

courtrooms were not made in this jury-of-six courtroom. Typically, on checking in with the probation officer and learning that "there are no girls today" (on the list), it became apparent that there was little to be gained with respect to studying gender differences in court outcomes in this courtroom.

Other courtroom business. Although the bulk of criminal court business has been described, there are other matters that may be taken up in district court. In the trial court, "probable cause" hearings to bind the case over to superior court are heard. These proceedings may be perfunctory because a judge is legally obliged to "bind over" certain more serious charges; or they may be contested when judges have discretion in deciding to take jurisdiction over the matter.

In the trial court, judges also take "dispositions" (not to be confused with sentencing) which are paperwork verifications that a persons has completed a certain probationary period satisfactorily; these rarely involve formal courtroom discourse.

If a defendant is convicted while already on probation, a probation revokation hearing is immediately conducted. After considering the probation officer's sworn testimony on the defendant's case, the judge either revokes probation and gives direct jail time, or decides against revokation of probation. For the small number of defendants who did receive direct jail time, about one-third resulted from probation revokation.

While my research focused on district court practices in pre-trial conference and trial courts, observational time was also spent in superior court. There are procedural differences in the adjudication of cases in district and superior courts which will not be described here (see Powers, 1973 for a comparison). The flavor of superior court is described briefly, however, since half of those interviewed worked in superior court.

Superior Court. The superior court has jurisdiction over more serious civil and criminal matters, with cases coming before it by the grand jury or by bind over from the district court. On an average day, "first call" occurs at 9:30 AM, and court business on the following matters begins at 10 AM: arraignments, hearings on motions, change of pleas (pleas to guilty), probation revokation hearings, attorney's conferences, trials, and sentencing.

Superior court matters move far more slowly than those in district court, having a monthly rather than daily rhythm, particularly with respect to on-going trials. This is owed to (1) the one-month length of jury duty and (2) the monthly to tri-monthly rotation of judges sitting on the bench. From 10 AM through 1 PM, four to five court-rooms may be occupied with jury or bench trials on civil or criminal matters, the hearing of motions, and sentencing. Unlike district court judges, those in superior court regularly sit on the bench from 2 to 4 PM.

In superior court the full sweep of legal apparatus is utilized; as such, there is less concern with the time involved in adjudication. Most trials begin about 6 months to 1 year after the initial incident, and this period is longer if motions to suppress evidence are part of the pre-trial proceedings. Once a trial begins, it may last 3 days to 2 weeks, depending on whether it is a jury or bench trial and the number of witnesses involved.

Because of the slower moving nature of superior court business and the small number of criminal trials going on at any one time (two to three), observations of particular trials and sentencing were made when the nature of the offense and defendants charged were pertinent to my research interests. An analysis of superior court records for the 8-month period, May through December, 1981, revealed that 11% of the 673 defendants indicted by grand jury for superior court adjudication were female. However, there were very few women appearing before the superior court during the 6-week observational period. Thus, efforts to study more severe charges against female defendants were thwarted by the relatively few cases available to follow.

Data collection methodology

A two-part data collection strategy was employed over a 3-month period in the Springfield courthouse. After preliminary visits to

the courthouse (in October, 1981) to get a feel for the rhythm of the court and its practices, systematic district court observations were undertaken for 6 weeks during November and December, 1981. Following this time, semi-structured interviews lasting about an hour were conducted with 35 district and superior court personnel. The ease of securing interviews with court personnel (none of whom refused requests to be interviewed) was enhanced by the sheer amount of time my assistant and I spent as spectators in the courtroom. Obviously, as any researcher studying court processes knows, observations of and more informal discussions with court personnel outside the courtrooms also constituted an important source of information on the handling of defendants.

Observational data collection methodology

The purpose of the observations in pre-trial conference and trial courts was twofold: (1) to get a feel for the totality of the adjudication process and the human dimension often lost in quantitative assessments of court decision-making and (2) to collect data on the handling of men and women before the court with a specific focus on what kinds of background information were mentioned in the court and whether this varied for male and female defendants.

The 15 days spent in trial court yielded data on 85 male and 17 female cases that were disposed of by trial or submission, while the

10 days in the pre-trial conference court produced 83 male and 25 female cases disposed by submission. Thus, there are a total of 210 observation sheets, 20% of which are for female defendants. The forms used to collect the data (Appendix C) were set up after 2 days of note-taking in the courtrooms in order to more efficiently collect the data.*

On the observation sheets used, the critical points of analysis are "defense summation" (trial) and "arguments on behalf of defendant" (pre-trial). For these two areas on the sheets, we attempted to record verbatim what the defense lawyer said on behalf of his or her client, information which the judge listened to after a finding and before sentencing. It is at this phase of the adjudication process where defense counsel put the "best face forward" on behalf of the defendant, providing background information, allusions to the defendant's "character," and mitigating circumstances surrounding the incident. Before presenting the results of these observations, it is important to place them in the context of the overall pattern of court outcomes in these two courtrooms.

Data collected in the context of total dispositional activity. Over the 6-week observational period, there were three types of information collected or available:

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*An arraignment court form was also used, and 4 observation days were spent in arraignment. Although these data are useful for determining whether a defendant's rights are outlined by the judge and the judge's

(note continued)

(1) Observation data in the pre-trial conference and trial courts (N=10 and 15 days, respectively).

(2) Complete dispositional activity data (including continuances, defaults, dismissals, and bindovers in the pre-trial conference and trial courts (N-6 and 18 days, respectively).

(3) Offenses charged for those adjudicated in pre-trial conference and trial courts (N=14 days each).

The differing number of days for which observational and dispositional data were secured are owed to the fact that we did not secure the full range of dispositions for all of the 10 pre-trial conference observation days. However, we augmented the number of trial court observation days with 3 additional days of trial court dispositions. This was done by recording the outcomes of "first" and "second" calls of the list and verifying these with members of the prosecutor's office. After a few days of observations, the prosecutor's office supplied us with ccpies of the pre-trial conference and trial court "lists," which listed defendants' names and offenses charged. These lists were used in analyzing the kinds of offenses charged, and they allowed for more complete information on the observational forms.

For the overall features of dispositional activity, one sees in Table B-1 that defendants whose cases were disposed by trial or submission constituted 35-40% of those scheduled to appear for trial or pre-trial conference. In pre-trial conference, 215 defendants were

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assessment in appointing counsel, the lack of information presented to the court on defendant's background (with the exception of information on the indigency of defendants) led to the decision to not observe further arraignments.

