

THE ROOTS OF GENDER AND ETHNIC BIAS IN COURTROOM  
DECISIONS: THE IMPACT OF RACE AND MOTHERHOOD ON  
JUDGMENTS ABOUT GUILT AND INNOCENCE

THESIS

Presented to the Graduate Council of  
Southwest Texas State University  
in Partial Fulfillment of  
the Requirements

For the Degree

Master of ARTS

By

Shannon J. Bermel, B.A.A.S.

San Marcos, Texas  
August 2002

COPYRIGHT ©

by

Shannon J. Bermel

2002

## ACKNOWLEDGEMENTS

I would like to thank several people who, with their support and encouragement, have given me the motivation to complete my Master's degree. First I would like to thank my husband for always believing in me and giving me the support and encouragement that I needed.

Next, I would like to thank Dr. Watt for taking the time to guide me through the process of analyzing my data and explaining statistical procedures. Your patience and knowledge are appreciated.

I am grateful to all the members of my thesis committee as well as to all of the professors I had in the Sociology and Criminal Justice departments. To Dr. Anderson, I am grateful for having you as my professor in Teaching Sociology. This class helped me grow into a more confident speaker. Having the opportunity to teach sociology classes opened my eyes to possible future career goals. To Dr. Supancic, you gave me new insight into issues and changed my way of viewing the criminal justice system. I could have never completed this program without the help of all my professors. Their passion for Sociology and Criminal Justice was contagious and made me want to learn and grow in the field.

Finally, I would like to thank Dr. Day, my thesis chair. Your constant belief in me, even when I did not believe in myself, kept me going. My first graduate class three years ago was Deviance and Social

Problems and after three years of graduate classes, it is still my favorite. I will never forget the *Kamikaze Biker* and after reading William Julius Wilson's *When Work Disappears*, I knew that I found the right field of study for me. Dr. Day, you are an amazing teacher and mentor, and I truly believe I would not have gotten this far without you. You have empowered me to become more than I ever thought I could be and I hope someday I can give to someone as much as you have given to me.

This manuscript was submitted on July 22, 2002.

## TABLE OF CONTENTS

	Page
LIST OF TABLES	vii
Chapter	
I. INTRODUCTION.....	1
The Problem.....	1
Sentencing Under the Rule of Law.....	4
Review of the Literature .....	6
Hypotheses .....	22
II. METHODOLOGY.....	24
Instrument Construction .....	24
Data Collection .....	26
Statistical Analysis.....	26
III. FINDINGS .....	28
Characteristics of the Sample.....	28
Test of Hypotheses .....	29
Other Findings.....	30
IV. CONCLUSIONS .....	35
Methodological Problems.....	35
Discussion of Findings.....	37
Recommendations for Further Research.....	39
REFERENCES .....	43
APPENDIX.....	49
TABLES.....	61

## LIST OF TABLES

TABLE		PAGE
1.	Percentage of Minorities in Federal Prison and Percentage of Minorities in the General Population.	61
2.	Demographic Characteristics of Respondents.	62
3.	Mean Sentence Length in Months of Defendants with and without Children.	63
4.	Guilt of Defendants with and without Children.	64
5.	Mean Sentence Length in Months of Hispanic and White Defendants.	65
6.	Verdicts of White and Hispanic Defendants.	66
7.	Guilt of Defendant by Ethnicity of the Respondent.	67
8.	Guilt of Defendant by Major of the Respondent.	68
9.	Logistic Regression for Guilt Verdicts Regressed on Independent Variables.	69
10.	Logistic Regression for Guilt Verdicts Regressed on Independent Variables with Selected Cases (Minority Respondents).	70
11.	Logistic Regression for Guilt Verdicts Regressed on Independent Variables with Selected Cases (White Respondents).	71

## **CHAPTER 1**

### **INTRODUCTION TO THE STUDY**

#### **The Problem**

A larger number of women are incarcerated now than ever before in United States history. The Bureau of Justice Statistics (1999) reports 84,000 women were incarcerated in 1998. The number of females convicted of a felony has grown more than two times the rate of increase of males since 1990 (Bureau of Justice Statistics 1999:1). Although the increase of women in prison has been substantial, comparisons of sentencing between women defendants are largely ignored in research. Previous research has looked at sentencing differences between male defendants (Kleck 1981; Thomson and Zingraff 1981; Conley et al. 2000) and even differences between male and female defendants (Stephan 1974; Curran 1983; Kruttschnitt 1984; Ghali and Chesney-Lind 1986; Steffensmeier et al. 1993), but research on jury sentencing disparity between women defendants is less common (Bickle and Peterson 1991; Crawford 2000).

Feminists have argued that women deserve equal treatment in all facets of society (see; for example, Nagel and Johnson 1994). As a minority group, women have been discriminated against in the past and continue to struggle to be equal to men in respect and equal pay. One area, though, has been known to favor women more than men. This is the criminal justice system. Women defendants are often at an advantage in the courtroom. Although over half the general population in the United States is female, women only accounted for 16% of all felons convicted in 1996 (Bureau of Justice Statistics 1999:1-5). The fact that women do not commit as much violent crime as men is one factor that accounts for the low population of women in prison. Other factors such as family ties and paternalistic views toward females, however, have also been shown to influence the number of women who are found not guilty or charged with lesser offenses. Not only is the population of incarcerated women small, but when factoring in race, the numbers decline even more for white women (Bureau of Justice Statistics 1999). Varying theories attempt to account for this bias and many studies have examined gender effects on sentencing outcomes (Stephan 1974; Curran 1983; Kruttschnitt 1984; Ghali and Chesney Lind 1986; Steffensmeier, et al. 1993). What has been lacking in the past literature, however, are studies examining the differences between women defendants and factors that might influence the lenient treatment of these women.

Not only do studies focus on disparities between genders, but a large portion of the sentencing literature also focuses on race. Racial and ethnic minorities, primarily blacks and Hispanics, have been shown to receive disparate treatment by the courts. Studies show that they receive longer sentences than whites (Sellin 1935; Gordon et al. 1987; Steffensmeier et al. 1998; Spohn and Holleran, 2000). Although overt racism does not often exist in our court system today, subtle discrimination can affect sentencing outcomes. Mauer (1999) suggests that throughout U.S. history, the majority group (whites) has defined other groups as crime prone. In the early 1900's, "Italians were depicted as being prominently involved in crimes of violence, the Irish in drunkenness and vagrancy, and Jews in prostitution and crimes against property" (Mauer 1999:119). Today, it is blacks and Hispanics who are the minorities misrepresented in the court system. In discussing death sentences that are discriminately meted out, Mauer (1999) states this discrimination is more "subtle" than overt racism:

Prosecutors do not state in court, nor do they necessarily believe, that they are seeking the death penalty because a black defendant killed a white person, nor do judges offer this as their rationale for imposing the death penalty. In fact it is far more likely that in the late twentieth century, in contrast to earlier times, patterns of discrimination reflect *unconscious* biases rather than blatant attempts to oppress African Americans. (P. 130)

These past studies, except for a few (Spohn and Holleran 2000; Steffensmeier and Demuth 2000), have examined the sentencing

differences between black and white male defendants, largely ignoring Hispanic defendants. Hispanics, whose numbers have reached over 35 million in the United States, are one of the fastest growing minorities in the United States (Guzman 2001:1). Again, although many studies have examined differences between race and ethnicity, comparisons between females of differing races or ethnicities have been few in numbers.

### **Sentencing Under the Rule of Law**

The United States legal system was founded on the basis of just and equal punishment. The Sixth Amendment of the Bill of Rights states all persons have a right to trial by an impartial jury. But past research has shown that punishment between races and genders has not been equal. Although overt racism and sexism might rarely exist in the court system today, some have argued that a more subtle bias exists in the minds of judges and jurors (Daly 1987; Mauer 1999). New sentencing laws have tried to eliminate any possibility of discrimination. Mandatory sentencing has removed the discretionary powers of judges so that non-legal variables cannot be considered. While proponents believe this is the best way to ensure fair and equal treatment, research has shown that sentencing disparities continue to exist (Spohn 2000). Some even argue that recent sentencing laws imposed to be “gender neutral” are actually treating women more unfairly (Nagel and Johnson 1994).

While research has shown varying kinds of sentencing disparities, it obvious that the percent of minorities in prison is disproportionate to

their percent in the United States population. The U.S. Sentencing Commission's data file (2000) shows that in the fiscal year 2000, the total number of whites incarcerated in federal prisons for all offenses was 17,755 (30.1%) while the number of blacks was 14,747 (25%) and Hispanics was 24,222 (41%). The percent of each group in the general population from the 2000 United States census is 69.1% white, 12.3% black and 12.5% Hispanic (U.S. Census Bureau, 2000). Obviously, the prison population does not reflect the population of society (see Table 1).

