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Ilene H. Nagel and John Hagan

Gender and Crime: Offense Patterns and Criminal Court Sanctions

ABSTRACT

The relation between gender and criminality is strong, and is likely to remain so. Women have traditionally been much less likely than men to commit violent crimes, and that pattern persists today. Rates of female involvement in some forms of property crime—notably petty theft and fraud—appear to be increasing. However, while the relative increase in women's property crime involvement is significant, female participation even in these crimes remains far less than that of men.

The relation of gender to case processing decisions in the criminal justice system varies from stage to stage. Although the pertinent literature is plagued by methodological and interpretive problems, several tentative conclusions can be offered. Women are more likely than men, other things equal, to be released on recognizance; however, when bail is set, the amount of bail does not appear to be affected by the defendant's gender. There is no clear evidence that the defendant's gender systematically affects prosecution, plea negotiation, or conviction decisions. In sentencing, however, women appear to receive systematic leniency except when they are convicted of high-severity offenses.

In the formative years of criminology, a major emphasis in theory and research was on understanding the causes of crime. Despite a plethora of theories on the typology of crime, no consensus was ever reached; each new causal theory was subjected to a fresh round of criticism of both method and substance. In part, the frustration of being unable to set forth one overarching theory to account for all criminal behavior stimulated a shift in emphasis. Whereas the early crime-causation tradition was characterized by attention to commonalities among criminals in

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psychological attributes, physiological characteristics, socialization patterns, and social backgrounds, the new tradition gave its attention to the commonalities of those formally labeled "criminals" in courts of law.

One reason for this shift was the hypothesis that overrepresentation of the socially disadvantaged might be explained by bias in the labeling process. Thus it might not be true that the socially disadvantaged commit more crimes. An alternative thesis could be that commission of crimes was equally distributed in the population but that, for a variety of political reasons, those empowered to categorize some as criminal and others as not would attach the stigmatizing label of criminal only to the powerless and the weak.

It was the intersection of these two traditions that provided the link between, on the one hand, the study of offenses and alleged offenders and, on the other hand, patterns of decisions resulting in criminal court sanctions. From then on, when race, sex, social class, or ethnicity were found to correlate highly with crime statistics, the question had to be asked: Were these groups really committing more or fewer crimes, or were they being discriminated against in the criminal courts, or both?

In the decade of the sixties, the increased sensitivity to issues of race, sex, and class bias reached new heights. One consequence was a renewed interest in the search for evidence of racism, sexism, and class bias in the law. In particular, the application of criminal laws and sanctions received considerable attention. The American system of justice is symbolized by a blindfold woman, carefully balancing a set of scales. The symbolic meaning is clear. All men (and women?) are equal before the eyes of justice; and the relevant facts, and only those, will be judiciously weighed on the juridical scales. To the extent that justice is not blind and, worse, favors or disfavors defendants because of status attributes over which they have no control, the abuse must be exposed and the system righted.

The concern for sexism in the law and its application has been especially slow in coming. Whereas race was identified early as an inappropriate consideration, the classification of sex as similarly inappropriate has not yet been resolved. Furthermore, unlike claims of racism in the application of laws and sanctions, there is no general presumption that women have historically been subjected to a consistent pattern of discrimination.

Only in the past two decades has the connection between sexism and the law begun to receive widespread attention. With respect to criminal law in particular, attention to the relation between gender and patterns

of offense, and gender and patterns of criminal court sanctions, has been especially lacking. One purpose of this review is to assess the depth and breadth of that lack.

As we conceptualize the issues, two questions must simultaneously be addressed. First, What is the relation between gender and patterns of crime? We consider the way the relation varies as a function of the particular way crime and patterns of criminal offenses are measured. Second, What is the relation between gender and patterns of criminal court outcome decisions? Here we consider the way the relation varies as a function of a particular criminal court decision stage being examined (e.g. pretrial release, conviction, plea, sentence). Although we present our review in two separate sections, the two are interrelated. Patterns of crime statistics are affected by the decisions of criminal justice personnel. Without consideration of the policeman's decision to arrest, the prosecutor's decision to prosecute, or the judge's decision to sentence, criminal justice statistics on the sex of defendants alleged to have committed certain offenses lose much of their meaning. Similarly, in the absence of an appreciation of who commits what alleged offenses, decisions of police, prosecutors, and judges can easily be misunderstood. Unfortunately, despite the conceptual interrelation of these two issues, we know of no practical way to integrate our examination of the extant research, because it has developed largely without drawing this connection. Thus we present our review as if the research traditions were distinct, as they indeed appear in the literature. But in the end we will come back to our starting point and wrestle with the juxtaposition of these research literatures.

Section I examines the relation between gender and patterns of crime, as indicated by official crime statistics. We examine this same relation as revealed in self-report data, victimization data, and research based on field observations and archival record data.

Section II reviews the attention given to gender as a relevant determinant of criminal court outcome decisions and follows with a discussion of why such attention is theoretically important. Subsequently, we review the research on the relation between gender and decision outcomes for pretrial release, the decision to prosecute fully toward conviction, the decision on the acceptability of a plea bargain, the adjudication of guilt or innocence, and sentencing. Throughout, our concern is to ascertain whether the sex of a defendant systematically affects decision outcomes, and whether male defendants and offenders are treated differently than are female defendants and offenders.

In section III we speculate about the interrelation of the patterns noted in the two previous sections and juxtapose these findings in an effort to set forth a research agenda for the future.