Table B-1. Dispositional activity in pre-trial conference and trial courts

Pre-trial conference
(N=6 days of complete disposition data)

Disposed	MALE N	MALE %	FEMALE N	FEMALE %	TOTAL N	TOTAL %	% of 200[a]
by submission	54	30%	16	53%	70	32%	35%
by dismissal	4	2%	0	0	4	2%	2%
by bindover	8	4%	0	0	8	4%	4%
Continued	81	44%	11	33%	92	43%	46%
Defendant default	23	13%	3	9%	26	12%	13%
unknown	13	7%	2	6%	15	7%	100%
total	183	100%	32	100%	215	100%	

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Trial
(N=18 days of complete disposition data)

Disposed	MALE N	MALE %	FEMALE N	FEMALE %	TOTAL N	TOTAL %	% of 445[b]
by trial/subm.	143	34%	25	38%	168	35%	38%
by dismissal	25	6%	8	12%	33	7%	7%
by bindover	12	3%	5	8%	17	3%	4%
Continued	127	30%	12	18%	139	27%	31%
Defendant default	80	19%	8	12%	88	18%	20%
unknown	32	8%	8	12%	40	8%	
	419	100%	66	100%	485	100%	

[a] Excludes 15 cases where disposition is unknown.

[b] Excludes 40 cases where disposition is unknown.

slated to appear over a 6-day period. Of 200 defendants where dispositions were known, 35% were actually disposed by submission, 46% continued for trial, 13% did not show for the court date and were defaulted, and 6% were disposed by dismissal or bindover hearing. For the 18 days of trial court dispositional activity analyzed, there were 485 defendants scheduled to appear. Of the 445 for whom dispositions were known, 38% were disposed of by trial or submission, 31% were continued, 20% did not show up for the trial and were defaulted, and the remaining 11% were dismissed or had bind over hearings.

Thus, about half of those scheduled for trial had their cases continued or did not show up for the court appearance. Note that in both courts, female defendants were less likely to have their cases continued and somewhat more likely to appear for their court date. The total number of completed observation sheets over the 6-week period must be understood in the context of the courts' dispositional activities: Those for whom detailed information was gathered (those disposed by trial or submission) are less than 4 in 10 of those scheduled for trial or pre-trial conference.

Data collected in the context of offenses charged. The character of offenses coming before district court is largely of a minor "criminal" nature. In Table B-2 an analysis of 14 days each of pre-trial conference and trial lists is presented categorized by five crime

types. In the table one sees that of the total of 873 defendants charged, 12% were for drunken driving and 15% for other motor vehicle-related offenses, 8% for possession and/or intent to distribute drugs, 20% for assault and related incidents, 29% for property offenses, with the remaining 16% falling into a miscellaneous offense category. Similar proportions of men and women are arrayed along the five general offense categories. However, male-female differences emerge when comparing specific offenses charged: Women are somewhat less likely to be charged on DUI-related offenses and more likely to be charged with larceny as a property crime; the "miscellaneous" category for women is largely prostitution while for men it is non-support and violation of restraining orders.

In an analysis of the number of charges against defendants (using only the latest incident), about half each of men and women had one charge per incident, but men were more likely to have three or more charges. Although not displayed on the table, there were differences in the types of crimes dealt with at pre-trial conference and at trial: Comparatively higher proportions of DUI's and non-support cases were settled at pre-trial conference, while drugs and assault charges were more likely dealt with in the trial court.

One other feature of the offenses charged were the proportions of defendants charged with "A & B on a police officer" or "refusal to stop or submit to a police officer." Some 10% of male and 6% of female defendants faced these charges in addition to those related to

Table B-2. Offenses charged in the district court[a]

	Number		Percent		TOTAL	
m/v & related	Men	Women	Men	Women	N	%
DUI & related	91	8	12%	7%	99	12%
moving violation	116	16	15%	14%	132	15%
			27%	21%		27%
drugs & related						
herion	15	0	2%	0%	15	2%
other drugs charges[b]	42	6	5%	5%	48	5%
firearms & drugs	5	1	1%	1%	6	1%
			8%	6%		8%
assault & related						
a & b w/ and wo/dangerous	76	16	10%	14%	92	11%
a & b w/property offense	10	1	1%	1%	11	1%
disorderly conduct	44	9	6%	8%	53	6%
rape	6	0	1%	--	6	1%
indecent assault	3	1	1%	1%	4	1%
other	12	0	2%	--	12	1%
			20%	24%		20%
property						
b & e	57	4	8%	3.5%	61	7%
larceny	74	21	10%	19%	95	11%
receiving stolen prop.	28	2	4%	2%	30	3%
damage prop./arson	32	4	4%	3.5%	36	4%
robbery, armed & unarmed	32	0	4%	--	32	4%
			30%	28%		29%

Table B-2 (continued)

	Number		Percent		TOTAL	
other	Men	Women	Men	Women	N	%
prostitution	0	18	--	16%	18	2%
viol. restraining order	16	0	2%	--	18	2%
non-support	47	1	6%	1%	48	5%
trespassing	19	2	2%	2%	21	2%
interstate rendition	15	0	2%	--	15	2%
other	21	2	3%	2%	23	3%
			15%	21%		16%
TOTAL	761	112	100%	100%	873	100%

[a] Analysis is based on 14 days each in the trial and pre-trial conference courts, and is of the latest charge(s) before the court; 12% of men and 11% of women faced prior court charges from default warrants.

[b] Possession of drugs charges were also levied against 3% of defendants as a result of arrests m/v violations, assault, property, and other charges.

the incident itself. Observations of the court proceedings for these defendants revealed that while male defendants were more apt to resist or to taunt police authority, they were also more likely to be pushed around and harassed by the police.

The picture that emerges of the crimes prosecuted in District Court is that less than 40% of defendants were charged with crimes of economic gain; close to 30% for motor vehicle moving violations (half of which involved drunk driving); and 20% for disorderly or assaultive behavior, the bulk of which was directed to family members or friends of the defendant. A small proportion of defendants (less than 6%) faced bind over to the superior court. Given the nature of offenses for which defendants were arrested and prosecuted, it should come as no surprise that a small proportion of sentences involved jail time. I turn now to a description of the observational data collected in the pre-trial conference and trial courts to present more detail on the character of cases dealt with in the Springfield district court.

Analysis of observational data collected

Characteristics of defendants and their cases. When examining Table B-3 on the characteristics of defendants and their cases, one finds both similarity and difference between male and female defendants. Combining pre-trial and trial court data*, the majority of defendants

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*Note that the overall proportions discussed here combine data from

(note continued)

defendants (about 60%) were white, although there were more black than hispanic female defendants, compared to males (a "within-minority" difference also found in the New York City and Seattle courts). Although half of male and female defendants were in their 20s, there were comparatively higher proportions of older male defendants. Few defendants were in custody awaiting pre-trial conference or trial.