Today, although the number of imprisoned males still exceeds the number of imprisoned females, because of new determinate sentencing laws (mainly for drug violations), females are gaining numbers in our prisons. The Bureau of Justice Statistics (2001) reports that the number of women serving local jail time in 2001 was 72,621 as opposed to 37,198 in 1990. That is an increase of 52% in eleven years. As noted above, the studies that have examined women and sentencing disparities are primarily in the context of comparing their situations to men. Furthermore, most of the past literature has focused on existing data sets, while actual juror attitudes toward sentencing defendants using mock jurors, has been ignored.

While America prides itself on having a fair and equal judicial system, the current sentencing structure has shown that extra-legal variables such as race and gender affect jurors and judges decisions.

The debate continues on how to eliminate bias and whether all extra-legal variables can or should be removed from sentencing decisions.

### **Review of the Literature**

A great deal of research has been done on sentencing disparities in general. These studies are grouped into two sections: articles that found sentencing disparities based on race or ethnicity and gender and those that found no disparities between race and gender. A comprehensive review of the literature follows.

#### *Disparities in Sentencing Exist*

*Race or Ethnicity.* Sellin (1935) completed one of the first studies examining sentencing disparities based on race and ethnicity. He examined white, black and foreign-born white male defendants (such as Italian, Polish, Canadian, German and Russian) and found that when looking at sentencing for the same crime, foreign-born white males received the longest sentences followed by black males and then white males. This was during a time in U.S. history where there was a large influx of immigrants who were often viewed as outsiders.

Gordon et al. (1987) examined whether jurors would sentence black and white defendants differently for blue-collar offenses and white-collar offenses. They showed college students two similar crime scenarios (one white-collar and the other blue-collar), differing only by race of defendants. The authors found “the black defendant who committed the burglary was given significantly longer jail sentences than

the white defendant. Students who received the embezzlement crime description gave the white defendant longer jail sentences than the black defendant” (Gordon, et al. 1987:195). This study suggested that, as a society, we associate certain types of crime with certain groups of people and punish accordingly.

Crawford et al. (1998) examined sentencing outcomes on 9,690 male offenders who were eligible to be sentenced under the habitual offender laws. Of these eligible offenders, blacks were sentenced as habitual offenders significantly more than whites. After controlling for prior record and crime seriousness, the authors found that black defendants were 69% more likely to be defined as habitual offenders than non-blacks (Crawford, et al. 1998:496). These differences were larger in crimes that were less serious such as property crimes and drug offenses.

Steffensmeier et al. (1998) looked at the effects of race, age and gender on sentencing outcomes. Using a data set of sentencing outcomes from the Pennsylvania Commission on Sentencing, the authors found that when race, age, and gender are grouped together, young black males receive the most severe sentencing of any group. The importance of this finding, according to the authors, is the “ways in which judges and others involved in sentencing decisions assess offenders and the anticipated consequences of sentencing decisions” (Steffensmeier, et al 1998:769). In other words, judges and others sentence young black

males more severely because they are perceived as violent and/or potential repeat offenders.

In answering Steffensmeier's request for further research in his Pennsylvania study, Spohn and Holleran (2000) examine how race effects "may be mediated by other factors" (Spohn and Holleran 2000:281). By duplicating the previous research and including Hispanics as well as blacks, the authors tested for interactions between ethnicity, age, and gender. They examined three different urban jurisdictions in Chicago, Miami, and Missouri, by analyzing a data set of 6,638 felony offenders. Their findings suggest that each offender characteristic had a direct effect on the decision to incarcerate in at least one of the jurisdictions. They also found results consistent with Steffensmeier's, that young black males, as well as young Hispanic males, are at greater risk of incarceration than older white males.

Crawford (2000) studied the race and gender effects of habitual offender sentencing in Florida. Looking at 1,103 female offenders in the Florida Department of Corrections from 1992-1993 who were eligible to be sentenced under the habitual sentencing guidelines, and controlling for legal variables, race was "found to be a relevant and statistically significant factor in the enhanced sentencing of female offenders" (Crawford 2000:263). In other words, black women were more likely to be labeled a habitual offender under the law than white females. Not only does that statute seem to apply the enhanced sentencing in a

discriminatory manner, it was also applied discriminatorily in a “geographically localized manner” (Crawford 2000:273).

Steffensmeier and Demuth (2000) examined the ethnicity of the defendant and sentencing outcomes. The authors fill a large gap in the literature by examining Hispanics, who were left out of the previous literature. Their main hypothesis is that “Hispanic defendants are sentenced more harshly than white defendants and perhaps even more harshly than black defendants” (Steffensmeier and Demuth 2000:708). Using sentencing data from the U.S. Sentencing Commission from 1993 to 1996 (using only male defendants), the authors found for both non-drug and drug sentencing outcomes “white defendants are treated most leniently, Hispanic defendants are treated most harshly, and black defendants fall in the middle” (Steffensmeier and Demuth 2000:718).

Lynch and Haney (2000) examined racial discrimination in capital cases and how the understanding of mitigating evidence played a part in the jurors’ decision-making process. By using mock trials with similar circumstances, but varying the defendant and victim’s race, the authors show “those who sentenced a black defendant were significantly more likely to undervalue, disregard and even improperly use mitigating evidence as opposed to those who sentenced a white” (Lynch and Haney 2000:347). This suggests that race can have a significant influence on sentencing decisions in capital cases.

Conley, et al. (2000) conducted a mock jury trial of a defendant accused of vandalism. Two videotaped proceedings were used in which the defendant was either white or black. The white defendant was found guilty at a higher rate than the black defendant, but when the study was redesigned to change the “racial ecology” of the courtroom, in other words, change the race of several actors in the courtroom, there was no significant difference between the conviction rates of the white and black defendant. The authors determine that because a white prosecutor was charging the black defendant in the first study, the witness testifying against him was white and the judge was white, the jurors felt the black defendant was isolated and they sympathized with the defendant.

*Gender.* Past studies examining gender have had significant results as well. They have opened the door to the question of why women are treated more leniently in the court system than men.

Stephan (1974) addresses the issue of sex prejudice in jury simulation. Eighty-four males and 101 female college students read a synopsis of a murder trial. In one version of the trial the defendant was male and was charged with murdering his wife. In the other version a woman defendant was on trial for murdering her husband. The subjects were told to find the defendant guilty or not guilty and impose a sentence. The author was examining five possible outcomes: “(a) men will favor female defendants and women will favor male defendants (b) men will favor male defendants and women will favor female defendants,

(c) both men and women will favor female defendants, (d) both men and women will favor male defendants (e) men will favor neither sex and women will favor neither sex” (Stephan 1974:305). Hypothesis (b) was the only one supported by the data. The author concludes that the paternalism hypothesis is not supported because the female defendant was not treated more leniently than the male defendant and there was no difference in sentencing for the male and female defendants who were found guilty. (Stephan 1974:308-9).

Curran (1983) reviews the two main hypotheses regarding sentencing differentials in gender: the chivalry hypothesis and the labeling theory. Curran explains the chivalry hypothesis as suggesting that men, in their traditional sex roles, have paternalistic attitudes and take a “protective stance towards women” (Curran 1983:42). Labeling theory, on the other hand, argues “less powerful elements of society will receive less considerate treatment and harsher disposition from the system” (Curran 1983:42). In other words, because these people have fewer resources they are not able to use the system to their advantage, and therefore they receive the harsher punishments. Using criminal case records from Dade County, Florida, the author found that when other variables are held constant, sex is not significantly related to prosecution or conviction. However, at the sentencing level “sex does have a significant independent effect on the outcome” when offense seriousness and criminal history are controlled (Curran 1983:51). The author

concludes that neither the chivalry hypothesis nor the labeling theories are consistent with the findings. Equal treatment between male and female existed in prosecution and conviction.

Kruttschnitt (1984) considers whether conviction decisions differ between males and females. Using a data set of offenders on probation for theft, forgery, or drug law violations between the years 1972 and 1976, the author found that in pretrial release decisions, defendants are more likely to be released if they are female and if the defendant lives with others, while setting of bail is more likely if the defendant acted alone, is white, and has few young children (as opposed to more young children). The presence of another caretaker of the children did not affect this outcome. For post-conviction decisions, Kruttschnitt found that being female is one factor that increases the chance of receiving a light sentence. Another important finding was that a female is more likely to be released on their own recognizance if “(1) she committed an offense that carries a light maximum statutory penalty, (2) she has children living with her and (3) she has a number of young children” (Kruttschnitt 1984:224).

Ghali and Chesney-Lind (1986) investigated the differences in treatment that exist between men and women in the different stages of the criminal justice system. Using 5,226 records from four data files of adults arrested in Honolulu for Part One Offenses from September 1979 to December 1980, the authors found that gender does influence the

outcome of some of the stages in the criminal justice system. These influences are not in one direction, however. For example, their results show a “significant effect of gender on the probability of being sentenced to probation” but there “does not seem to be any evidence that females receive preferential treatment in the type of sentence for those convicted of larceny and tried at the District Court” (Ghali and Chesney-Lind 1986:167). The authors also found that when looking at the decision to prosecute felony auto theft, the probability of being prosecuted for this offense is twice as high for females than for males.