I. The Criminal Behavior of Women

Research on crime by women focuses primarily on three issues: the extent of gender differences in criminal behavior, whether these differences show signs of declining, and the comparability of the criminal behavior patterns of men and women.

Data on differential patterns of offending by sex are available from several sources: public and private crime control agencies, victim surveys, self-report studies, field observations, and archival research. Each of these sources is imperfect, but their individual failings need not be collectively fatal. Credible estimates can be obtained through triangulation from the various sources. If several data sources produce comparable results, this may warrant confidence. Of course, to the extent that the sources disagree, our skepticism should increase.

The data on crime by women indicate several clear patterns. Women are much less likely than men to commit violent crimes or serious property crimes. With the exception of peculiarly female crimes such as prostitution and infanticide, and various "victimless crimes" on which credible statistical data are seldom available, "traditional female crimes" tend to be minor property offenses like shoplifting and fraud. There appear to have been increases in the rates of female criminality compared with rates for men, but the notable increases are for those minor offenses that are traditionally female crimes. Female crime rates remain, in absolute terms, far below those for men. These points can be illustrated with the following kinds of data.

A. *Public Agency Data*

Public agency data can tell us only part of the story of crime and gender, but it is an important part and is remarkably consistent: men are nearly always shown to be much more involved in criminal activity than are women. The annual *Uniform Crime Reports* (UCR) published by the FBI are the major source of national data on criminality. Data reported annually on arrests provide the nearest thing available to a national criminality register. These data are far from perfect. They provide at best only a distorted image of crime patterns: not all people arrested are guilty; the likelihood of arrests given involvement in crime varies enormously between offenses and over time; the data are vulnerable to

conscious and inadvertent manipulation by the police departments that report them; and so on. Such problems of official arrest data are well known (for example, see Nettler 1978, chap. 4). Still, arrest data are the closest we can get on a large scale to actual offending. As Hindelang has observed: "researchers who refuse to examine even a blurred reflection of the phenomenon may be discarding an opportunity to reduce ignorance about the phenomenon in question" (1974, p. 2).

We begin our examination of female offending, then, by looking at UCR arrest data; we later consider whether the lessons we draw from these data are confirmed by the findings of victimization surveys, self-report studies, and other data. Table 1 shows arrest rates and ratios per 100,000 population by sex for selected property offenses for the period 1960–75. From the pioneering explorations of official crime statistics by Quetelet (1842) to the more modern tabulations by Radzinowitz (1937), Pollak (1950), Adler (1975), Simon (1975), and Smart (1977b), such statistics have consistently shown that men are more criminal than women. However, although this pattern is apparent in table 1 as well, it is also the case that the *ratio* of male to female arrest rates has declined in recent years. For example, we see in table 1 that between 1960 and 1975 the ratio of male to female rates of index property crimes (combining the offenses of burglary, larceny, and auto theft) decreased from 9.43 to only 3.93. Similar declines in the ratio of male to female rates are also apparent in table 1 for the individual crimes of burglary, larceny theft, auto theft, fraud/embezzlement, and stolen property. The question commonly asked of these kinds of data is whether the gap between males and females in rates of property crime has therefore declined.

Different answers have been given to this question, and there is reason to think that the differences derive from the kinds of measures applied. Steffensmeier (1978, 1980) notes that disparities between the sexes can be measured in absolute and relative terms. He advocates the former. Some ratio and percentage measures of relative differences, he argues, can be misleading because, if the starting point is low, small absolute changes will look *relatively* large. This may often be the case with female crime rates. Furthermore, he notes that percentage or ratio measures of relative change may be unstable when the measure is premised on part-to-part rather than part-to-whole comparisons. In place of the part-to-part ratio measure, Steffensmeier calculates the percentage that the female rate contributes (% FC) to the male rate *plus* female rate for each offense. He also calculates absolute differences between male and female rates. These various kinds of measures are presented in table 2 to

TABLE 1

Property Crime Rates and Ratios per 100,000 for Females and Males, 1960–75

Year	Three Property Crime Index			Burglary			Larceny Theft		
	Female	Male	Male/ Female	Female	Male	Male/ Female	Female	Male	Male/ Female
1975	421.2	1657.1	3.93	31.0	588.4	18.98	379.6	913.8	2.41
1974	428.1	1708.0	3.99	31.7	592.9	18.70	384.5	930.5	2.42
1973	339.6	1364.7	4.02	25.4	479.6	18.88	303.6	706.8	2.32
1972	327.0	1387.4	4.24	23.6	464.8	19.70	293.3	743.6	2.54
1971	321.8	1470.1	4.57	23.4	468.1	20.00	286.7	786.3	2.74
1970	298.7	1400.5	4.69	20.8	455.3	21.88	267.8	742.9	2.77
1969	252.1	1313.3	5.21	18.4	434.8	23.63	222.8	667.0	2.99
1968	213.7	1265.0	5.92	17.6	434.1	24.66	186.0	620.3	3.33
1967	200.9	1210.0	6.02	16.0	406.8	25.42	176.6	602.7	3.41
1966	183.2	1128.5	6.16	13.6	361.1	26.55	162.0	576.6	3.56
1965	176.6	1138.1	6.45	13.4	369.2	27.55	155.4	579.6	3.73
1964	156.0	1102.0	7.06	12.7	355.1	27.96	135.6	563.2	4.15
1963	134.9	1044.3	7.74	10.9	342.5	31.42	117.6	529.8	4.51
1962	134.0	1040.5	7.76	11.9	342.7	28.80	115.5	530.8	4.60
1961	112.3	1002.9	8.93	10.9	349.3	32.04	96.0	502.3	5.23
1960	101.9	961.3	9.43	9.8	324.7	33.13	87.3	487.4	5.58