Female defendants were more likely to be represented by counsel (83%) than male (68%), and this difference has consequences for the likelihood that defendant background information was presented to the judge. For those defendants with lawyers, however, similar proportions of 80% each of male and female defendants had the benefit of background information given to the court. Two interesting male-female differences arise in this area: (1) 12% of male, compared to

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10 pre-trial and 15 trial court observation days. Since there are differences in the distributions of defendant characteristics and features of their cases in each of these courts and there are a higher number of trial days represented, the overall average should be used cautiously where there are between-court differences.

In order to estimate the proportions of defendants who submitted in pre-trial and trial courts, I carried out an estimated weighted average, taking into account that there were 5 fewer pre-trial conference observation days. For men this was computed by taking the average number of pre-trial conference submissions for the 10-day period (8.3), multiplying by 5 (days), adding this to the number of submissions (127 + 41.5 = 168.5), dividing by 210 (168.5 + 41.5 = 210), for an estimated 80% submission rate. The same procedure was carried out for women: [(2.5 x 5 = 12.5) + 32] divided by 54.5 (42 + 12.5 = 54.5), yielding an 82% submission rate.

Table B-3. Characteristics of defendants and their cases[a]

	MALE DEFENDANTS			FEMALE DEFENDANTS		
	pre-trial (N=83) percent	trial (N=85) percent	trial & pre-trial (N=168) percent	pre-trial (N=25) percent	trial (N=17) percent	trial & pre-trial (N=42) percent
race/ethnicity						
hispanic	18%	26%	22%	12%	18%	14%
black	11	23	17	24	35	29
white	71	51	61	64	47	57
	100%	100%	100%	100%	100%	100%
age						
20 years	19%	14%	17%	32%	17.5%	26%
20-30	45	54	49	52	59	55
31-40	24	18	21	4	0	2
41-50	10	8	9	8	6	7
50	2	6	4	4	17.5	10
	100%	100%	100%	100%	100%	100%
defendant held?						
yes	1%	7%	4%	4%	0%	2%
no	99	93	96	96	100	98
	100%	100%	100%	100%	100%	100%
has counsel?						
yes	61%	74%	68%	80%	88%	83%
no	39	14	26	20	12	17
no, but active self-representation	0	12	6	0	0	0
	100%	100%	100%	100%	100%	100%

Table B-3 (continued)

	MALE DEFENDANTS			FEMALE DEFENDANTS		
	pre-trial (N=83) percent	trial (N=85) percent	trial & pre-trial (N=168) percent	pre-trial (N=25) percent	trial (N=17) percent	trial & pre-trial (N=42) percent
background info presented?						
yes	52%	46%	49%	56%	71%	62%
no	43	44	44	44	23	26
by judicial inquiry of defendant	5	10	7	0	6	2
	100%	100%	100%	100%	100%	100%
how disposed?						
trial	0%	51%	weighted	0%	59%	weighted
submission	100%	49	average: 80%	100%	41	average: 82%
	100%	100%	submission[b]	100%	100%	submission[b]

[a] Analysis based on 10 pre-trial conference and 15 trial court days.

[b] See note on previous page for the estimated rate of submissions using a weighted average.

none of the female defendants attempted to represent themselves during trial; and (2) male defendants without counsel were more often queried about their background by judges. Based on a weighted average of defendants who submitted or went through with a trial over the 25 observation days, similar proportions of about 20% each of male and female defendants went ahead with a trial.

These overall features of defendants and the handling of their cases mask differences between activity in the pre-trial conference and trial courts. For both men and women, those in the trial court were more likely to be represented by counsel and more likely black or hispanic compared to those disposed in pre-trial conference. Like the analysis of the crime types scheduled from the 14-day pre-trial and trial lists, there are also differences in the types of charges disposed in pre-trial and trial courts, particularly for male defendants, as Table B-4 shows. From this table of cases disposed by submission or trial, together with the 14-day analysis of crime types scheduled in each court, one finds that male defendants charged with assault and property cases are more likely continued for trial; and once in the trial court are more likely to have their cases continued, or for assault charges, to have their cases dismissed. For female defendants, these differences do not arise.

These male-female differences resulted in part from (1) the somewhat more serious nature of male cases (particularly property and assault charges), which more often lead to continuances; and

Table B-4. Charges disposed by submission and trial

	MALE		FEMALE	
	pre-trial (N=84) percent	trial (N=85) percent	pre-trial (N=25) percent	trial (N=17) percent
m/v & related	57%	34%	32%	24%
drugs	4	7	0	0
assault & related	8	31	28	29
property	11	21	24	29
miscellaneous	20	7	16	18
	100%	100%	100%	100%

(2) unknown gender differences in the recommendations of prosecutors and/or probation officers which lower the "plea bargaining" potential across certain crime categories for male, but not female defendants. It is clear from the table that male defendants charged with motor vehicle violations were far more likely to submit and to get their case over with in comparison to other crime types.

Sentencing outcomes. These gender differences in the types of charges typically disposed may explain the similarity in sentencing outcomes for male and female defendants shown in Table B-5. I was not allowed access to prior record information on defendants with which to interpret sentencing disparities (if they arose), but a priori I assumed that men would have more developed prior records, hence overall more severe sentences than women. Thus, the dramatic similarity in sentencing outcomes shown in Table B-5 was not anticipated. When comparing grouped finding/sentencing levels (Levels I to IV), one finds almost identical proportions of male and female defendants at each level. A tiny fraction (1-2%) were found not guilty; over 60% had findings of "facts sufficient" or "guilty" with fines or court costs; 30% were found guilty and received suspended sentences or probation; and 7% were found guilty and received direct jail time.

Simple bi-variate analyses of sentencing outcomes for men and women are usually characterized by more severe sentences for men, a

Table B-5. Findings and sentences for defendants disposed by trial or submission[a]

		MALE DEFENDANTS				FEMALE DEFENDANTS			
		pre-trial (N=83) percent	trial (N=83) percent	trial & pre-trial (N=167) percent		pre-trial (N=25) percent	trial (N=17) percent	trial & pre-trial (N=42) percent	
	finding: sentence								
I	not guilty: none	0%	2%	1%	1%	0%	6%	2%	2%
II	guilty: filed	0	6	3	63%	0	0	0	62%
	facts suffct: court costs	34	31	33		40	23	33	
	facts suffct & guilty: fine & court costs	13	0	7		4	0	2	
III	guilty: fine	28	13	20	29%	28	23	26	29%
	guilty: suspended w/ and wo/fine	1	9	5		0	6	2	
	guilty: suspended w/ probation	2	6	4		8	12	10	
	guilty: probation	18	23	20		16	18	17	
IV	guilty: direct jail	4/100%	10/100%	7/100%	7%	4/100%	12/100%	7/100%	7%
	average fine	$135 (N=61)	$125 (N=48)	$131 (N=109)		$73 (N=19)	$163 (N=9)	$102 (N=28)	

[a] Analysis based on 10 pre-trial conference and 15 trial court days.