Daly (1987) examined the relationship between sex effects and sentencing outcomes. Using a data set of defendants who were prosecuted in a lower New York City criminal court from 1974-1975, Daly found that both familial male and female defendants are sentenced less harshly than nonfamilial defendants. Daly defines familial individuals as those with familial responsibilities” (Daly 1987:154). In addition, she found familial differential treatment varied between men and women. Daly explained these results by stating that court personnel are more concerned with whether defendants have “ ‘day-to-day’ responsibilities for the welfare of others” (Daly 1987:167).

In a later study, Daly (1989) examines judicial concerns with respect to women, and found that judges tend to be more lenient to mothers facing sentencing if they are the primary caretakers of their children. Daly interviewed judges from Massachusetts and New York

and observed courtroom proceeding to determine the factors that judges use in considering sentencing of men and women defendants. Daly characterizes her finding as judges being paternalistic to protect the children of the defendants by giving more lenient sentence to women with children.

Bickle and Peterson (1991) measured the effects of gender-based family roles on sentencing outcomes of 124 female and 390 male defendants convicted of forgery from 1973 to 1978. Seriousness of offense, prior record, bail status, plea and number of counts were used as control variables. Using several different models to test the effects, the authors found varying results. In examining familial criteria between black and white females, “black females benefit from performing the emotional support role well...By contrast, white women are more likely than black women to be beneficiaries of familial paternalism for having emotional dependents” (Bickle and Peterson 1991:390).

Steffensmeier, et al (1993) took a data set of 61,294 cases from the state of Pennsylvania from 1985-1987 and examined the gender differences in the decision to imprison and length of sentence. Their findings show that gender has a “small-to-moderate effect” on the decision to imprison across all types of offenses (Steffensmeier, et al. 1993:426). There was no effect on the sentence length decisions. The authors also examined whether judges are more punitive toward black than white women. They found “black female defendants receive prison

sentences that, on average, are about three months longer than white female defendants” (Steffensmeier, et al. 1993:430). When looking at the jurisdictions in Pennsylvania that used downward departures from the sentencing guidelines, five reasons were given that favored the female defendant, including “defendant is caring for dependents or is pregnant” (Steffensmeier, et al. 1993:433).

Mazzella and Feingold (1994) examined how extralegal factors can have an effect on sentencing outcomes. They conducted a meta-analysis by examining mock jury research and “assessed the effects of physical attractiveness, race, socioeconomic status and gender” (Mazzella and Feingold 1994:135). Mock jurors were found slightly more likely to be more punitive toward male defendants than females. They also found that female defendants were treated much more leniently than male defendants for the crime of theft.

#### *Studies That Found No Disparities in Sentencing*

*Race or Ethnicity.* Nemeth and Sosis (1973) conducted a simulated jury study to test how the characteristics of a defendant effects juror’s decisions. Eighty paid student volunteers were selected to read one of four descriptions of a crime. Each description varied by race of defendant (black or white) and attractiveness. Attractive was defined as likable, middle-class, upstanding citizen with no criminal record. Unattractiveness was defined as working-class, marital difficulties and criminal record. The subjects were asked to attribute guilt and length of

sentence. Although the findings did show that the unattractive defendant was sentenced more harshly than the attractive defendant, the race of the defendant did not affect sentencing.

Kleck (1981) examined racial bias in sentencing of capital and non-capital cases. By examining published research and execution rates by race from 1930 to 1967, Kleck concluded that except in the South, the death penalty has not been imposed discriminatorily toward blacks. According to Kleck, “general or widespread overt discrimination against black defendants” does not exist, although “there is evidence of specific jurisdictions, judges, crime types, etc” (Kleck 1981:799). In other words, although discrimination generally does not take place in the courtroom, certain jurisdictions have found to favor white defendants over black defendants.

Thompson and Zingraff (1981) examined prior studies of sentencing disparities and found “these studies...have failed to provide consistent findings concerning the existence of discrimination in criminal sentencing” (Thompson and Zingraff 1981:869). They took a closer look at the issue and found that “prior incarceration is the only variable which has a relationship with sentence length” (Thompson and Zingraff 1981:874).

Logan and Dilulio (1992) believe from their research that racial discrimination does not exist in the criminal justice system the way others have noted. In their “Ten Deadly Myths,” the fifth deadly myth

states, “The U.S. Criminal Justice System is Shot Through with Racial Discrimination” (Logan and Dilulio 1992:24). They state there is “simply no empirical evidence to support the view that African-Americans...are far more likely than whites to be arrested, booked, indicted, fully prosecuted, convicted, be denied probation...or be denied furloughs or parole” (Thompson and Zingraff 1981:28).

*Gender.* Spohn, Welch and Gruhl (1985) examined whether women receive paternalistic treatment in sentencing. Using two data sets of 50,000 felony cases from 1968 to 1979, the authors selected the twelve most common offenses. Without controlling for legal and extralegal variables, the data shows that women are treated “much more leniently than men” (Spohn, et al. 1985:181). When controlling for the legal and extralegal factors that influence sentencing, it reduces the disparity in the mean sentence so that it is no longer statistically significant. However, they did find that black women, while not incarcerated any less than white men, are incarcerated significantly less often than black males.

#### *Other Articles Examining Disparities*

Feild and Barnett (1978) examined whether students acting as mock jurors would impose sentence lengths differently from the citizens of the general population acting as mock jurors. To test this hypothesis, the authors developed a crime vignette, with four versions, to examine sentencing disparities between attractive and non-attractive defendants

as well as differences between black and white defendants. They selected a total of 160 respondents, 80 of the respondents were full-time college students while the other 80 were from the general population. The respondents were asked to determine the length of sentence for the defendant. The overall findings showed disparities in sentencing between the attractive and non-attractive defendant but no disparities between the two races. The attractive defendant received a lighter sentence than the unattractive defendant. However, the authors found that college students were significantly more lenient in sentencing all the defendants than were the non-students. The authors explained that this finding could affect the ability of studies that use only student respondents to generalize their findings to the general population.

Bray et al. (1978) examined the effects of defendant status on mock jurors decision-making. Using students and community members as mock jurors, the authors presented a 30 minute recording of a mock murder trial in which two male defendants were on trial for murdering a female in her apartment. The authors used two versions of the trial, one in which the defendants were medical interns (high status) and in the other version, the defendants were maintenance employees (low status). The decision of guilt or innocence was not affected by the status of the defendant, but jurors gave longer sentences to the high status defendants than the low status defendants. While this finding seems to

be in opposition to what would be expected, the authors explained that jurors felt the interns should be more responsible for their actions.

### **Paternalism Theory**

The theory used most frequently to explain the differences in sentencing between male and female defendants is paternalism. This theory states that the legal system is protective of women defendants because they are viewed as weaker and less able to handle the harshness of the justice system (Curran 1983, Spohn, et al. 1985). Paternalism also takes into account the parental status of the female. The judges impose lighter sentences on females partly “because they assume that many female defendant’s have young children and thus feel that sending these defendants to prison would both disrupt family life and place the burden of caring for the children on society” (Spohn et al. 1985:179).

Daly (1989) suggests that this theory is too broad and breaks it down into two distinctions: “judicial concern for protecting *women* and concern for protecting *children and families*” (P. 11). She notes that the concern for protecting children is more of a practical issue, while the attitudes for protecting women is more paternalistic.

While paternalism theory has been used to explain sentencing differences between male and female defendants, Daly’s theory of protecting children and families can be applied when examining differences between female defendants with and without children.

### **Liberation Hypothesis**

It has been suggested that jurors, when faced with insufficient evidence, turn to extra-legal factors to decide the guilt of the defendant. This approach is called the liberation hypothesis, and was first used by Kalven and Zeisel. Kalven and Zeisel (1966) suggest that when evidentiary support is borderline, the jurors feel liberated to bring “sentiment” into their decision-making. The authors explain how jurors reason by including extra-legal variables in decision-making, whether consciously or not. Building on this premise of bringing sentiment into the decision-making process, the authors point to several factors that can have influences on jurors such as race, age, appearance, sex and family ties. In explaining how family ties affect jurors, the authors note, “(w)hen the burden is so great, the jury fears that by punishing the defendant they will punish an innocent family. Not only did family have influence, but having the family in the courtroom, had an effect on the jurors” (Kalven and Zeisel 1966:207).

In examining rape cases, Reskin and Visher (1986) found that jurors turned to factors such as the defendant’s appearance or the lifestyle of the victim to make their decisions. The authors examined the effects of five extra-legal variables on juror responses in 38 sexual assault trials: defendant’s appearance, defendant’s employment status, victim’s apparent carelessness, victim’s moral character and jurors “tough on crime” attitude. The findings showed that all the extra-legal

factors in their study significantly affected the verdicts in the cases without controlling for hard evidence. In testing the liberation hypothesis, the authors found that the influence of the five extra-legal factors was greatest in cases with weak evidence.

Spohn and Cederblom (1991) build on the liberation hypothesis by examining the theory that in less serious cases, judges will use race as an extra-legal factor in determining the guilt and sentencing of the defendant. The authors found that in less serious cases, defendant's race was a factor in the judges decision to incarcerate, however length of the sentence was not at all explained by race. In the more serious cases, race was not a factor in either the decision to incarcerate or in sentencing length. The liberation hypothesis, therefore, was partially supported in this study.