Year	Auto Theft			Fraud/ Embezzlement			Stolen Property		
	Female	Male	Male/ Female	Female	Male	Male/ Female	Female	Male	Male/ Female
1975	10.6	155.0	14.62	67.1	142.2	2.12	13.7	124.9	9.12
1974	11.9	184.5	15.50	53.7	121.0	2.25	13.4	127.3	9.50
1973	10.5	178.4	16.99	41.9	101.0	2.41	10.5	101.2	9.64
1972	10.1	179.1	17.73	44.2	113.9	2.58	10.1	101.0	10.00
1971	11.8	199.6	16.92	44.0	119.3	2.71	10.6	111.0	10.47
1970	10.1	202.3	20.03	35.5	104.1	2.93	8.9	93.3	10.48
1969	10.9	211.5	19.40	29.6	92.0	3.11	6.5	75.0	11.54
1968	10.2	210.6	20.65	24.3	84.6	3.48	4.8	61.6	12.83
1967	8.3	200.5	24.16	24.2	87.8	3.62	3.6	46.9	13.03
1966	7.7	190.7	24.77	22.0	86.4	3.92	2.9	36.6	12.62
1965	7.7	189.2	24.50	21.7	92.5	4.27	2.9	33.9	11.69
1964	7.7	183.8	23.66	19.1	87.4	4.58	3.3	32.3	9.79
1963	6.3	171.9	27.29	18.7	90.9	4.86	2.4	28.7	11.96
1962	6.6	167.0	25.30	16.7	87.4	5.23	2.5	28.8	11.52
1961	5.5	151.3	27.50	16.1	89.7	5.57	2.4	27.3	11.38
1960	5.4	149.2	27.62	14.7	87.9	5.98	2.3	26.3	11.43

Source: Steffensmeier 1978, table 1, reformulated.

illustrate the point that a *relative* gap in crime rates between the sexes can narrow while the *absolute* gap actually widens.

Indeed, for all crimes except forgery and embezzlement in table 2, the relative gap does decline, while the absolute difference increases. Using larceny as an illustration, the arrest rate for females was 87.3 in 1960 and 376.2 in 1978. For males it was 487.4 in 1960 and 870.4 in 1978. The two relative measures of change presented in this table both indicate a narrowing of the male/female gap: the ratio of rates declined from 5.58 to 2.31, and the % FC increased from 15.2 to 30.2. However, Steffensmeier's point is that only limited significance can be attached to these changes because, during the same period, the absolute difference between male and female rates widened to 493.6 (870.4–376.8) from 400.1 (487.4–87.3). Based on the kinds of calculations presented in table 2, Steffensmeier concludes that the relative gains made by women in their rates of crime are often more apparent than real. However, there are important differences of opinion on this point.

Rita Simon, whose work (e.g. 1976a, b) may have had the greatest influence in this area, offers a convergence theory in which patterns of criminality for women increasingly resemble those for men. For example, she has analyzed arrest statistics for a forty-year period (1932 to 1972) and concluded that: (1) the proportion of all persons arrested in 1972 who were women was greater than was the case one, two, or three decades earlier; (2) the increase was greater for serious offenses than for other kinds of offenses; and (3) the increase in female arrest rates among the serious offenses was caused almost entirely by women's greater participation in property offenses, especially larceny. Simon (1976b) extrapolates from the latter findings and states that "if present rates in these crimes persist, approximately equal numbers of men and women will be arrested for fraud and embezzlement by the 1990's, and for forgery and counterfeiting the proportions should be equal by the 2010's. The prediction made for embezzlement and fraud can be extended to larceny as well."

Steffensmeier is most at odds with Simon on these last points. He finds that arrest rate projections for larceny show a *widening of the absolute gap* with each passing decade to the year 2000, with similar results for fraud and forgery. He concludes (1980, p. 1098) that "female gains have been leveling off in recent years and it is likely that crime will be as much a male-dominated phenomenon in the year 2000 as it is in 1977." Still, this does not deny Simon's more fundamental point that, in *relative*

terms, women are now significantly more involved in crime than they were in the past.

In terms of crime patterns, Simon emphasizes that the relative increases in adult women's crime rates are concentrated in the area of property crime. This point is important to Simon's theoretical argument that as women increase their participation in the labor force, their opportunity to commit certain types of crime also increases. Steffensmeier does not reject this argument; rather, he seeks to diminish its significance. His point is that, while the female contribution to property crime generally, and again in a relative sense, has increased, the amount of this increase that is occupationally related (e.g. embezzlement) is small. A problem here involves the vagueness of general offense categories like larceny. When such categories are broken down, Steffensmeier argues that the greater contributions of women are in the areas of petty theft and fraud.