[b] Two cases missing data on sentencing.

difference which is reduced, particularly after prior record and charge severity are entered into the analysis. In explaining the similarity in sentencing outcomes here without introducing any controls, the following is suggested:

(1) There has been a severity and crime charge homogenization of male and female cases that are more likely disposed of by submission or trial (rather than continued).

(2) There may be little gender differences in sentencing outcomes for the typically less serious types of charges prosecuted in district court and the rarity with which decisions center on defendant's loss of liberty.

Arguments on behalf of defendants. The major component in making the observations was an assessment of the types of information presented by counsel on the defendant's behalf and whether this varied for men and women. The verbatim portions of the pre-trial and trial observation sheets were analyzed along eight categories of defendant background information, and the results of this analysis are shown in Table B-6. In the table one sees that three major categories of information--family situation, employment situation, and prior record--were differentially discussed for male and female defendants. Family situation was the most salient category for women, while employment was the most salient for men. Information about women's prior record was brought up more frequently since defense counsel could more often stress that their female client had no record.

Table B-6. Information presented by counsel on defendant's behalf or sought by the judge of the defendant[a]

	MALE DEFENDANTS (N=93)			FEMALE DEFENDANTS (N=24)	
	N	(N)	%[b]	N	%[b]
Age	46		49%	14	58%
Education	15		16%	4	17%
Family situation[c]	50		54%	18	75%
(lives w/parents)		(21)		(4)	
(marital status)		(24)		(11)	
(has children)		(24)		(10)	
Employment situation[d]	66		71%	14	58%
(presently employed)		(41)		(10)	
(presently unemployed; laid off)		(25)		(4)	
Medical/mental problem	9		10%	4	17%
Military service	11		12%	--	--
Prior record[e]	28		30%	14	58%
Ties/residence in area	13		14%	5	21%

[a] Analyses based on 10 pre-trial conference and 15 trial court days.

[b] All percentages shown are of 93 male or 24 female defendants where information was provided in each of the listed categories. Some defendants had only one category mentioned; others, 5-6.

[c] The N's and percentages shown for family situation are of defendants where something was said about defendant's family ties. That is, where it was stated that the defendant "was married and had two children," this was counted as one instance of a family indicator. The numbers in parentheses show more particularly what information was conveyed about defendant's familial situation.

Table B-6 (continued)

[d] Employment situation, whether presently employed or unemployed in paid work, is included in the total count for "employment situation." Counsel often argued that defendants had "just been laid off," or were "temporarily unemployed, but looking for a job" to request more time in the payment of fines, or more generally, to elicit court sympathy for the economic/ employment problems of the defendant.

[e] For virtually all dispositions, judges receive prior record information from the court probation officer. Prior record information was more often presented by counsel when the defendant had no prior record, or a record of minor motor vehicle violation(s).

Although differences are noted in the family and employment situations for men and women, it is important to emphasize that for the majority of men, information on family situation was introduced to the court; and for the majority of women, employment situation was also given. Overall, family and employment situation are the two critical "background criteria" introduced about defendants. Note too that defendant's age is also commonly mentioned. For most defendants, age was introduced as the first defendant attribute; it was an "orienting" device to subsequently convey the particulars of the defendant's family and/or work situation.

One question that emerges from this analysis of counsel's arguments on behalf of his or her client is: Why do roughly 20% of defense lawyers <u>not say anything</u> about the defendant's background? In some cases, counsel briefly argued that the defendant was confused or unintentionally implicated in an incident. More often, counsel simply said, "We agree with the recommendation" or "No argument." For pre-trial conference, little was said about the defendant's background when defense counsel conferred only briefly with the defendant, or when the agreed recommendation was a good one for the defendant such that (a) additional information would probably not have helped or (b) time extensions for payment of fines or requests for recovery of a driver's license were not at issue. In trial court, lack of background information was associated with (a) submissions rather than trials or (b) counsel's arguments on the legal merits of the case only.

The data collected on defense counsel summations suggest the following questions: (1) When do counsel selectively omit certain information? and (2) What information "counts," i.e., what types of information do judges find important for sentencing? These and other questions pertaining to the handling of male and female defendants were addressed in the second phase of data collection, interviews with court personnel themselves.

Interview data collection methodology

Throughout the period of court observation, contacts were slowly developed with all "sides" of the adjudication process--clerks, judges, probation officers, defense counsel, and prosecutors. When court personnel asked why my assistant and I were in the court, we replied in general terms that we were doing research on the treatment of male and female defendants. This openness was important in obtaining interviews with court personnel: Evasiveness or differing stories would have created distrust, especially given the speed of the courthouse grapevine.

In order to get a multi-faceted view of court proceedings--perspectives from a variety of "actors" involved--we did not ally with the prosecutor's office or the more active defense lawyers. With the exception of judges, who were not easily accessible on an informal basis, securing interviews with court personnel was quite easy. Judge interviews were gained through the aid of the court officers who were the gatekeepers to judicial chambers.

The sample. Interviews were conducted with the following court personnel:

	District		Superior	Total
Judges	5		6	11
Prosecutors	3		3	6
Court probation officers	5		4	9
Defense lawyers	—	9	—	9
Total	13	9	13	35

In selecting those to be interviewed, differing criteria were used for each group. Attempts were made to interview all the judges available during the months of December and January; thus, the number of judges reflects all (except 2-3) of those sitting on the bench during this time. For prosecutors in district courts, I selected those who worked full-time (just over 25% of the 18 district court prosecutors worked full-time); and for prosecutors in district and superior courts, more senior personnel were selected. The district court probation office has 26 personnel, 8 of whom are pre-trial or trial court probation officers, and the remainder, probation supervisors. Half of the court probation officers were interviewed, together with the head of the district court probation department. The superior court probation department has 14 personnel, who serve both as probation supervisors and court probation officers. Superior court probation officers were selected on the basis of their differing perspectives on the role and intent of probation. Lastly, of the 9 defense lawyers interviewed, over half were public defenders from

the MDC, and the remainder were private attorneys who were active on a daily basis in the Springfield criminal courts. MDC lawyers and other active private counsel were chosen because of their greater degree of contact with and knowledge of the criminal court.

Of the 35 interviewed, 10 were women. Women were oversampled in comparison to their proportions as court personnel to see if there were differences in their perspective on the handling of male and female defendants. Although women court workers faced particular problems not found for the men and they expressed some slightly differing orientations to their work, these will not be reported or discussed. To do so would violate promises of anonymity, given the small numbers of women in each of the four court personnel categories.

Interview schedules. Four different interview schedules were developed to be specifically relevant for each of the four groups of court personnel. The questions asked are shown in full in Appendix C. Variations in questions were introduced for district and superior court prosecutors, probation officers, and judges to conform with differing work roles and decision-making contexts in each of these courts. Although there were differences on each of the four schedules, all focused on the following areas:

(1) Background information about the respondent; length of experience working in the court and previous experience.