### **Discussion**

These studies show the range of findings in the issue of sentencing disparities. More often than not, studies find some sort of disparity in sentencing. Jurors are supposed to leave any preconceived notions about a person's background outside of the courtroom, but the studies have shown that they do take into account extra-legal variables such as race and personal responsibilities, which can cause disparities in sentencing. The research examining data sets does not capture the perceptions and stereotypes jurors bring with them into the courtroom and the few studies that have looked at juror's attitudes toward

defendants have not examined female defendants. By looking at whether other extra-legal variables, such as motherhood and ethnicity, play a role in sentencing decisions of jurors, this study will help clarify whether jurors bring perceptions and biases with them into the courtroom, such as suggested by the liberation hypothesis. The studies that examine data sets cannot examine this effect; they can only examine the outcome and perhaps, infer the effect from the outcome. Using a crime vignette and pictures of defendants, we can study the attitudes and the decision making process of mock jurors more readily. This paper will address two factors that could influence the sentencing outcomes of women: motherhood and ethnicity.

### **HYPOTHESES**

The hypotheses tested concern the importance societal attitudes toward women and minorities play on determining the severity of sentencing. Specifically, the four hypotheses are:

*Hypothesis 1:* For the same crime, female defendants without young children will receive longer sentences than female defendants with young children.

*Hypothesis 2:* For the same crime, female defendants without young children will be found guilty more often than female defendants with young children.

*Hypothesis 3:* For the same crime, Hispanic female defendants will receive longer sentences than white female defendants.

*Hypothesis 4:* For the same crime, Hispanic female defendants will be found guilty more often than white female defendants.

## **CHAPTER 2**

### **METHODOLOGY**

#### **Instrument Construction**

To test the hypotheses, a questionnaire with a written crime vignette depicting a theft was constructed (see Appendix). The crime of theft was chosen for two reasons. First, it is a nonviolent offense therefore I hoped to reduce the emotional response that a violent offense might automatically produce. Studies such as the one conducted by Crawford, et al. (1998) have shown that disparities are often greater with less severe and nonviolent crimes. Mazzella and Feingold (1994) also found for all the crimes they examined that theft produced the greatest sentencing differences between male and female defendants. Second, more females are in prison because of some type of theft offense than any other crime except drug cases, thus making the vignette more realistic.

Four different versions of the questionnaire were designed, with each version identical except for the defendant characteristics (Hispanic/mother, white/mother, Hispanic/childless and white/childless). Each vignette contained a picture of the defendant. Pictures

were obtained from two women, one Hispanic and the other white, who agreed to contribute their pictures to the questionnaire. To control for other extra-legal variables that could have an effect on jurors' decisions, the pictures taken were as similar as possible. Both women are in their early twenties, both have their hair pulled back and neither is smiling in the picture. The pictures were taken of the head and shoulder area emulating a "mug shot."

The respondents were asked to read the vignette and determine the guilt or innocence of the defendant. If respondents chose "guilty," they were then asked to give what they believed to be an appropriate sentence. The questionnaire also covered demographic variables including age, sex, ethnicity, college major, semester hours completed and a self-measurement of liberalism. Finally, a 16-item Likert-type scale was also created to measure the attitudes of the respondents concerning motherhood and minorities. The scale consisted of 5 questions that were designed for this study to measure the attitudes respondents have towards motherhood, 3 questions that were designed to measure the respondent's attitudes towards minorities and 6 questions designed to measure attitudes towards crime.. The scale was used to determine if these attitudes would have an effect on sentencing outcomes. The five possible answers for each item on the scale ranged from Strongly Agree to Strongly Disagree.

### **Data Collection**

The questionnaire was distributed to 362 undergraduate and graduate students at Southwest Texas State University. This sample was a convenient, non-random sample. In the summer of 2002 students were approached in twelve classes during regular class hours with the permission of the instructor. Seven of the classes were in sociology, four criminal justice, and one in mass communications. The four versions of the questionnaire were distributed randomly to the respondents along with a letter of explanation. Students were told that their participation was voluntary and their answers would remain confidential. Respondents were told not to place any identifying marks on the questionnaires so they would remain anonymous.

### **Statistical Analysis**

Two dependent measures for sentencing were used: the guilt of the defendant and the defendant's parental status. Frequency distributions were performed for every variable to determine means and percentages so comparisons and correlations between variables could be calculated. Cross tabulations were also run to see the relationship among all of the variables. To test hypotheses 2 and 4, Chi square analysis was performed to examine the relationship between the dichotomous dependent variable of guilt and the ethnicity and motherhood of the defendant. To further explore the results of these data, binary logistic regression was also used to examine the effect of the

two independent variables on the decisions on the finding of guilt. Binary logistic regression was chosen because it is suited to studies where the dependent variable is dichotomous and odd ratios can be estimated for each of the independent variables. Dummy variables were coded to group the defendants into four categories: white defendant with children (WWC), white defendant without children (WWOC), Hispanic defendant with children (HWC) and Hispanic defendant without children. The independent variables of the respondent's characteristics were included as well. Factoring in the respondents characteristics gave other points of comparison to examine additional findings. To test hypotheses 1 and 3, independent samples T-Tests were performed to compare the means of the sentence to the independent variables. A scale item analysis was used to test the effectiveness of the 16-item Likert scale. The researcher set alpha = .05 as significant for all statistical procedures.

## **CHAPTER 3**

### **FINDINGS**

#### **Characteristics of the Sample**

There were 362 respondents to the questionnaire. The four versions were equally distributed randomly among the 362 respondents. Table 2 shows the characteristics of the respondents. The age range of the respondents was 18 to 51 with the majority of the respondents between the ages of 18 and 25 (84.3%). Females totaled 61.8% of the respondents, while the males constituted 38.2% of the respondents. Seventy percent of the respondents were white and 19.6% were Hispanic. The respondents were asked how liberal they would define themselves and 38.9% stated they were liberal or somewhat liberal, 23% said they were conservative or somewhat conservative and 38.1% stated they were “middle of the road.” Sixteen percent of respondents were Sociology majors, 26.4% were Criminal Justice majors and 57% were coded as other majors.

### **Test of Hypotheses**

*Hypothesis 1: For the same crime, female defendants without young children will receive longer sentences than female defendants with young children.* An independent-samples T-Test was performed to compare the mean sentence between defendants with and without children. Although the female defendants without children did receive longer mean sentences, this difference was not statistically significant (see Table 3). This hypothesis, therefore, is rejected.

*Hypothesis 2: For the same crime, female defendants without young children will be found guilty more often than female defendants with young children.* To test hypothesis 2, the data were analyzed using chi-square to find a relationship between the versions of the questionnaire (i.e. female defendants with and without children) and guilty or not guilty verdicts. The defendants without children were found guilty more often than the defendants with children (see Table 4). This finding was significant at the .05 level, therefore, the hypothesis is not rejected.

*Hypothesis 3: For the same crime, Hispanic female defendants will receive longer sentences than white female defendants.* Using independent-samples T-Test to test this hypothesis, the findings show that the white defendants actually received slightly longer mean sentences (7.41 months) than the Hispanic defendants (7.23 months).

The difference in the means, although small and not statistically significant, is the reverse of the hypothesis. This hypothesis is rejected (see Table 5).

*Hypothesis 4: For the same crime, Hispanic female defendants will receive guilty verdicts more often than white female defendants.* To test hypothesis 4, the data were analyzed using chi-square to find a relationship between the versions of the questionnaire (i.e. Hispanic defendants and white defendants) and guilty or not guilty verdicts. This hypothesis is also rejected, although the Hispanic defendant was found guilty slightly more often than the white (63.9% and 61.6% respectively). This finding was not significant (see Table 6).

### **Other Findings**

Respondents were asked when making a decision about guilt to write the reasons for their verdict. This activity produced some interesting comments. In support of hypothesis 2, several respondents wrote that the fact that the defendant had children influenced their decisions. A male respondent who selected not guilty explained, "I don't want to take a mother away from her children." Another male respondent who found the defendant not guilty stated "I don't think she would risk going to jail when she has two kids." Other respondents felt the same way: "I don't believe she would jeopardize her family" and another stated, "why would she risk her job and her children." The respondents who shared these sentiments were both male and female

and expressed their thoughts of both the white and Hispanic defendant.

Other statements made were:

“...she has two kids she would not want to jeopardize them in any way.”

“It seems as though her lifestyle (i.e.) her children, would steer her away from committing such a crime.”

“If she has two small children she probably would not engage in such activities.”

“...why risk something like that when you have two children to worry about.”

These statements support the hypothesis that having children affects sentencing outcomes. They also suggest that the respondents view mothers of young children as less likely to commit crimes, or, if they do believe mothers have committed crimes, they feel mothers deserve to be found not guilty because of their children. Even though sentence length did not vary significantly between defendants with or without children, we can see that some respondents chose to find her not guilty altogether instead of giving her a lighter sentence.