Some support for Steffensmeier's suggestions is provided in table 2. This table includes a division between "masculine" and "petty property" crimes. As both Steffensmeier and Simon suggest, "masculine" crimes like robbery, burglary, and auto theft remain predominately male phenomena, in spite of some recent relative increases in female participation. In contrast, the petty property crime rates of women have increased notably, and the absolute differences between the male and female rates for petty crimes like forgery and embezzlement have actually declined: between 1960 and 1978 the sex difference in forgery rates declined from 42.8 to 36.8, and for embezzlement from 11.3 to 4.7. Still, the absolute differences between male and female rates of other petty property crimes like larceny and fraud have increased over this period, and it may be important to note that embezzlement represents only a very small part of female arrests: one-tenth of one percent in 1978, down from a similarly small three-tenths of one percent in 1964. Steffensmeier's point is that women are being arrested for traditionally female kinds of larceny like fraud rather than for nontraditional kinds of female crime such as embezzlement. However, this does not make the nontraditional gains any less important; indeed, in terms of dollars and the threat posed to the economic order, these nontraditional female crimes may be very important. Simon and Steffensmeier here offer different interpretations of similar empirical findings.

Last, there is the issue of female involvement in violent crime. Simon's findings seem to contradict Adler's predictions of growing female vio-

TABLE 2

Arrest Rates and Ratios per 100,000 Males and Females for Petty Property Crimes and for Masculine Property Crimes, 1960 (64) and 1977[a]

Type of Crime	Female Rate	Male Rate	Male/ Female	% FC	AD[b]	% of All Female Arrests	% of All Male Arrests
Petty							
Larceny							
1960	87.3	487.4	5.58	15.2	400.1	8.5	5.4
1978	376.2	870.4	2.31	30.2	494.2	9.0	22.2
Fraud							
1964	16.3	73.4	4.50	18.2	57.1	1.6	0.9
1978	100.3	185.3	1.85	35.1	85.0	5.9	1.9
Forgery							
1960	9.2	52.0	5.65	15.0	42.8	0.9	0.6
1978	23.8	60.6	2.55	28.2	36.8	1.4	0.6
Embezzlement							
1964	2.8	14.1	5.03	16.5	11.3	0.3	0.2
1978	2.1	6.8	3.23	23.6	4.7	0.1	0.1

Masculine							
Robbery							
1960	3.5	76.5	21.86	4.4	73.0	0.3	0.9
1978	10.9	154.7	14.19	6.6	143.8	0.6	1.6
Burglary							
1960	9.3	324.7	34.91	2.8	315.4	0.9	3.6
1978	32.7	536.1	16.39	5.7	503.4	1.9	5.5
Auto theft							
1960	5.4	149.2	27.6	3.5	143.8	0.5	1.7
1978	14.0	165.2	11.8	7.8	151.2	0.8	1.7
Arson							
1964	0.9	9.4	10.44	8.7	8.5	0.1	0.1
1978	2.4	18.7	7.79	11.4	16.3	0.1	0.2
Vandalism							
1964	8.6	142.3	16.55	5.7	133.7	0.8	1.7
1978	20.5	240.6	11.74	7.9	220.1	1.2	2.5
Stolen property							
1960	2.3	26.3	11.43	8.2	24.0	0.2	0.3
1978	13.5	177.5	13.15	10.3	104.0	0.8	1.2

Source: Steffensmeier 1981, table 1, reformulated.
Note: In some cases 1964 data were used because this was the earliest year for which data were reported separately for these categories.
[a]Percentage of female contribution.
[b]Absolute difference.

lence. Other sources of data seem to be consistent with Simon's position as well, at least for adult women (see Noblet and Burcart 1976; Harris and Hill 1981; Steffensmeier 1980). Thus the violence of adult women is clearly patterned differently from the violence of men (Ward, Jackson, and Ward 1969; Wolfgang 1958), and this patterning has not shown much sign of change. However, this point is less clear for adolescent women. Noblet and Burcart (1976, p. 655) find that arrests for violent crimes and property crimes increased equally among adolescent women between 1960 and 1970, and Harris and Hill (1981) report sex ratio drops between 1963 and 1974 in the population under 18 for a variety of violent crimes. We will return below to the issue of changing patterns of violence among adolescent women.

B. *Victimization Surveys*

Since many criminal acts involve victims as well as perpetrators, victims too can be a source of information about crime. Surveys of victims began in the United States in the mid-1960s (Biderman et al. 1967; Ennis 1967), and the American government has since inaugurated a regular surveying program on a national scale, the results of which we consider here.

Victimization surveys are limited, of course, in their subject matter: they are concerned explicitly with *crimes*, committed by *individuals*, against *persons* and their *property*. They are not concerned with "victimless crimes" such as gambling, prostitution, public disorder offenses, and alcohol and drug abuse. Added to this limitation, there are several deficiencies of method (see Sparks 1979), at least one of which—the reluctance of victims to report sexual assaults and crimes deriving from family quarrels—may particularly involve women. The existence of these deficiencies must be weighed against the unique findings that victimization surveys provide (Bowker 1981) and the short history of the techniques involved.