(2) Perceptions of the trends over time in the volume of male and female defendants, types of crimes for which they are prosecuted, and demographic changes (if any) in the characteristics of defendants before the court.

(3) The kinds of information deemed pertinent to present or to learn of with respect to defendant's background and whether this varied for male and female defendants.

(4) Perceptions of whether male and female defendants were treated differently; if they were (or not), why this was the case.

The variations introduced on the interviews are summarized as follows:

(1) Judges

(a) Extent of awareness of the taking into account the presence of the defendant's family in the courtroom.

(b) Using a hypothetical situation, their sentences for defendants, varying sex and familial situation.

(c) Reaction to the (female) "paternalism" thesis.

(d) Degree to which they rely on probation, prosecutors, and/or defense counsel in arriving at their sentences.

(2) Prosecutors

(a) Factors involved in their plea bargaining with defense counsel, and whether these varied for male and female defendants.

(b) Factors involved in going ahead in the full prosecution of a case, and whether these varied for male and female defendants.

(3) Probation officers

(a) Types of information collected on defendants, and whether these varied for male and female defendants.

(b) Information considered important in their sentencing recommendations, and whether this varied for male and female defendants.

(c) Perceived degree of power or persuasiveness in their sentencing recommendations to the judge.

(4) Defense lawyers

(a) Factors taken into account in advising clients to submit or to go to trial; factors involved in their plea bargaining with prosecutors.

(b) Types of information stressed for defendant's background, and whether these varied for male and female defendants.

(c) Perceived degree of power or persuasiveness in their sentencing arguments to the judge.

For the women interviewed, we also asked what particular problems (if any) they encountered working in the criminal courts.

Interviews normally lasted 45 minutes to an hour, although some were as short as 30 minutes, and others lasted 3 hours. At times, all the questions on the interview schedule could not be asked (due to scheduling constraints of the person interviewed); in these instances, we selectively focused on certain parts of the interview. At other times, the interview went on to related areas not specifically raised. All those interviewed were very cooperative in responding to the questions. None of the interviews was taped; rather, the responses were recorded by note-taking and shorthand.

The over 50 hours of interviewing produced 175 typed transcription pages. This material was reduced to a more manageable size by cataloging responses to particular questions, grouped by the four types of court personnel. By this method, frequencies of responses could be established, and the context of the quotations used could be accurately portrayed.

Reflections on the field work

One got the feeling that the topic of "gender differences in court outcomes" was not one that many of those interviewed had considered before. Its lack of salience (in contrast to a study of racial or ethnic discrimination) may well have fostered a higher degree of openness. As well, because there was a tendency to believe that women got "more of a break" than men, it may have been easier to discuss this form of "discrimination."

An important feature of the interviews and earlier observational phase of the research was that as female researchers we received alot of attention. Although the presence of women in the criminal courts as judges, clerks, defense counsel, prosecutors, and probation officers is increasing (indeed, I initially expected less of a female presence), it remains a highly male-dominated preserve. Thus, a "new girl" curiosity arose which promoted an ease of initial contact with the predominantly male personnel. Ultimately, however, the

cooperativeness of court personnel was tied to the seriousness with which they viewed our interest in their work. Student spectators come and go in the courthouse, but none had spent the amount of time (albeit for a relatively short period) we did. After about 2 weeks in the courthouse, some court personnel believed that we couldn't understand what was really going on without more specific information from them.

Although the first research phase was observational, there were moments when we were brought in as participants; this occurred when defense counsel and prosecutors wanted to give their side of the story during or after a trial, which provided insights into the frequent adversarial nature of court proceedings, both in and outside the courtroom. Indeed, moments of "high drama" were witnessed. For example, during a recess following a heated courtroom exchange, the prosecutor and defense counsel were restrained from exchanging physical blows! The degree of adversarialness was higher in superior court, where professional and political stakes were greater, particularly for the prosecutor's office. This was fostered on one hand by the MDC staff and other court regulars, most of whom actively and forcefully represented their client's interests; and on the other, by the degree of political polarization surrounding the prosecutor's office and the D.A. himself.

Limitations of data collected. My assistant and I were not allowed access to the court probation officer's desk to gather prior record information and to hear the content of judge-probation officer exchanges. There was no computerized data base for court outcomes; thus, requests for very basic statistical information about defendants (e.g., proportions male-female) meant a search through file drawers. Thus, Tables B-1 through B-6, while limited to a short time period, were an attempt to get a picture of the processing, dispositional activity, and characteristics of defendants which were not systematically retained in the court for data analysis. I make no claims that the more detailed types of information presented in these tables reflects anything more than district court activity for a 6-week period in 1981, and I will not attempt to argue its generalizability to a longer time frame. In the following section, I discuss the research emphasis and results from the analysis in considering whether the findings may be applicable to other criminal courts.

Questions of generalizability. The research focus on (1) background characteristics deemed salient in the adjudication of defendants, (2) differences in how these are stressed and interpreted for male and female defendants, and (3) the more general importance of familial relations in the adjudication process has not been one other court researchers have undertaken. Hogarth's (1971) study of the factors involved in judicial sentencing in a Canadian province comes

the closest. He found that defendant's "family background" was considered the most essential piece of sentencing information judges needed, a result which Hogarth found inexplicable. With the exception of his work, and more recently Maynard's (1982), there is little other comparable research that has attended to a close-grained analysis of the "factors taken into account" in the adjudication process and their public presentation before the court.

For some time, sociologists studying criminal court outcomes have used variables of schooling, employment, and age without any account of whether the court knows this information about the defendant during its deliberations, what background factors in fact count, and how they count in exercising judicial discretion. The results from my research suggest that the leading sociological background factors are responsibilities for dependents (particularly children), a degree of "familial social control," and whether currently employed in the paid labor force or not. Other factors considered, but with less emphasis are age, whether high school or further technical education has been completed, and previous or anticipated military service.

Typically, quantitative studies of court outcomes show little "explained variation" in court outcomes owed to a defendant's background. Rather statistical analyses point to the salience of prior record and severity or type of crime charged. The statistical analyses mask the reality (at least in the Springfield courthouse)

that particular background characteristics are invoked by defense counsel and considered by judges, prosecutors, and probation officers. That is, they have an "effect" in the real world of court deliberations, but their "effects" may not conform to the assumptions of linearity implied in most statistical models, and they are contextually related to elements of the crime and the defendant's past and present life situation (as Maynard's work so vividly shows). If, as the research in the Springfield courthouse indicates, background characteristics of defendants are used as discretionary criteria in the adjudication process, one might question whether Springfield is an "exceptional" or "average" representation of state court deliberations elsewhere. Two features of court processing in Springfield and Massachusetts, more generally, are considered. These are size of case load and the liberal context of court decision-making.

