

Sean Berberian

## INTRODUCTION

In the last twenty years there has been an increasing interest in women and the judicial process. One issue that has begun to receive a great deal of attention is the analysis of gender differences in sentencing. Studies have shown that women are generally treated with more leniency by the court (Black 1976; Daly 1989; Harris 1977; Kruttschnitt 1984a, 1984b; Nagel and Weitzman 1971; Simon 1975). However, while women, in general, receive more lenient treatment than men, this treatment is not uniform for all women. Indeed, Visher (1983) and Kein (1973) have found that leniency tends to apply more to those who fit a "traditional sex-role," and are "white and middle class." We examine whether this difference in leniency also occurs in the setting of bail bond amounts and in the probability of pretrial releases.

Since racial differences in the lenient treatment of women in the sentencing process have been established, we look at possible reasons for that variation at other points in the decision making process. To do that, we choose a sample from a population in which the final outcome is known and look for racial differences in judicial treatment. In short, we look to find out if incarcerated Black women were less likely to obtain a pretrial release and/or more likely to receive a higher bail bond than incarcerated White women.

There are two competing perspectives that have shown explanatory success in predicting variation in criminal justice leniency for women. First, in her theory of 'informal social control,' Kruttschnitt (1980-81, 1982) proposes that lenient sanctioning trends for women reflect their higher degree of informal social control from family/kin ties. In short, this theory predicts that women who are married will receive more leniency. In contrast, Daly (1987a, 1987b, 1989a, 1989b) makes the distinction between the court's concern for protecting women (Female Paternalism) and its concern for protecting children and families (Familial Paternalism). Daly's theory of 'familial paternalism' suggests that the court sees the female defendant with children as more responsible and anchored and a corollary realizes the impracticality of imprisoning a person on which children depend. This theory predicts that women with children, independent of marital status, will be more likely to receive lenient treatment from the court.

As mentioned, both perspectives have been tested empirically with respect to sentencing. Results indicate that there are racial differences. In particular, Visher (1983), Daly (1989a), and others have found that black offenders do not receive the same degree of leniency that non-black offenders receive. We hope to extend these findings in this study. We do this by looking at a sample where the final outcome is the same for Black and White offenders, but where preincarceration treatment may have been different. We expect to find that both 'informal social control' and 'familial paternalism' will be helpful in explaining any variation in leniency between Black and White women in our sample, but, consistent with earlier research findings, that these factors will operate differently.

## DATA, METHODS AND RESULTS

Data for this study comes from the Bureau of Justice's Survey of Inmates of State Correctional Facilities in 1986. The data was collected via face-to-face interviewing and comes from 275 facilities. It is available from the Inter-University Consortium for Political and Social Research (ICPSR). As indicated, we look only at women in the sample for this study.

Contrary to expectations, frequency of pretrial release shows little difference for the two groups. Approximately one out of every two Black and White women received a pretrial release (46.0%, 46.8%, respectively). The case is not the same for bail bond amount. The median bail bond amount for Black women is \$10,000 while it is \$15,000 for White women. Again, this finding is contrary to our expectations, however, it may be the case that a number of factors may be influencing this difference. Certainly, one of the major factors is the type of offense committed. As a rule, individuals arrested for violent offenses have less of a chance for pretrial release and higher bail bond amounts than other arrestees. To control for this possibility, we look only at those who are incarcerated for murder or manslaughter. Another reason for restricting analysis to this group is the likelihood that arrest decisions for these offenses are likely to be less vulnerable to discriminatory practices. Unlike many other crimes, there is less discretion available for arresting officers and others in charging murder or manslaughter. As a result, we expect it to be

less impacted by racial or class factors during the initial phases of arrest and charge than other arrests.

Logistic analysis is used to analyze pretrial release, while linear regression is used to look at bail bond amounts. We do analyses separately for Black and White women arrested for murder and manslaughter to allow comparisons to be made between the two groups. In each analysis, we predict either pretrial release or the log of bail bond amount by our informal social control factor of whether a respondent is married and our familial paternalism factor of whether a respondent has children or not. In addition, we control for age, whether a respondent was employed before incarceration, amount of preincarceration income, level of preincarceration education, whether a respondent is Hispanic or lives in the South.

Among those currently incarcerated and arrested for murder or manslaughter, nearly four out of ten (39%) received pretrial release and median bail bond amount was \$35,000. Black and White women were equally as likely to receive pretrial release (approximately 40% in each group) while median bail amount for White women was twice as high as median bail amount for Black women (\$50,000 to \$25,000). The above results are mirrored by our multivariate analysis. With respect to pretrial release there is no mean difference between odds for Black and White women. However, regression results show that Black women have a substantially lower mean bail bond amount than White women.

As expected, there are differences in the pattern of factors associated with the dynamics of pretrial release and bail bond amount for Black and White women. For both Black and White women arrested for murder or manslaughter and currently incarcerated, being older and living in the South increases the odds of pretrial release. In addition, for Blacks, a higher educational level is also associated with increased odds of pretrial release while for Whites greater preincarceration income increases the odds of pretrial release. What is most striking, however, is that being married is significant only in increasing the odds of pretrial release for White women. In contrast, reduced bail bond for White women is associated only with living in the South, while for Black women it is associated with: living in the South, being younger and, most importantly, having children.