Hindelang (1979) has analyzed data on the sex of offenders reported by victims derived from the 1973 through 1976 surveys of American crime victims, called the National Crime Surveys (NCS). The findings of these surveys are summarized in table 3 along with 1976 *Uniform Crime Reports* data. A comparison of the NCS and UCR data (see table 3) reveals a very similar picture, leading Hindelang (1979, p. 152) to surmise that "in general, it appears that even at the earliest stage in the offending process for which data are available, the conclusions we can draw about sex and involvement in crime from victimization survey data are essentially the

TABLE 3

Estimated Percentages of Offenders Reported by Victims to Have Been Females, by Type of Crime in National Crime Survey, 1972–76, and Female Arrests in *Uniform Crime Reports*, 1976 Only

Type of Crime	NCS 1972[a]	NCS 1973[a]	NCS 1974	NCS 1975	NCS 1976	UCR 1976
Rape	0% (232,845)[c]	1% (203,733)	0% (223,721)	3% (222,050)	1% (161,000)	1%
Robbery	6%[a] (2,365,176)	4%[a] (2,070,110)	7% (2,122,945)	4% (2,248,777)	4% (2,126,622)	7%
Aggravated assault	8% (1,895,089)	8% (2,191,050)	7% (2,086,011)	6% (1,982,910)	8% (1,986,360)	13%
Simple assault	15% (3,047,491)	15% (3,364,001)	15% (3,228,297)	15% (3,283,535)	14% (3,374,864)	14%
Burglary	5% (563,470)	5% (493,526)	4% (604,949)	7% (458,304)	5% (502,293)	5%
Motor vehicle theft	3% (127,933)	3% (161,621)	4% (87,213)	2% (69,030)	5% (110,205)	7%
Larceny[b]	14% (2,039,625)	14% (1,636,759)	14% (1,709,704)	15% (1,818,003)	17% (1,670,439)	—
Personal larceny	11% (409,217)	11% (351,611)	11% (380,437)	11% (507,332)	14% (383,957)	—
Larceny from household	15% (695,064)	16% (568,833)	16% (535,966)	14% (515,022)	17% (507,345)	—
Larceny of unattended property	14% (935,344)	15% (716,315)	16% (793,301)	19% (795,649)	19% (779,137)	—

[a]Commercial robberies for 1972 and 1973 (or about one-fifth of all robberies) have been excluded because the raw data were not available for analysis. Female offenders generally constitute fewer than 2 percent of the commercial robbery offenders; hence, if they were included in the 1972 and 1973 robbery data, the robbery percentages for females might decline by half a point.

[b]The UCR and NCS larceny categories are not comparable (see Hindelang 1979, p. 148).

[c]Number of cases in parentheses.

same as those derived from arrest data for the same types of crimes." Thus these data indicate (1) women offenders are a small portion of all offenders reported by victims (e.g. in 1976 they accounted for 4 percent of all robberies, 8 percent of all aggravated assaults, 14 percent of all simple assaults, 5 percent of all burglaries, and 5 percent of all motor vehicle thefts reported by victims), and that (2) what increase in female involvement in crime has occurred during the short period of these surveys is most conspicuously in the area of larceny offenses (women accounted for 14 percent of all larcenies reported by victims in 1972, and 17 percent of these larcenies in 1976). Again, these data indicate that petty property crimes are the "traditional female crimes," and that they are the crimes in which increases in female involvement are most clearly occurring. Finally, Hindelang reports that, when the sex of the victim was held constant in his analyses, there was no evidence that male chivalry (males' reluctance to report crimes against them by women) had the effect of reducing the number of female-offender victimizations reported to the police. In sum, victimization data seem to confirm the picture of women and crime portrayed in public agency data.

C. *Self-Report Studies*

Self-report studies use paper-and-pencil instruments and interviews to ask (usually male) respondents to confess, in Kinseylike fashion, the quality and quantity of their criminal and delinquent indiscretions. The problems of self-report research are reviewed comprehensively elsewhere (Hindelang, Hirschi, and Weis 1978). Here it may be important to note that self-report research often involves students, and disproportionately middle-class ones at that. Even urban secondary-school student samples are skewed toward the middle class because of high drop-out and truancy rates. The weaknesses of the self-report approach also include memory lapses, deceit among subjects, vaguely stated survey items, and indefinite periods of coverage. Nonetheless, self-report data are suggestive of the volume and social location of various kinds of crime and juvenile delinquency, and, if appropriate questions and sampling procedures are used, it may be possible to generalize from these findings and to make comparisons with official data sources.

The gender-crime patterns we have seen in public-agency and victimization data reappear in the self-report studies, but with significant variations in degree. For example, official arrest ratios by sex are substantially higher than the sex ratios by offense found in self-report surveys. Nye and Short (1958) find a sex ratio among adolescents of 2.42

in a midwestern setting and 2.82 in a western setting. Wise's (1967) New England study yields an adolescent differential of 2.30; Hindelang's (1971) California data yield a sex ratio of 2.56; Kratcoski and Kratcoski (1975) report a 2.00 sex ratio; and Cernkovich and Giordano (1979) find a ratio of 2.18 (see also Hagan, Simpson, Gillis (1979); Jensen and Eve 1976). In each of these instances, males exceed females in self-reported delinquencies by more than two to one. However, this figure is still considerably less than that indicated by public agency data. The 1975 FBI *Uniform Crime Reports* indicate that the male/female arrest ratio for those under 18 years of age is 3.72. One explanation for this disparity is that police are more sensitive and responsive to male delinquencies.

In an attempt to estimate how police selection practices might influence delinquency sex ratios, Feyerherm (1981) has calculated a series of "transition probabilities" that reflect the likelihood that male and female adolescents will be processed through a series of steps beginning with police contact and leading to arrest. The results of these calculations reveal that, while the ratio of male to female delinquency at the stage of self-report was on the order of 1.70 to 1, at the point of arrest this ratio had increased to 3.88 to 1, more than doubling the apparent difference between males and females and approximating the figures found in public agency data.

Two explanations are offered: (1) that police are biased in their arrest practices, and (2) that male adolescents are involved in more serious kinds of delinquency. This brings us to the *kinds* of self-reported activities in which male and female adolescents are involved.