Although not part of the original hypotheses, the data were further analyzed in reference to other variables including the characteristics of the respondents. When the respondents are collapsed into two groups, dominant group (white) and minority group (all other ethnicities), the ethnicity of defendant was a factor in deciding guilt. Minority respondents found the white defendant guilty 76.5% of the time and the Hispanic defendant guilty 51.9% of the time. The dominant group (white

respondents) found the white defendant guilty only 55.2% of the time while finding the Hispanic guilty 68.8% (see Table 7). These differences were significant for both groups. In other words, white respondents found the Hispanic defendant guilty more often than the white defendant and the minority respondents found the white defendant guilty more often than the Hispanic. This helps explain why no differences were found when examining hypothesis 4. When the white respondents found the Hispanic guilty more often than the white defendant and the minority respondents did just the opposite, the two groups cancelled each other out resulting in no significant differences. But we can see that depending on the ethnicity of the respondents, the defendant's ethnicity affected sentencing outcomes.

Ethnicity of the defendant was also a factor when respondents were categorized by major (see Table 8). While sociology majors showed no effect, criminal justice majors found the Hispanic defendant guilty more often than the white defendant.

In further analyzing the data, other interesting findings emerged. Binary logistic regression was used to analyze the dichotomous dependent variable of guilt and its relation to the different independent variables. Using binary logistic regression allows examination of more than one independent variable concurrently. New independent variables were recoded to four new dummy variables: white with children (WWC), white without children (WWOC), Hispanic with children (HWC), and

Hispanic without children (HWOC). WWC was used as the reference variable to compare to the other three variables. The respondents characteristics were also included in the analysis, as well as the attitudes towards motherhood. By examining these independent variables we can further examine how the characteristics of the respondents will influence the sentencing decisions. Table 9 reports the logistic regression and estimated odds ratios for all predictors. Coefficients are significant at  $p < .05$  or less. Findings of guilt are more likely for the white defendant without children (HWOC) in relation to the white defendant with children (WWC). In other words, white women defendants without children were more than twice as likely to be found guilty than white women with children.

As noted previously, white respondents found Hispanic defendants guilty more than white defendants and vice versa for Hispanic respondents. To further compare the effects of the same independent variables on guilt between white and minority respondents, binary logistic regression was run twice; once selecting only white respondents and the other with all other minority respondents. Separating the respondents into two sub-populations will show if the race of the respondent will have an effect on the guilt verdicts of the four versions of the questionnaire. Table 10 presents the results for the minority respondents. Interestingly, the coefficient for the Hispanic defendant with children is negative, meaning that for minority respondents, the

Hispanic defendant with children was more likely to be found not guilty compared to the white defendant with children. Table 11 presents the results of the findings for white respondents only. Excluding all minority respondents, the white woman without children, Hispanic woman with children and Hispanic woman without children, were each more than twice as likely to be found guilty as was the white woman with children.

Item analysis revealed that four items (2, 10, 11 and 15) created a scale (MHOOD) measuring respondents' views toward motherhood.

These four statements on the scale were:

Mothers with children should never be separated.  
Women who have children should be given special consideration.  
The worst thing I can imagine is to be without a mother.  
Women should put their children before everything.

The item analysis showed these four to be the best predictors of attitudes towards motherhood. These four items were coded as one variable (MHOOD) and added together to produce a scale score between 1 and 20, the lower the total, the higher the value placed on motherhood. This variable was added to the logistic regression to determine if attitudes toward motherhood had an effect on the sentencing outcomes. The results show that views toward motherhood did not have a significant effect on sentencing outcomes. In other words, respondents who agreed with the four statements were not any more likely to find white and Hispanic mothers with children not guilty than the other defendants without children.

## **CHAPTER 4**

### **CONCLUSIONS**

#### **Methodological Problems**

There are a few methodological problems with this study. First and foremost, the sample was not randomly selected and only consisted of college students. To get a true representative sample, the general population should be sampled as to get a greater variety of respondent's age, socioeconomic and cultural backgrounds. Therefore, caution should be used when making inferences about the finding as well generalizing the findings to the larger population.

Because this survey was conducted with a sub-sample of the population and not a random sample, the effects of motherhood and the defendant's and respondent's race should be interpreted with caution. The population of college students used from this study were taken from specific classes of Sociology and Criminal Justice, therefore, the students may have views toward motherhood that could be different from the general population at large. This could be true as well for the findings

towards ethnicity. While the majority of respondents were in their early 20's and white could have had an effect on the outcome of this study.

Another problem comes from using a mock crime vignette instead of an actual jury trial. Jury trials actually have more information presented to the jurors related to the crime and other factors such as demeanor and testimony of witnesses, the likeability of the prosecutor and defense attorney as well the general atmosphere of the courtroom (Feild and Barnett 1978, Conley, et al. 2000). However, using the crime vignette is the next best option. Crime vignettes “help to standardize the social stimulus across the respondents and at the same time makes the situation more real” (Alexander and Becker 1978:103). In other words, crime vignettes are often used in studies because they provide uniformity and control over the situation. Studies reviewed in this paper have also used crime vignettes (Stephan 1974, Gordon, et al. 1987) and although they are not a substitute for actual jury trials, they are useful to manipulate and control variables, which is harder to do in an actual jury trial. Crime vignettes are also better than data sets to explore juror's attitudes with respect to defendants. “Groups differences in attitudes can be measured as long as there is an approximately equal distribution of the different vignette versions across the sample group” (Alexander and Becker 1978:94).

Because this study was conducted in south central Texas, Hispanics make up a larger proportion of the general population. A

Hispanic was chosen as the minority defendant because Hispanics are the largest minority population in this area of Texas. This, however, could possibly have skewed the findings of ethnicity. Hispanics have constituted almost half of the population in this area for many years, therefore there may not be as much bias as there would be another minority. Using a black defendant might have produced some different results because blacks constitute a smaller percentage of the general population in the study area and respondents could have found them more threatening. Steffensmeier and Demuth (2000) explain that there tends to be more bias toward faster growing minorities because the dominant group is threatened which leads to social conflict. In other areas of the United States, this is true for the fast growing Hispanic population, but because they have been a dominant presence in South Texas for many years, this might not be the case for this study.

### **Discussion of the Findings**

Although methodological problems existed, the study of the four hypotheses and other findings offer an interesting addition to the current literature. The primary purpose of this project was to further the study of disparities by examining perceptions toward female criminal defendants, with or without children and of certain ethnicities. Previous studies have been inconsistent on whether sentencing disparities exist due to extra-legal variables. While more often than not, studies find

some sort of disparity, the methodological problems facing this sort of study limits the amount of information we can find.

This study was designed to control for the type of crime and the circumstances the crime was conducted in. The researcher hoped by controlling these variable conditions, that the findings would show if societal attitudes toward race and motherhood would affect sentencing outcomes. Although race and ethnicity as a cause of sentencing disparity has been a hot topic for several decades, this study did not find any disparity between the Hispanic and white defendant in either the number of guilty verdicts or the mean length of sentence. Hypotheses 3 and 4 were both rejected. However, with further analysis, we found that because white respondents were sentencing the Hispanic more often than the white defendant and the minority respondents were doing the opposite, these differences were cancelled out when combining all of the respondents. This means that ethnicity was a significant factor, but only when factoring in the ethnicity of the respondent.

The findings for hypothesis 2 were consistent with previous research. Previous research has found that differences take place more in the guilt phase of sentencing than in the length of prison term, so it is not surprising that only the differences in the guilt phase were significant when comparing defendants with and without children. What is more interesting is the fact that respondents were blatant in their reasons to find defendants with children not guilty. This could mean as a

population we are not as willing to send a female criminal to jail because she has children. These findings show that jurors do take into account the extra-legal variables of ethnicity and motherhood when determining guilt. While our legal system is based on equal treatment under the law, we can see that juror's perceptions and attitudes toward the defendant do factor into their decision-making process.

### **Recommendations for Future Research**

Additional studies would be beneficial to expand on this research. While the amount of research on sentencing disparities is enormous, narrowing the topic down to the ever-growing population of women defendants is important to further understand the issues of sentencing disparities and how these disparities related to the female population. While this study focused on Hispanic and white women, repeating the study in this area with black and white women defendants would be interesting and could provide different results because the black population is so small in this area.

This study found that women with children were found guilty less often than the women without children. They also received shorter sentences. This would be an important area of research to further explore. Coming into a courtroom as a juror, individuals are told to follow the letter of the law and only stick to the facts of the case. Obviously, this did not happen in this study. Whether this is the correct thing to do or not remains to be seen. Is it better for our society to spare

a criminal a record so she will not be taken away from her children? Is it acceptable to assume as some respondents did that she did not commit the crime because she wouldn't want to jeopardize her family? These questions are difficult to answer. Is it fair for someone who commits a crime to be found not guilty because the person has children, whereas someone else who commits the same type of crime is sent to prison partly because that person does not have family ties?