Size of court load. The Springfield courthouse serves a city population of 155,000 people, with the following racial and ethnic mix: white (75%), black (16%) and hispanic (9%) (1980 census, Massachusetts Data Center). District court defendants also come from 5-7 smaller towns surrounding the area, and superior court defendants come from an even wider population area. Criminal court business, an average of 60 defendants a day scheduled for pre-trial conference and trial, and perhaps a dozen defendants on trial or change of pleas in superior court, is far smaller than that handled by larger urban

courts. There is little evidence that defendants had to be "rushed through" in pre-trial conference or trial courts, and the court did expect time to be taken by defense lawyers in their summations on behalf of defendants. One wonders, then, whether in more busy courts with less staff to handle case loads, such time is considered more of a luxury or allowed only in selected cases.

Liberal context of court decision-making. Massachusetts criminal court procedures, such as bail reform (1966), court reform (1978), provision of counsel for all indigent defendants charged with jailable offenses at all stages of court proceedings (initiated in the 1960s), and decisions by (until recently) a liberal-dominated State supreme court make it more of a "defendant's rights" oriented state in comparison with others. As well, its per capita prison population is lower than in many other states. As such, one wonders whether the more liberal stance taken in the Massachusetts criminal justice, with the importance placed on background factors and substantive rationality (as opposed to formal rationality) in decision-making, together with less incarceration space and very limited incarceration space for women, create an atmosphere facilitating concern with "maintaining the family unit." Although the New York City outcomes and Seattle sentencing results also demonstrate the importance of a defendant's familial relations, it is important that other court jurisdictions be studied along these lines.

Date: _____

Exhibit C-1. Arraignment Check Sheet

Def name _____ M F Hisp Bl Wh _____

Age (approx) _____ in custody? Y N Lawyer rep def? Y N

Charges arraigned on	Plea?	Disposition?
_____	G NG	_____
_____	G NG	_____
_____	G NG	_____
_____	G NG	_____

Def appraised of right to counsel? Y N

Def asked about:	Def wants:	Def gets:
___marital status	___none	___rec by J to get lawyer
___employment	___court-appointed	___court-appointed BA MDF
___family deps	___privately retained	___not eligible for court-appointed

Bail hearing? Y N If yes, show details of hearing on reverse side

---

Def name _____ M F Hisp Bl Wh _____

Age (approx) _____ in custody? Y N Lawyer rep def? Y N

Charges arraigned on	Plea?	Disposition?
_____	G NG	_____
_____	G NG	_____
_____	G NG	_____
_____	G NG	_____

Def appraised of right to counsel? Y N

Def asked about:	Def wants:	Def gets:
___marital status	___none	___rec by J to get lawyer
___employment	___court-appointed	___court-appointed BA MDF
___family deps	___privately retained	___not eligible for court-appointed

Bail hearing? Y N If yes, show details of hearing on reverse side

Exhibit C-2. Pre-trial Conference Check Sheet

Date: _____

Submissions

Def name _____ M F Hisp Bl Wh _____

Age (approx) _____ Def rep lawyer? Y N

Submission details read by: po pros ___ other: _____

Charges	Disposition
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Arguments on behalf of def by counsel: (record verbatim)

_____

_____

_____

_____

_____

_____

If def is not represented by counsel, record exchange between judge and def:

J: "Anything you wish to say?"

Def: _____

_____

_____

_____

Exhibit C-3. Trial Check Sheet

Date: _____

Def name _____ M F Hisp Bl Wh _____

Age (approx) _____ Def in custody? Y N Lawyer rep def? Y N

Physical/dress/demeanor characteristics of def _____

_____

Charges	Disposition
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

"Facts" of case/testimony given by:

___prosecutor ___def

___police officer ___witness(es) on behalf of def

___victim/plaintiff ___ _____

___witness(es) on behalf of victim ___ _____

Prosecutor's summation _____

_____

Defense summation _____

_____

_____

(Details on case, testimony, etc. on reverse side)

Exhibit C-4. Judge interview schedule

A. BACKGROUND

1. How long have you been a judge?

2. What did you do before your appointment?

B. GENERAL TRENDS IN TYPES OF DEFENDANTS AND CRIMES CHARGED OVER THE YEARS

I'd like to get an idea from you of the changes (if any) over the years you've worked in the court as to the volume of defendants and the types of crimes for which they are charged.

1. Have there been more women before the court as defendants over the years you've worked?

2. Are women coming in on the same or different sorts of charges now compared to the past?

3. In terms of demographics of women (age, race or ethnicity, family situation) have there been changes?

4. What about for male defendants, are there more of them?

5. Are they coming in on the same or different sorts of charges now than in the past?

6. In terms of demographics of male defendants, have there been changes over time?

C. WHAT GOES ON IN THE COURTROOM

1. What goes on in your mind during a trial when you're listening to testimony. What is it that you're listening for?

2. Beyond the testimony, what else are you taking in? For example, the defendant's demeanor, reactions during the trial?

3. If you see that a defendant's family members are in the courtroom, does this affect your finding or your disposition?

4. (FOR SUPERIOR COURT JUDGES ONLY): In what situations do you ask for a pre-sentence report?

Exhibit C-4 (continued)

5. REACTION TO DEFENSE SUMMATION / TO PRE-SENTENCE REPORT

In terms of the pre-sentence report or the defense lawyer's summation in which you're given the background characteristics of the defendant ...

(a) What specifically about a defendant's background do you want to know? (probe on the implications of each of the salient characteristics for the judge)

(b) Are there background characteristics that you'd be particularly interested to know for female defendants?

D. HYPOTHETICAL CASE

I want to give you a hypothetical case and see how you would decide it.

A defendant was in the trial court with a larceny over charge, $125 cash. The defendant was found guilty. The record showed two prior convictions, one for selling marijuana and the other for a larceny under. This latest larceny over represented a violation of probation. If found in violation of probation, the defendant could get 3 months direct.

How would you decide this case, IF the defendant was a:

(a) Woman with two young children
(b) Woman who was single and living with friends
(c) Man with a part-time job, who had a wife and 2 children whom he supported
(d) Man who was single and living with friends

E. REACTION TO STATEMENT IN THE LITERATURE

I'd like to get your response to the following statement which more or less represents the prevailing view in the research literature on how judges respons to male and female defendants. The statement reads as follows:

"Judge treat female defendants more kindly or protectively than they do male defendants because the female defendants remind them of their daughters, or their wives, sisters--women close to them. Or, just in general, judges find it hard to be as tough on a woman as a man."

Exhibit C-4 (continued)

F. GENERAL INFORMATION ABOUT THE RELATIONS AMONG COURT PERSONNEL

There are four major actors in the courtroom -- you, the prosecutor, the defense lawyer, and the probation officer. What do you see as your role in the court?