The important point to be made here is that, while female adolescents may be more "versatile" in their delinquencies than female adults are in their criminal behavior, nonetheless, as the seriousness of the events increases, so also do the differences between levels of male and female participation, among both adolescents and adults. A first indication that female adolescents may be unexpectedly versatile in their delinquencies is found in the work of Hindelang (1971). Hindelang reports that, while males may be much more delinquent than females, female delinquencies, much like those of males, still are spread across a broad range of activities. However, more recently Feyerherm (1981) has pointed out that the seriousness of these activities may differ substantially by sex. Thus, in Feyerherm's data, three levels of theft are examined, with the following results: in the lowest level, under $10, the ratio of male to female participation is 1.80; between $10 and $50 the ratio increases to 4.56; over $50, it increases to 22.00. The conclusion (p. 88) is that "since

the sets of arrest statistics most often examined are designed to deal primarily with serious offenses, this tendency may explain why arrest information is more likely to show strong male-female differences."

A key difference between the self-report studies and those based on public agency data is that the former are generally time bound in their coverage. This makes it more difficult to answer questions about change over time when using self-report data. Fortunately, however, Smith and Visher (1980) have brought together many of these studies, along with those focusing on public agency data, and have offered a "meta-analysis" of the data they review. Their analysis indicates that the relative involvement of males and females in crime is trending toward similarity for *both* self-report and official measures, but that the rate of the trend is significantly greater for the self-reported measures. Beyond this, Smith and Visher report that, although women are closing the gap in terms of *minor* forms of crime and delinquency, there is no indication that equal gender representation in the area of serious criminal behavior has yet occurred. Finally, and perhaps most significantly, they note that, while the gender-deviance relation is diminishing for both youths and adults, their data indicate that this trend is stronger for youths.

The last point is significant because, as Smith and Visher (1980) note, "It is at least plausible that shifting sex-role ideologies may be more salient for younger females and, thus, may have a greater impact upon the behavior of this group." This hypothesis and an analysis of public agency data in support of it are found in the work of Harris and Hill (1981).

D. *Private Agency Data, Observational Studies, and Archival Research*

There remain three other sources of data on women and crime. First, the records of the internal security departments of corporate entities have been used to study shoplifting and the crimes of employees against these bureaucracies. The studies of shoplifting indicate that this is a traditionally female crime in that it has involved large numbers of women for some time (Cameron 1964). Of greater interest is the question whether women shoplifters are reported by private security personnel to police at the same rate as are men shoplifters. Because so many women are apprehended for shoplifting, this is a good offense to test for police bias. Cameron reports from the Chicago department store data she analyzed that only 10 percent of the women shoplifters, compared with 35 percent of the men shoplifters, were reported to the police. However, Hindelang (1974) finds no disparity by sex when the retail value of goods

stolen was taken into account in a sample of shoplifting cases processed in California between 1963 and 1965. Of the two studies, Hindelang's is the more recent and the more methodologically sound.

Employee theft is another area in which private agency data have been put to interesting use. Franklin (1979) reports, in a study based on the reports of a large retail organization, that although a majority of the employees were women, the majority of employee thieves were men. Similarly, it is also found that the greater the value of the theft, the greater the likelihood that it was committed by a male employee. Indeed, the female thefts were relatively petty, with 81 percent of the thefts committed by females valued between $1 and $150. These private agency data, then, seem to further confirm the impression that women continue to be involved in the "traditional" types of female crime.

The latter point is made in a somewhat different way by observational case studies of different types of criminal behavior. Miller (1973) reports on the basis of his work with street corner gangs that females continue to play largely ancillary roles. As Steffensmeier (1980, p. 1102) notes, this does not mean there have been no serious and significant female criminals: there are now and always have been cases of female professional thieves, robbers, and so on (Block 1977; Byrnes 1886; Ianni 1974; Jackson 1969; Lucas 1926; Reitman 1937). However, the female role, then and now, has typically been as an accomplice to a male who both organized the crime and was the central figure in its execution (although see Giordano 1978).

There is, finally, one additional study based on archival records that puts much that precedes into a broader historical perspective. This study, by Cernkovich and Giordano (1979), is based on police blotters from the city of Toledo, Ohio, for the years 1890–1975. The length of the time period covered is unique to this study, and these conclusions were drawn: (1) women are now being arrested for offenses that are increasingly similar to those for which males are arrested; (2) female rates of arrest are increasing more rapidly than are male rates; and (3) male-to-female ratios are declining for many offenses. This changing character of female crime is noted in qualitative as well as quantitative terms. Thus, notes made by police officers in the margins of these blotters indicate that, whereas in the earliest periods a high percentage of the total number of women arrested were somehow tied to "houses of ill fame" (see also Heyl 1979), by the 1930s there began to be a more active, independent-from-hearth-and-home (as well as from house-of-prostitution) quality to the offenses. Indeed, the 1930s show significant increases in such prop-

erty offenses as robbery, burglary, theft, and embezzlement. The significance of the timing of this shift is that it also marks the onset of the Great Depression, a time that was particularly precarious for women. Thus Giordano, Kerbel, and Dudley (1981) conclude that "this analysis of offense types as well as the characteristics of women arrested suggests that the increases may reflect the fact that certain categories of women (e.g., young, single, minority) [were] now in an even more unfavorable position in the labor market at the same time they [were]... increasingly expected to function independently."