While society agrees that race, ethnicity and even gender shouldn't influence our decisions to sentence a defendant, the question of family ties is more of a debate. Sentencing a woman with small children to prison could cause more harm to society than letting her go free. The Bureau of Justice Statistics (1999) reports that 1.5 million American children had a parent in prison in 1999. These children are often displaced from their homes to live with relatives, in single parent homes or placed in foster care (Bureau of Justice Statistics 1999:2). The effects of having a parent in prison on their children may cause more problems for society in the long run. On the other hand, depending on the individual, keeping a mother with her children when she is not a good parental influence could have negative effects as well. A case in point, the majority of parents (85%) in state prison report prior drug use and 43.9% of parents in prison were incarcerated for violent offenses (Bureau of Justice Statistics 1999:5).

This study confirms that there are still questions that need to be answered. While this experiment began to answer some questions about the perceptions society has regarding certain defendants and the effects extra-legal variables have on sentencing, the study can be expanded to find more answers. Replicating this study with a random general population is an obvious start. By using random sampling the findings can be generalized to the entire population. Another direction to take is to include men who have young children. This way we can determine if having small children who must be cared for would have the same effect on sentencing outcomes with male defendants, or if the population views women as the more important caregiver. Also defendants of other races, such as blacks, could be included in the study to see if the general population has biases toward them.

In conclusion, this study has contributed to the important topic of sentencing disparities in the United States court system. By continuing to examine sentencing disparities between women, sociologists can help the legal system cope with the ever-growing population of female defendants. More studies are needed to determine the biases that exist in the court system today, as well as the public's perceptions towards these biases. This study shows that this topic should not be ignored and only by furthering examining the disparities in sentencing can we begin to understand why there are disparities and how they can be resolved. The results of this study provide more evidence to the theory that the

extra-legal variable ethnicity and motherhood can affect the sentencing outcomes. This study also showed the ethnicity of the “juror” can also have an effect on the sentencing outcomes.

## REFERENCES

- Alexander, Cheryl S. and Henry J. Becker. 1978. "The Use of Vignettes in Survey Research." *Public Opinion Quarterly* 42:93-104.
- Bickle, Gayle S. and Ruth D. Peterson. 1991. "The Impact of Gender-Based Family Roles on Criminal Sentencing." *Social Problems* 38:372-94.
- Bray, Robert M., Cindy Struckman-Johnson, Marshall D. Osborne, James B. McFarlane, and Joanne Scott. 1978. "The Effects of Defendant Status on the Decisions of Student and Community Juries." *Social Psychology* 41:256-60.
- Bureau of Justice Statistics. 1999. *Special Report: Women Offenders*. Washington, DC: U.S. Department of Justice. Retrieved May 11, 2002 (<http://www.ojp.osdoj.gov.bjs>).
- Bureau of Justice Statistics. 2001. *Prison and Jail Inmates at Midyear 2001*. Washington, DC: U.S. Department of Justice. Retrieved May 11, 2002 (<http://www.ojp.osdoj.gov.bjs>).
- Conley, John M., William J. Turner and Mary R. Rose. 2000. "The Racial Ecology of the Courtroom: An Experimental Study of Juror Response to the Race of Criminal Defendants." *Wisconsin Law*

*Review* 1185:1-34. Retrieved February 3, 2002 (<http://web.lexis-nexis.com/universe>).

- Crawford, Charles. 2000. "Gender, Race and Habitual Offender Sentencing In Florida." *Criminology* 38:263-80.
- Crawford, Charles, Ted Chiricos and Gary Kleck. 1998. "Race, Racial Threat, and Sentencing of Habitual Offenders." *Criminology* 36:481-511.
- Curran, Debra A. 1983. "Judicial Discretion and Defendant's Sex." *Criminology* 21:41-58.
- Daly, Kathleen 1987. "Discrimination in the Criminal Courts: Family, Gender, and the Problem of Equal Treatment." *Social Forces* 66:152-75.
- \_\_\_\_\_. 1989. "Rethinking Judicial Paternalism: Gender, Work-Family Relations, and Sentencing." *Gender and Society* 3:9-36.
- Feild, Hubert S. and Nona J. Barnett. 1978. "Simulated Jury Trials: Students vs. "Real" People as Jurors." *The Journal of Social Psychology* 104:287-93.
- Ghali, Moheb and Meda Chesney-Lind. 1986. "Gender Bias and the Criminal Justice System: An Empirical Investigation." *Sociology and Social Research* 70:164-71.

- Gordon, R.A., T.A. Bindrim, M.L. McNicholas, and T.L. Walden. 1987. "Perceptions of Blue-Collar and White-Collar Crime: The Effect of Defendant Race on Simulated Juror Decisions." *The Journal of Social Psychology* 128:191-97.
- Guzman, Betsy. 2001. *The Hispanic Population: Census 2000 Brief*. U.S. Census Bureau. Retrieved May 11, 2002 (<http://www.census.gov>).
- Kalven, Harry, Jr. and Hans Zeisel. 1966. *The American Jury*. Chicago, IL: The University of Chicago Press.
- Kleck, Gary. 1981. "Racial Discrimination in Criminal Sentencing: A Critical Evaluation of the Evidence with Additional Evidence on the Death Penalty." *American Sociological Review* 46:783-805.
- Kruttschnitt, Candace. 1984. "Sex and Criminal Court Dispositions: The Unresolved Controversy." *Journal of Research in Crime and Delinquency* 21:213-32.
- Logan, C. and J.C. Dilulio, Jr. 1992. "Ten Deadly Myths about Crime and Punishment in the United States." Pp. 21-35 in *The Criminal Justice System: Politics and Policies*, edited by G.F. Cole & M.G. Gertz. Belmont, CA: West/Wadsworth Publishing Company.
- Lynch, M. and Haney C. 2000. "Discrimination and Instructional Comprehension: Guided Discretion, Racial Bias, and the Death Penalty." *Law and Human Behavior* 24:337-58.
- Mauer, M. 1999. *Race to Incarcerate*. New York: The New Press.

- Mazzella, Ronald and Alan Feingold. 1994. "The Effects of Physical Attractiveness, Race, Socioeconomic Status, and Gender of Defendants and Victims on Judgments of Mock Jurors: A Meta-Analysis." *Journal of Applied Social Psychology* 24:1315-44.
- Nagel, Ilene H. and Barry L. Johnson 1994. "The Role of Gender in a Structured Sentencing System: Equal Treatment, Policy Choices, and the Sentencing of Female Offenders under the United States Sentencing Guidelines." *Journal of Criminal Law & Criminology*. 85:1-27. Retrieved February 23, 2002 (<http://proquest.umi.com>).
- Nemeth, Charlan and Ruth Hyland Sosis. 1973. "A Simulated Jury Study: Characteristics of the Defendant and the Jurors." *The Journal of Social Psychology*. 90:221-29.
- Reskin, Barbara F. and Christy A. Visher. 1986. "The Impacts of Evidence and Extralegal Factors in Jurors' Decisions." *Law and Society Review* 20:423-38.
- Sellin, Thorsten. 1935. "Race Prejudice in the Administration of Justice." *American Journal of Sociology*. 41:212-217.
- Spohn, Cassia and Jerry Cederblom. 1991. "Race and Disparities in Sentencing: A Test of the Liberation Hypothesis." *Justice Quarterly* 8:305-307.
- Spohn, Cassia, Susan Welch and John Gruhl. 1985. "Women Defendants in Court: The Interaction Between Sex and Race in Convicting and Sentencing." *Social Science Quarterly* 66:178-82.

- Spohn, Cassia. 2000. "Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process." *Criminal Justice* 2000 3:427:501.
- Spohn, Cassia and David Holleran. 2000. "The Imprisonment Penalty Paid by Young, Unemployed Black and Hispanic Male Offenders." *Criminology*. 38:281-306.
- Stephan, Cookie. 1974. "Sex Prejudice in Jury Simulation." *The Journal of Psychology*. 88:305:12.
- Steffensmeier, Darrel, Jeffery Ulmer and John Kramer. 1998. "The Interaction of Race, Gender and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black and Male." *Criminology* 36:763-97.
- Steffensmeier, Darrell, John Kramer and Cathy Streifel. 1993. "Gender and Imprisonment Decisions." *Criminology*. 31:411-43.
- Steffensmeier, Darrell and Stephen Demuth 2000. "Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who is Punished More Harshly?" *American Sociological Review*. 65:705:29.
- Thomson, R.J. and Zingraff, M.T. 1981. "Detecting Sentencing Disparity: Some Problems and Evidence." *American Journal of Sociology*. 86:869-80.

U.S. Bureau of the Census. 2000. *2000 Census of Population and*

*Housing: Profile of General Demographic Characteristics.*

Washington, DC: Retrieved May 11, 2002

(<http://www.census.gov>).

U.S. Sentencing Commission. 2000. *Fiscal Year 2000 Annual Report*

[Data File]. Retrieved October 2000

(<http://www.ussc.gov/ANNRPT/2000>).

DO NOT WRITE YOUR NAME ANYWHERE ON THIS QUESTIONNAIRE. This is a voluntary questionnaire for a research project. You are not obligated to participate, but should you choose to do so, your participation will be appreciated. Please answer all questions to the best of your ability.