## CONCLUSIONS

Our results show support both for Kruttschnitt's 'informal social control' and Daly's 'female paternalism' theories. As expected, however, both of these theories appear to be affected by racial dynamics. In particular, being married may only be of importance in decisions of pretrial release for White women, while having children is only associated with a reduced bail bond amount for Black women. Why this is the case is open to some speculation. First, Daly may be correct in positing that the court adopts a familial paternalistic orientation with respect to women offenders, however, it may do so more readily for Black, rather than White families. Second, on the one hand, given that bail bond amount in general reflects the valuation that the court places on the amount of harm done to society, the fact that it is significantly lower for Black women may reflect that Black women are incarcerated for less serious crimes. In other words, Black women who are currently incarcerated may not have committed in the eyes of society as costly crimes as currently incarcerated White women. On the other hand, the finding that this difference in bail bond amount still remains when one looks only at the murder and manslaughter category would suggest that the victims of Black women, most likely other Blacks, are not as valued as the victims of White women.

Future research might consider a replication of this study with different offense categories. In particular, larceny and drug violations have seen dramatic increase in women's arrest and incarceration, and it would be of some interest to see whether the associations found here extend beyond the murder and manslaughter category. Finally, we offer a caution. As work continues on women's incarceration, it is our belief that race and racial factors be explicitly made manifest and studied separately. As we have found, the dynamics of the incarcerative experience may differ among African American and White women inmates. We think that this should be kept uppermost in the minds of researchers given that African American women are now nearly one-half of our female prison population.

## Selected References

- Bernstein, Ilene H., John Cardascia, and Catherine Ross. 1979. "Defendant's Sex and Criminal Court Decisions." In *Discrimination in Organizations*, ed. Rudolfo Alvarez and Kenneth G. Lutterman, 329-54. San Francisco: Jossey-Bass.
- Bickle, Gayle S., and Ruth D. Peterson. 1991. "The Impact of Gender-Based Family Roles on Criminal Sentencing." *Social Problems* 38:372-94.
- Black, Donald. 1976. *The Behavior of Law*. New York: Academic Press.
- Boritch, Helen. 1992. "Gender and Criminal Court Outcomes: An Historical Analysis." *Criminology* 30:293-325.
- Chesney-Lind, Meda. 1977. "Judicial Paternalism and the Female Status Offender: Training Women to Know Their Place." *Crime and Delinquency* 23:121-30.
- . 1978. "Young Women in the Arms of the Law" and "Chivalry Re-Examined: Women and the Criminal Justice System." Pp. 171-223 in *Women, Crime, and the Criminal Justice System*, edited by L. Bowker. Lexington, MA:Lexington Books.
- Daly, Kathleen. 1987a. "Structure and Practice of Familial-Based Justice in a Criminal Court." *Law and Society Review* 21:267-90.
- . 1987b. "Discrimination in the Criminal Courts: Family, Gender, and the Problem of Equal Treatment." *Social Forces* 66:152-75.
- . 1989a. "Neither Conflict nor Labeling nor Paternalism Will Suffice: Intersections of Race, Ethnicity, Gender, and Family in Criminal Court Decisions." *Crime and Delinquency* 35:136-168.
- . 1989b. "Rethinking Judicial Paternalism: Gender, Work-Family Relations, and Sentencing." *Gender and Society* 3:9-36.
- Hagan, J. and K. Bumiller. 1983. "Making Sense of Sentencing: A Review and Critique of Sentencing Research." In *Research on Sentencing: The Search for Reform*, Vol. II, edited by A. Blumstein, J. Cohen, S. Martin, and M. Tonry. Washington, DC: National Academy Press.
- Hancock, Linda. 1980. "The Myth That Females are Treated More Leniently than Males in the Juvenile Justice System." *The Australian and New Zealand Journal of Sociology* 16(3):4-14.
- Harris, Anthony R. 1977. "Sex and Theories of Deviance: Toward a Functional Theory of Deviant Type-Scripts." *American Sociological Review* 42:3-16.
- Johnson, David R., and Laurie K. Scheuble. 1991. "Gender Bias in the Disposition of Juvenile Court Referrals: The Effects of Time and Location." *Criminology* 29:677-99.
- Kein, Dorie. 1973. "The Etiology of Female Crime: A Review of the Literature." *Issues in Criminology* 8:3-30.
- Kruttschnitt, Candace. 1980-81. "Social Status and Sentences of Female Offenders." *Law and Society Review* 15:247-65.
- . 1982. "Women, Crime and Dependency." *Criminology* 19:495-513.

---. 1984. "Sex and Criminal Court Despositions: The Unresolved Controversy." *Research in Crime and Delinquency* 21:213-232.

---. 1985. "Legal Outcomes and Legal Agents: Adding Another Dimension to the Sex-Sentencing Controversy." Plenum Publishing Corporation.

Moulds, Elizabeth F. 1980. "Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System." Pp. 277-99 in *Women, Crime, and Justice*, edited by S. Damesman and F. Scarpitti. New York: Oxford University Press.

Nagel, Stuart, and Lenore Weitzman. 1971. "Women as Litigants," *23 Hastings Law Journal* 171.

Nagel, Ilene H. and John Hagan. 1983. "Gender and Crime: Offense Patterns and Criminal Court Sanctions." In Michael Tonry and Norval Morris (eds), *Crime and Justice: An Annual Review of Research*. Chicago: University of Chicago Press.

Simon, Rita. 1975. "Women and Crime," Lexington, Mass.: Lexington Books.

Steffensmeier, Darrell and John Kramer and Cathy Streifel. 1993. "Gender and Imprisonment Decisions." *Criminology* 31(3):411-446.

Terry, Robert. 1976a. "The Screening of Juvenile Offenders." *Journal of Criminal Law, Criminology, and Police Science* 58(2):173-81.

Visher, Christy A. 1983. "Gender, Police Arrest Decisions, and Notions of Chivalry." *Criminology* 21:5-28.