We are now in a position to draw some conclusions about the relation between gender and crime. We have noted that this relation is strong and that it is likely to remain so into the near future, at least in an absolute sense. On the other hand, in a relative sense, there is evidence that women are becoming more like men in their levels of involvement in crime, with this being particularly true of younger women and in the area of property crime. The areas of female criminality that are changing fastest are those that have been traditionally female, including petty forms of theft and fraud. These changes are important not only to our understanding of crime as a behavioral phenomenon, but also to our understanding of changes that may be occurring in the sanctioning of women offenders. As we will see in the following section, research on sanctioning has not done a good job of drawing this connection. We emphasize this point in the conclusion. First, however, we review the research that has been conducted on women and the sanctioning process.

II. The Role of Gender in Court Outcome Decisions

Our purpose here is to examine the research on *the role of gender in criminal court outcome decisions.* To organize our presentation, we divide this section into six subsections: (*a*) changes in the level of attention given to gender in court outcome research; (*b*) the theoretical relevance of including gender as a potential decision outcome determinant; (*c*) the role of gender in pretrial release decisions; (*d*) the role of gender in decisions to prosecute fully toward conviction rather than to terminate through some form of dismissal, discharge, or diversion; (*e*) the role of gender in plea negotiation/bargains; and (*f*) the role of gender in conviction and sentencing decisions. Because our focus is on the role of gender in *criminal court* decisions, we exclude research on juveniles and juvenile court dispositions (see e.g. Chesney-Lind 1973; Datesman and Scarpitti 1980; Kratcoski 1974; Scarpitti and Stephenson 1971; Terry 1970; Thornberry 1973), research on decisions that precede (e.g. arrest) or

follow (e.g. parole) processing in the court, research based on data drawn from jurisdictions not within the United States (e.g. Smart 1977*b*), and research focusing on discrimination in criminal statutes (e.g. Armstrong 1977; Babcock 1973; DeCrow 1974; Frankel 1973; Singer 1973; Temin 1973). While some of this literature is relevant to the discussion here, it does not fall directly within our review mandate. Finally, we exclude research on the imposition of the death penalty, not because it falls outside the boundaries of our review, but because there have been too few empirical studies where the gender of the offender was examined (for exceptions, see Bedau 1964; Judson et al. 1969).

A. *Changes in the Attention Given to Gender in Court Research*

Rasche, in an essay on the female offender as an object of criminological research, contends that "the vast bulk of criminological research, unquestionably, has concerned itself with male offenders" (1975, p. 9). To explain this, she notes that women constitute only a minute proportion of those imprisoned, that they appear to be less violent, and that as research subjects they seem inherently less interesting. As we noted in section I, the actual number of women arrested, prosecuted, convicted, and imprisoned is indeed considerably smaller than the number of males, especially for violent crimes and major property offenses. This has two important consequences. First, because there are so few women offenders, researchers have generally presumed that they can safely be ignored in the search for important patterns of decision making. Moreover, the smallness of their numbers makes inclusion of women a problem in data analysis.

> Small populations of female offenders mean that researchers interested in them will have fewer subjects for study, complicating statistical findings and, of course, lowering the generalizability of the data. (Rasche 1975, p. 11)

Second, women typically have not been prosecuted and convicted for the more serious or violent crimes such as robbery, burglary, assault, and auto theft. They have more often been prosecuted and convicted for property-related misdemeanors such as shoplifting. Researchers have not included women in their more focused efforts to model decision making for the outcomes of serious, violent offenders. Finally, the importance of gender as a salient independent variable for sociological inquiry has only recently been recognized. While the social science journals of the 1970s are filled with publications on sex differences in

labor force participation, occupational mobility, scientific accomplishments, and the like, no comparable research tradition can be found in the journals of the 1950s or 1960s. Thus the inattention to sex in court outcome research probably reflects the more general pattern of inattention to gender in social science research before the onset of the women's liberation movement.

The inattention to gender in court outcome research raises several important interpretative issues. First, it is unclear whether the patterns discerned for samples of male defendants hold for samples of female defendants. Harris (1977, p. 3) argues that "general theories of criminal deviance are . . . no more than special theories of male deviance." From this perspective it follows that including females in the research samples used to model court outcome decisions might dramatically change current conceptions. Second, to the extent that including gender in models of decision outcomes changes the relation among other independent variables (e.g. the defendant's race, age, occupation, social class) and the court outcome under study, extant theory and research may need to be reexamined.

Our review of the research on the role of gender in court outcomes reveals a major change after 1970. Before 1970 the inattention to gender was almost universal. In Hagan's 1974 review of studies relating extralegal offender characteristics to judicial sentencing, nineteen of the twenty studies reviewed were published before 1970. Only five of the nineteen included a defendant's sex in the research; in two of those five there were too few women to draw any inferences (Bedau 1964; Judson et al. 1969). Both were studies of the imposition of the death penalty. Since 1970, we can identify more than twenty studies that consider a defendant's sex. What is noteworthy is that only a handful of researchers and their students seem to have done most of this work. Thus, despite the relative gains in the apparent attention to gender, relative to other status characteristics of defendants such as race or social class, gender is still largely ignored. Moreover, with few exceptions, there are virtually no studies that go beyond noting that males, or females, receive preferential treatment at one decision point or another. The research by Nagel, Cardascia, and Ross (1980) on sex differences in the processing of state court defendants is the only study we can identify where the question raised by Harris—Are there different models of decision making by sex?—is directly addressed. It appears that the repeated calls for an end to the inattention to gender (see e.g. Adler 1975; Babcock 1973; Brodsky

1975; Harris 1977; Simon 1975; Ward, Jackson, and Ward 1969) have not yet been answered.