Below is a picture of a defendant and the crime for which she is on trial. Please read it carefully, then, with the information provided, answer the following questions.



Mary Johnson worked at Modern Electronics, a store selling televisions, stereos, and other electronic equipment. She is now on trial for larceny because police officers stopped her car one evening and found merchandise from the store in its trunk.

Mary's story is that she was running errands with a friend who is a co-worker, when they stopped at their place of work after hours. Her friend entered the store for a few minutes, exiting with several boxes. She says her co-worker did not tell her what he intended to do in the store and assured her that the store's owner had given him the merchandise.

The police and prosecutor did not believe Mary's story since her fingerprints were found on the boxes. She explains that fact by saying she helped to unload and display those boxes in the store, but her co-worker said Mary was the one who took the merchandise. Both Mary and her co-worker are on trial. The stolen goods were worth \$15,000.

Mary is twenty-six years old, has two small children and had worked for the store for two years.

If you were on the jury, indicate whether you would find Mary

**GUILTY**

or

**NOT GUILTY**

---

(circle one):

Please explain in the space below why you gave Mary this verdict.

**If you found Mary NOT GUILTY, please skip to question one below.**

If you found Mary **GUILTY**, please indicate the number of months you believe she should serve in a state jail. In case you were wondering, Mary has no prior criminal arrests, although she has received several traffic citations.

Her sentence can be from **zero months (probation) to 24 months** for this offense.

What sentence should she be given? \_\_\_\_\_ MONTHS

Now, please answer the following demographic questions:

1. Age \_\_\_\_\_

2. Sex:                                      Female                                      Male (Circle one)

3. What is your major? \_\_\_\_\_

4. Approximate number of college hours completed: \_\_\_\_\_

5. Ethnicity:

\_\_\_\_\_ Anglo American

\_\_\_\_\_ Hispanic American

\_\_\_\_\_ African American

\_\_\_\_\_ Native American

\_\_\_\_\_ Asian American

\_\_\_\_\_ Other (specify): \_\_\_\_\_

6. How would you define yourself:

\_\_\_\_\_ Liberal

\_\_\_\_\_ Somewhat Liberal

\_\_\_\_\_ Middle of the Road

\_\_\_\_\_ Somewhat Conservative

\_\_\_\_\_ Conservative



DO NOT WRITE YOUR NAME ANYWHERE ON THIS QUESTIONNAIRE.  
 This is a voluntary questionnaire for a research project. You are not obligated to participate, but should you choose to do so, your participation will be appreciated. Please answer all questions to the best of your ability.

Below is a picture of a defendant and the crime for which she is on trial. Please read it carefully, then, with the information provided, answer the following questions.



Maria Rodriguez worked at Modern Electronics, a store selling televisions, stereos, and other electronic equipment. She is now on trial for larceny because police officers stopped her car one evening and found merchandise from the store in its trunk.

Maria's story is that she was running errands with a friend who is a co-worker, when they stopped at their place of work after hours. Her friend entered the store for a few minutes, exiting with several boxes. She says her co-worker did not tell her what he intended to do in the store and assured her that the store's owner had given him the merchandise.

The police and prosecutor did not believe Maria's story since her fingerprints were found on the boxes. She explains that fact by saying she helped to unload and display those boxes in the store, but her co-worker said Maria was the one who took the merchandise. Both Maria and her co-worker are on trial. The stolen goods were worth \$15,000.

Maria is twenty-six years old, has two small children and had worked for the store for two years.

If you were on the jury, indicate whether you would find Maria

**GUILTY**

or

**NOT GUILTY**

---

(circle one):

Please explain in the space below why you gave Maria this verdict.

**If you found Maria NOT GUILTY, please skip to question one below.**

If you found Maria **GUILTY**, please indicate the number of months you believe she should serve in a state jail. In case you were wondering, Maria has no prior criminal arrests, although she has received several traffic citations.

Her sentence can be from **zero months (probation) to 24 months** for this offense.

What sentence should she be given? \_\_\_\_\_ MONTHS

Now, please answer the following demographic questions:

1. Age \_\_\_\_\_

2. Sex:                                      Female                                      Male (Circle one)

3. What is your major? \_\_\_\_\_

4. Approximate number of college hours completed: \_\_\_\_\_

5. Ethnicity:

\_\_\_\_\_ Anglo American

\_\_\_\_\_ Hispanic American

\_\_\_\_\_ African American

\_\_\_\_\_ Native American

\_\_\_\_\_ Asian American

\_\_\_\_\_ Other (specify): \_\_\_\_\_

6. How would you define yourself:

\_\_\_\_\_ Liberal

\_\_\_\_\_ Somewhat Liberal

\_\_\_\_\_ Middle of the Road

\_\_\_\_\_ Somewhat Conservative

\_\_\_\_\_ Conservative

Please indicate whether you strongly agree (SA), agree (A), disagree (D), strongly disagree (SD) or have no opinion (NO) about the followings statements by circling the appropriate category.

SA                      A                      NO                      D                      SD

- \_\_\_ 1 People are the same, no matter what color their skin is.
- \_\_\_ 2. Mothers and their children should never be separated.
- \_\_\_ 3. I do what's right, even if my friends get mad at me.
- \_\_\_ 4. People only break the law when they have no other choice
- \_\_\_ 5. I have close friends who are member of other ethnic or racial groups.
- \_\_\_ 6. Minorities tend to be lazier than whites.
- \_\_\_ 7. People who commit crimes should not be allowed to have children
- \_\_\_ 8. Stealing is always wrong, no matter what the circumstances are.
- \_\_\_ 9. I work harder than most people I know.
- \_\_\_ 10 Women who have children should be given special consideration.
- \_\_\_ 11. The worst thing I can imagine is to be without a mother.
- \_\_\_ 12. Most people I know steal if they think they can get away with it.
- \_\_\_ 13. Some people would rather steal than work.
- \_\_\_ 14. If everyone could have a good job, there would be no crime.
- \_\_\_ 15. Women should put their children before everything
- \_\_\_ 16. Crimminals are born that way.

SA                      A                      NO                      D                      SD

**Thank you for your time.**

**DO NOT WRITE YOUR NAME ANYWHERE ON THIS QUESTIONNAIRE.**

This is a voluntary questionnaire for a research project. You are not obligated to participate, but should you choose to do so, your participation will be appreciated. Please answer all questions to the best of your ability.

Below is a picture of a defendant and the crime for which she is on trial. Please read it carefully, then, with the information provided, answer the following questions.



Mary Johnson worked at Modern Electronics, a store selling televisions, stereos, and other electronic equipment. She is now on trial for larceny because police officers stopped her car one evening and found merchandise from the store in its trunk.

Mary's story is that she was running errands with a friend who is a co-worker, when they stopped at their place of work after hours. Her friend entered the store for a few minutes, exiting with several boxes. She says her co-worker did not tell her what he intended to do in the store and assured her that the store's owner had given him the merchandise.

The police and prosecutor did not believe Mary's story since her fingerprints were found on the boxes. She explains that fact by saying she helped to unload and display those boxes in the store, but her co-worker said Mary was the one who took the merchandise. Both Mary and her co-worker are on trial. The stolen goods were worth \$15,000.

Mary is twenty-six years old and had worked for the store for two years.

If you were on the jury, indicate whether you would find Mary

**GUILTY**

or

**NOT GUILTY**

---

(circle one):

Please explain in the space below why you gave Mary this verdict.

**If you found Mary NOT GUILTY, please skip to question one below.**

If you found Mary **GUILTY**, please indicate the number of months you believe she should serve in a state jail. In case you were wondering, Mary has no prior criminal arrests, although she has received several traffic citations.

Her sentence can be from **zero months (probation) to 24 months** for this offense.

What sentence should she be given? \_\_\_\_\_ MONTHS

Now, please answer the following demographic questions:

1. Age \_\_\_\_\_
2. Sex:                                      Female                                      Male (Circle one)
3. What is your major? \_\_\_\_\_
4. Approximate number of college hours completed: \_\_\_\_\_
5. Ethnicity:
  - \_\_\_\_\_ Anglo American
  - \_\_\_\_\_ Hispanic American
  - \_\_\_\_\_ African American
  - \_\_\_\_\_ Native American
  - \_\_\_\_\_ Asian American
  - \_\_\_\_\_ Other (specify): \_\_\_\_\_
6. How would you define yourself:
  - \_\_\_\_\_ Liberal
  - \_\_\_\_\_ Somewhat Liberal
  - \_\_\_\_\_ Middle of the Road
  - \_\_\_\_\_ Somewhat Conservative
  - \_\_\_\_\_ Conservative



DO NOT WRITE YOUR NAME ANYWHERE ON THIS QUESTIONNAIRE.  
 This is a voluntary questionnaire for a research project. You are not obligated to participate, but should you choose to do so, your participation will be appreciated. Please answer all questions to the best of your ability.

Below is a picture of a defendant and the crime for which she is on trial. Please read it carefully, then, with the information provided, answer the following questions.