1. Do you rely on one of the actors more than another in terms of sentencing?

2. Does this vary depending upon which court you're in?

G. OTHER COMMENTS

1. Are there things I should know about your role as judge that I've overlooked?

2. Are there other things about the handling of male and female defendants that you think I should know?

Exhibit C-5. Prosecutor interview schedule

A. BACKGROUND

1. How long have you worked in the District/Superior Court prosecutor's office?

2. What did you do before this?

B. GENERAL TRENDS IN TYPES OF DEFENDANTS AND CRIMES CHARGED OVER THE YEARS

I'd like to get an idea from you of the changes (if any) over the years you've worked in the court as to the volume of defendants and the types of crimes for which they are charged.

1. Have there been more women before the court as defendants over the years you've worked here?

2. Are women coming in on the same or different sorts of charges now compared to the past?

3. In terms of demographics of women (age, race or ethnicity, family situation) have there been changes?

4. What about for male defendants, are there more of them?

5. Are they coming in on the same or different sorts of charges now than in the past?

6. In terms of demographics of male defendants, have there been changes over time?

C. EMPHASIS/PRIORITY IN PROSECUTING (asked only of most senior prosecutor in District and Superior Court)

1. Are there certain crimes that have more prosecutorial emphasis than others?

2. Are there priorities made in terms of moving some cases more rapidly than others?

D. MAKING DEALS/GOING FORWARD WITH CASES

1. In what ways (if at all) does the sex of the defendant have a bearing on decisions to prosecute a case or not?

2. Does there seem to be a pattern in which certain types of cases or charges are more often dropped? (e.g., certain types of crimes or victim-offender relationships)

Exhibit C-5 (continued)

3. In terms of making deals, does the sex of defendant have a bearing on the types of dispositions? Specifically, are there aspects of female defendants' cases that call for different treatment than male cases?

4. In what ways do background characteristics of defendants have a bearing on your deals with defense counsel (e.g., how does family situation, employment, education, prior record, etc., influence the deal)?

5. Are you apt to offer a better deal for a defendant if he/she submits to "facts sufficient" / introduces a change of plea rather than going through with the trial? (Under what types of situations, for example?)

E. JUDICIAL RESPONSE

1. In general, do you feel that the types of dispositions that defendants receive are too tough, about right, or too lenient?

2. In general, do you think that there are differences in the ways judges handle male and female defendants? (Probe as to why or why not)

F. OTHER COMMENTS

1. Are there things about your work as a prosecutor that you think I should know?

2. Are there other things about the handling of male and female defendants that you think I should know?

Exhibit C-6. Defense lawyer interview

A. BACKGROUND

1. How long have you been a lawyer?

2. What proportion of your work is in criminal law (if applicable)?

3. What is your working history as a lawyer?

B. GENERAL TRENDS IN TYPES OF DEFENDANTS AND CRIMES CHARGED OVER THE YEARS

I'd like to get an idea from you of the changes (if any) over the years you've worked in the court as to the volume of defendants and the types of crimes for which they are charged.

1. Have there been more women before the court as defendants over the years you've worked?

2. Are women coming in on the same or different sorts of charges now compared to the past?

3. In terms of demographics of women (age, race or ethnicity, family situation) have there been changes?

4. What about for male defendants, are there more of them?

5. Are they coming in on the same or different sorts of charges now than in the past?

6. In terms of demographics of male defendants, have there been changes over time?

C. HOW YOU DEAL WITH CASES -- ADVISING CLIENTS

1. Approximately ... what is your case load of criminal court defendants? (at any given time in the year, or yearly average)

2. ON ADVICE TO CLIENTS: In what types of situations do you advise clients to submit to facts sufficient or to change their plea to guilty, rather than going through with a trial?

3. In general, does a defendant get a better deal if he or she pleads guilty, than to plead not guilty and to be found guilty? Pressure by the D.A.'s office to do this?

Exhibit C-6 (continued)

D. ARGUMENTS ON BEHALF OF DEFENDANTS BEFORE SENTENCING

Before disposition, defense lawyers typically put the "best face forward" on behalf of clients, citing, among many other things the circumstances surrounding the incident, defendants' problems with drugs or other medical problems, employment and education history, age, family situation, and marital status, whether they support or take care of children, and prior record.

1. What things about the defendant do you like to stress?

2. Do you find that you stress different things depending on whether your client is male or female?

3. In Superior Court, when do you ask that a pre-sentence report be written?

4. JUDGE REACTIONS: How much do you think that judges take defendants' background characteristics into account in sentencing? What types of information do you think judges are really concerned with?

   Have you found that there are differences in the types of background characteristics that judges consider for male and female defendants?

E. RELATIONS BETWEEN YOU, PROSECUTOR, PROBATION OFFICER, AND JUDGE

1. Can you give me an idea of the things that you discuss with the prosecutor and probation officer in handling a case?

2. In terms of power to influence the judge in recommendations for sentencing, who has more power?

3. In what ways can you exert influence in recommendations?

4. In those situations where there is an "agreed recommendation" between you and the prosecutor, about how often does the judge go along with it?

5. When you and the prosecutor do not agree, with whom does the judge side?

Exhibit C-6 (continued)

F. JUDICIAL RESPONSE

1. Do you feel that the types of sentences that defendants receive are too lenient, about right, or too tough?

2. In general, do you think that there are differences in the way judges handling male and female defendants in terms of sentencing? (Probe as to why or why not)

G. OTHER COMMENTS

1. Are there things I should know about your work as a defense lawyer that I've overlooked?

2. Are there other things about the handling of male and female defendants that you think I should know?

Exhibit C-7. Probation officer interview schedule

A. BACKGROUND

1. How long have you been a probation officer?
2. What did you do before being a probation officer?
3. Have you worked in other courts as a probation officer?

B. GENERAL TRENDS IN TYPES OF DEFENDANTS AND CRIMES CHARGED OVER THE YEARS

I'd like to get an idea from you of the changes (if any) over the years you've worked in the court as to the volume of defendants and the types of crimes for which they are charged.

1. Have there been more women before the court as defendants over the years you've worked here?

2. Are women coming in on the same or different sorts of charges now compared to the past?

3. In terms of demographics of women (age, race or ethnicity, family situation) have there been changes?

4. What about for male defendants, are there more of them?

5. Are they coming in on the same or different sorts of charges now than in the past?

6. In terms of demographics of male defendants, have there been changes over time?

(The following sections C and D for District Court probation)

C. INFORMATION COLLECTED BY PROBATION

I'd like to ask you about the background data probation collects and used in making recommendations

1. What background characteristics do you take into account when you make recommendations? What particular background characteristics are important to you?

2. Does this differ for female defendants?

Exhibit C-7 (continued)

D. ON WHAT HAPPENS IN THE COURT

I'd like to get a sense of your role in the court in presenting information to the judge and in dealing with prosecutors and defense lawyers.

1. About how often do you and the prosecutor agree on the handling of defendants in terms of recommendations?

2. If you disagree with the prosecutor, do you find that the judge will more often heed your advice?

3. If you and the prosecutor agree, but the defense lawyer does not, how does the judge usually decide?

4. So in rough terms, about how often do judges accept probation's recommendations? (almost all of the time, most of the time, some of the time ...?)

5. In situations where judges do not go along entirely with your recommendation, are they tougher or more lenient that you would have like?

(The following sections C and D for Superior Court probation officers)

C. YOUR WORK AS A PROBATION OFFICER

1. What is your case load?

2. Do you handle certain types of clients? What clients do you not typically handle?

D. PRE-SENTENCE INVESTIGATION AND REPORT

1. In the pre-sentence investigation process, do you find that judges ask you to collect certain information to assist them? What are examples of this?

2. As to the information that you collect for the pre-sentence report, what kinds of information are most important to get?

3. Do you find that the types of information collected differ depending on whether the defendant is male or female?

Exhibit C-7 (continued)

FOR THE PRE-SENTENCE REPORT ITSELF

1. About how long is a pre-sentence report?

2. When you are considering whether the client should be recommended for probation or not, what do you weigh in your mind about the client?

3. Do you find that there are any special problems or considerations in terms of recommendations for probation or incarceration for female defendants?

4. What is the impact of your report on the judge? Do they rely heavily on your pre-sentence report and recommendation?

(The following sections for District and Superior Court probation)

E. JUDICIAL RESPONSE

1. Generally, do you think that the types of sentences that defendants receive are too lenient, about right, or too tough?

2. Do you think that there are differences in the way judges handle male and female defendants? (Probe as to why or why not)

(The following section for Superior Court probation)

F. SUPERVISION ROLE

1. What types of clients are hardest to supervise? Differences between men and women? Who are the easiest to supervise?

(The following section for Superior and District probation)

G. OTHER COMMENTS

1. Are there things I should know about your role as probation officer that I've overlooked?

2. Are there other things about the handling of male and female defendants that you think I should know?

Exhibit C-8. District court probation form

Form UP-1

PR NPR _____

_____

_____

_____

Date _____

Name _____

Alias _____

_____

Residence _____

Comp _____ Sex _____ Mart. Status _____

DOB _____ POB _____

OCCU _____ SS# _____

Place Of Emp. _____

Father _____

Mother M.N. _____

Wife/Husb M.N. _____

Children _____

Offense(s) _____

_____

_____

_____

_____

Arresting Officer _____

Disposition _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

SUP P.O. _____ Cont. Page 2

Exhibit C-9. Superior court probation form

Form Sup-1-50M-4-80-152647 Office File No. _____ Form No. Sup-1

Pretrial Intake Report

Probation Officer _____ Date _____

Reviewed by _____ Date _____

Presentence Investigation Report

Probation Officer _____ Date _____

Reviewed by _____ Date _____

THE COMMONWEALTH OF MASSACHUSETTS SUPERIOR COURT DEPARTMENT

_____ OFFICE

PRETRIAL INTAKE REPORT

District Court charge(s) with docket #(s) _____

Superior Court charge(s) with docket #(s) _____

FULL NAME: _____ ALIAS: _____
Last First M.I.

DOB /__/__/__/__/ POB _____ SOC. SEC. #_____

HT /__/ WT. /__/__/ HAIR /__/__/ EYES /__/__/ SEX: M F RACE: _____ U.S. CITIZEN: _____

PRESENT ADDRESS, STREET: _____ PHONE NO: _____

City _____ State _____ Zip _____

OTHER ADDRESSES: (Past 12 mos.) _____

FAMILY AND MARITAL STATUS

NAME AND ADDRESS OF PARENTS: _____ PHONE NO: _____

PRESENT MARITAL STATUS: Single ____ Married ____ Separated ____ Divorced ____

NAME & ADDRESS OF SPOUSE: _____ PHONE NO: _____

NUMBER OF CHILDREN: _____ AGES OF CHILDREN: _____

EMPLOYMENT RECORD

NAME & ADDRESS OF EMPLOYER: _____

DATE EMPLOYED: _____ SALARY: $_____ POSITION: _____

OTHER EMPLOYERS—PAST 12 MOS.	POSITION	FROM/TO

EDUCATION LEVEL AND RECORD

SCHOOL & ADDRESS: _____

HIGHEST GRADE COMPLETED: _____ DATE: _____

OTHER SCHOOLS—PAST 12 MOS.	DATES	GRADES OF COURSES COMPLETED

CURRENT FINANCES AND FINANCIAL RECORD

TOTAL INCOME LAST YEAR: $_____ TOTAL FAMILY INCOME LAST YEAR: $_____

FINANCIAL ASSISTANCE (Amount & Source): $_____

BANK ACCOUNTS (Names of Banks & Accounts): _____

SAVINGS: $_____ CHECKING: $_____

Exhibit C-9 (continued)

OTHER ASSETS: _____

MONTHLY MORTGAGE OR RENTAL PAYMENTS: $_____

AUTO MAKE: _____ YR. _____ PUR. PRICE: $_____ BAL. DUE: $_____

MONTHLY EXPENSES FOR FOOD, CLOTHING, UTILITIES & OTHER NECESSITIES: $ _____

OBLIGATED SUPPORT PAYMENTS: _____

OTHER SUPPORT PAYMENTS: _____

OTHER INDEBTEDNESS: _____

EXAMINATION FOR COUNSEL

What attorney have you asked to represent you in the past or to represent you in this case?

_____

☐ I, being unable to obtain counsel because of my inability to pay an adequate fee, hereby request that an attorney be appointed by the court to represent me.

☐ I, being unable to obtain counsel because of my inability to pay the usual fee, hereby request an attorney appointed by the court, and I agree to pay a marginal amount, to be determined by the court and to pay in whatever manner the court deems appropriate.

_____ _____
(Defendant) (Date)

In my opinion defendant has the ability/has the marginal ability/has not the ability to pay for counsel.

Date: _____ Probation Officer's Signature: _____

The court finds the defendant able/marginally able/unable to pay for counsel.

The court assigns _____ and orders that a fee of $_____ be paid by _____
(date)

_____, 19___ _____
(date of assignment) Justice of the Superior Court

I hereby swear or affirm under the penalties of perjury that the above information which I have provided is true and accurate to the best of my knowledge.

_____ _____ _____
(defendant) (witness) (date)

_____

ADDITIONAL COMMENTS: (If additional space is needed, please attach separate sheet).

_____

Reference Notes: PR CRIM FAM MAR EDUC EMP FIN ALC DRUG OTHER _____