Maria Rodriguez worked at Modern Electronics, a store selling televisions, stereos, and other electronic equipment. She is now on trial for larceny because police officers stopped her car one evening and found merchandise from the store in its trunk.

Maria's story is that she was running errands with a friend who is a co-worker, when they stopped at their place of work after hours. Her friend entered the store for a few minutes, exiting with several boxes. She says her co-worker did not tell her what he intended to do in the store and assured her that the store's owner had given him the merchandise.

The police and prosecutor did not believe Maria's story since her fingerprints were found on the boxes. She explains that fact by saying she helped to unload and display those boxes in the store, but her co-worker said Maria was the one who took the merchandise. Both Maria and her co-worker are on trial. The stolen goods were worth \$15,000.

Maria is twenty-six years old and had worked for the store for two years.

If you were on the jury, indicate whether you would find Maria

**GUILTY**

or

**NOT GUILTY**

---

(circle one):

Please explain in the space below why you gave Maria this verdict.

**If you found Maria NOT GUILTY, please skip to question one below.**

If you found Maria **GUILTY**, please indicate the number of months you believe she should serve in a state jail. In case you were wondering, Maria has no prior criminal arrests, although she has received several traffic citations.

Her sentence can be from **zero months (probation) to 24 months** for this offense.

What sentence should she be given? \_\_\_\_\_ MONTHS

Now, please answer the following demographic questions:

1. Age \_\_\_\_\_

2. Sex:                                      Female                                      Male (Circle one)

3. What is your major? \_\_\_\_\_

4. Approximate number of college hours completed: \_\_\_\_\_

5. Ethnicity:

\_\_\_\_\_ Anglo American

\_\_\_\_\_ Hispanic American

\_\_\_\_\_ African American

\_\_\_\_\_ Native American

\_\_\_\_\_ Asian American

\_\_\_\_\_ Other (specify): \_\_\_\_\_

6. How would you define yourself:

\_\_\_\_\_ Liberal

\_\_\_\_\_ Somewhat Liberal

\_\_\_\_\_ Middle of the Road

\_\_\_\_\_ Somewhat Conservative

\_\_\_\_\_ Conservative

Please indicate whether you strongly agree (SA), agree (A), disagree (D), strongly disagree (SD) or have no opinion (NO) about the followings statements by circling the appropriate category.

SA                      A                      NO                      D                      SD

- \_\_\_ 1. People are the same, no matter what color their skin is.
- \_\_\_ 2. Mothers and their children should never be separated.
- \_\_\_ 3. I do what's right, even if my friends get mad at me.
- \_\_\_ 4. People only break the law when they have no other choice.
- \_\_\_ 5. I have close friends who are member of other ethnic or racial groups.
- \_\_\_ 6. Minorities tend to be lazier than whites.
- \_\_\_ 7. People who commit crimes should not be allowed to have children.
- \_\_\_ 8. Stealing is always wrong, no matter what the circumstances are.
- \_\_\_ 9. I work harder than most people I know.
- \_\_\_ 10. Women who have children should be given special consideration.
- \_\_\_ 11. The worst thing I can imagine is to be without a mother.
- \_\_\_ 12. Most people I know steal if they think they can get away with it.
- \_\_\_ 13. Some people would rather steal than work.
- \_\_\_ 14. If everyone could have a good job, there would be no crime.
- \_\_\_ 15. Women should put their children before everything.
- \_\_\_ 16. Criminals are born that way.

SA                      A                      NO                      D                      SD

**Thank you for your time.**

Table 1. Percentage of Minorities in Federal Prison and Percentage of Minorities in the General Population.

Race/ Ethnicity	Percentage of the federal prison population	Percentage of total population
White	30.1	69.1
Black	25.0	12.3
Hispanic	41.0	12.5

Source: Bureau of Justice Statistics Special Report, Women Offenders  
December 1999

Table 2. Demographic Characteristics of Respondents.

Characteristics	Frequency of Response (N=362)	Percent
<b>Gender</b>		
Male	137	38.2
Female	222	61.8
<b>Age</b>		
18-25	301	84.4
26-33	36	10.0
34-41	14	3.9
42+	6	1.7
<b>Ethnicity</b>		
White	252	70.6
Hispanic	70	19.6
Black	22	6.2
Other	13	3.6
<b>Major</b>		
Sociology	59	16.6
Criminal Justice	94	26.4
Other	203	57.0

Table 3. Mean Sentence Length in Months for Defendants with and without Children.

Defendant	<u>Months for sentence</u>		
	Number	Mean	Difference in Means
With Children	104	6.64	-1.25
Without Children	121	7.89	
Total	225	7.32	

\*=P<.05

Table 4. Guilt of Defendants with and without Children.

<u>Percentage of Guilty Verdicts by Defendant</u>				
<u>Verdict</u>	<u>With Children</u>	<u>Without Children</u>	<u>Total</u>	<u>Chi Square</u>
Guilty	57.0 (n=102)	68.5 (n=124)	62.8 (n=226)	5.116*
Not Guilty	43.0 (n=77)	31.5 (n=57)	37.2 (n=134)	

\*= $P < .05$

Table 5. Mean Sentence Length in Months of Hispanic and White Defendants.

Defendant	<u>Months for sentence</u>		
	Number	Mean	Difference in Means
White	110	7.41	.18
Hispanic	115	7.23	
Total	225	7.32	

\*=P<.05

Table 6. Verdicts of White and Hispanic Defendants.

<u>Percentage of Guilty Verdicts by Defendant</u>				
Verdict	White	Hispanic	All	Chi Square
Guilty	61.6 (n=109)	63.9 (n=117)	62.8 (n=226)	.213
Not Guilty	38.4 (n=68)	36.1 (n=66)	37.2 (n=134)	

\*=P<.05

Table 7. Guilt of Defendant by Ethnicity of the Respondent.

Respondent	<u>Version by Ethnicity</u>				
	<u>Hispanic Defendant</u>		<u>White Defendant</u>		
	Guilty (%)	Not Guilty (%)	Guilty (%)	Not Guilty (%)	
White	68.8	31.2	55.2	44.8	.009*
Minority	51.9	48.1	76.5	23.5	

\*=P<.05

Table 8. Guilt of Defendant by Major of the Respondent.

Respondents' Major	<u>Version by Ethnicity</u>				
	<u>Hispanic Defendant</u>		<u>White Defendant</u>		
	Guilty	Not Guilty	Guilty	Not Guilty	
Sociology	56.3	43.8	66.7	33.3	.024*
Criminal Justice	83.7	16.3	62.7	37.3	

\*=P<.05

Table 9. Logistic Regression for Guilt Verdicts Regressed on Independent Variables (N=362).

Variable	Guilt Verdict		
	B	S.E.	Exp(B)
White Defendant w/out children	.820*	.331	2.271
Hispanic Def. w/children	.372	.314	1.451
Hispanic Def. w/out children	.574	.319	1.775
Sex of Respondent	-.146	.245	.864
Liberalism of Respondent	-.466	.361	.628
Sociology Major	.103	.315	1.109
Criminal Justice Major	.524	.291	1.688
Attitudes Toward Motherhood	-.039	.040	.961

\*=P<.05

Table 10. Logistic Regression for Guilt Verdicts Regressed on Independent Variables (N=362) with Selected Cases (Minority Respondents).

Variable	Guilt Verdict		
	B	S.E.	Exp(B)
White Defendant w/out children	-.142	.770	.867
Hispanic Def. w/children	-1.756*	.789	.173
Hispanic Def. w/out children	-1.253	.516	.286
Sex of Respondent	-.284	.245	1.328
Liberalism of Respondent	-.784	.741	.457
Sociology Major	1.684*	.698	5.387
Criminal Justice Major	2.029*	.638	7.609
Attitudes Toward Motherhood	-.109	.083	.897

\*=P<.05

Table 11. Logistic Regression for Guilt Verdicts Regressed on Independent Variables (N=362) with Selected Cases (White Respondents).

Variable	Guilt Verdict		Exp(B)
	B	S.E.	
White Defendant w/out children	.795*	.396	2.214
Hispanic Def. w/children	.911*	.377	2.486
Hispanic Def. w/out children	.911*	.376	2.486
Sex of Respondent	-.262	.302	.770
Liberalism of Respondent	-.315	.450	.730
Sociology Major	-.457	.380	.633
Criminal Justice Major	.144	.358	1.155
Attitudes Toward Motherhood	-.062	.050	.940

\*=P<.05

## **VITA**

Shannon Bermel was born in Midland, Texas, on May 24, 1971, the daughter of Edwin Atkin and Kathy Clark. After completing her work at Coronado High School, Lubbock, Texas, in 1989, she entered University of North Texas in Denton, Texas. She received the degree of Bachelor of Applied Arts and Science from University of North Texas, 1994. During the following years she was employed in several law firms and district attorney's offices. In the Fall of 1999 she entered the Graduate School of Southwest Texas State University.

Permanent Address: 609 S. Union St.  
New Braunfels, TX 78130

This thesis was typed by Shannon Bermel.