B. *The Theoretical Relevance of Gender as a Decision Outcome Determinant*

Current perspectives in the sociology of law and deviance provide strong theoretical justification for expecting a defendant's gender to affect criminal court outcome decisions. These perspectives draw attention to social power, social rank, the defendant's ability to negotiate the imposition of a criminal label, and stereotypic expectations and responses to criminal defendants.

With respect to power, conflict theorists (e.g. Chambliss and Seidman 1971; Quinney 1970, 1973, 1977; Turk 1969) and labeling theorists (e.g. Lofland 1969) argue that the relative power of an individual is an important factor in the determination of criminal court decision outcomes. Less powerful members of society, they contend, will be more likely to receive unfavorable treatment. In Black's (1976) terms, the quantity of law will vary with the social rank and power of the individual. In other words, sanctions will more likely be imposed on the less advantaged members of society. Women can be assumed to be less powerful by virtue of their weaker ties to the economic means of production, their lesser status roles in the work force, their underrepresentation in politics, and their general underrepresentation in positions of economic, social, and political leadership. If one simply applied the thesis that the less powerful are more likely to receive the least favorable outcomes, one would predict that women will fare less well than men in court outcome decisions.

We believe, however, that power is situational, and in the context of the criminal court the relative powerlessness of women in society would be more an advantage than a disadvantage. We contend that this is so because the powerlessness of women is not accompanied by a dimunition in value and rank. Rather, one societal view is that the proper role of women is one of powerlessness and dependency, but that this role deserves respect, protection, and value. Thus a simplistic application of the conflict perspective would erroneously predict that women would be treated more harshly than men. We predict instead—to the extent that there is a consistent pattern—that women will be less likely to be detained pretrial, prosecuted fully to conviction, unfavorably treated in plea negotiations, or sentenced to imprisonment.

With respect to a defendant's ability to negotiate away the imposition

of a criminal label, Blumberg (1967), Bernstein et al. (1977), and Schur (1971) argue that certain status attributes, life experiences, or court experiences enable some defendants to evade criminal labels more easily. Warner, Wellman, and Weitzman (1971) suggest that women may be better negotiators since they can use their "femininity" to manipulate actors to respond favorably to them. Some social psychological research testing hypotheses deduced from attribution theory (see e.g. Landy and Aronson 1969; Stephan 1975; Weiten and Diamond 1980) supports this supposition, since it is generally reported that jurors and judges (simulated or real) are less likely to attribute criminal liability to attractive defendants. Further, on the assumption that most criminal court decisions are made by males, one would again predict that female defendants are likely to receive more favorable decision outcomes.

With respect to values and expectations, Becker (1963), Erikson (1964), Kitsuse and Cicourel (1963), Rubington and Weinberg (1978), Schur (1971), and Swigert and Farrell (1977) argue that criminal court personnel hold certain values and expectations that are shaped by the ascribed and achieved status of defendants. Since sex is a major ascribed status for shaping behavior and expectations, typifications based on gender can be expected to affect criminal justice decision making.

A consideration of gender is clearly consistent with, and indeed central to, some of the assumptions of the variety of theoretical perspectives that frame court outcome research. Yet the specific role of gender in these perspectives has not been well developed. While hypotheses of differential treatment by sex can be derived, it is not at all clear what the direction of the hypotheses should logically be, or how the hypotheses would change when the same questions are addressed for women defendants as for men. There are, however, two theoretical perspectives, the chivalry thesis and the evil woman thesis, that focus specifically on differential treatment, by gender, within the legal system. Both emphasize the importance of specific expectations of, and tolerances for, female criminality. What is curious is that, while the two positions make different assumptions about the motive of decision makers (i.e., punitive versus protective), the outcomes they predict are not clearly dissimilar. And, in the most recent literature, *both* the punitive and the protective (chivalry) patterns are attacked as evidence of sex discrimination (see e.g. Datesman and Scarpitti 1980; Moulds 1980).

1. The chivalry/paternalism thesis. The first perspective is ordinarily termed the *chivalrous* or *paternalistic* thesis. It is meant to explain the preferential treatment of women on the basis of chivalrous or paternalis-

tic responses of judges, prosecutors, magistrates, and the like. The thesis that women are given chivalrous treatment in the criminal justice system was first noted by Thomas (1907). In his book *Sex and Society* he states:

> man is merciless to woman from the standpoint of personal behavior, yet he exempts her from anything in the way of contractual morality, or views her defections in this regard with allowance and even with amusement. (Thomas 1907, p. 234)

Despite the relatively early date of its origin, the chivalry thesis was largely ignored until Pollak revived it in his classic (1950) work on female criminality. Pollak (1950, p. 151) states the thesis quite clearly:

> One of the outstanding concomitants of the existing inequality between the sexes is chivalry and the general protective attitude of man toward woman. This attitude exists . . . on the part of the officers of the law, who are still largely male in our society. Men hate to accuse women and thus indirectly to send them to their punishment, police officers dislike to arrest them, district attorneys to prosecute them, judges and juries to find them guilty.

After Pollak, many years passed before the chivalry thesis reappeared in the literature. With the exception of Nagel (1969), Nagel and Weitzman (1971), and Reckless and Kay (1967), each of whom claim to find some empirical support for the thesis that women are chivalrously or paternalistically treated, the chivalry/paternalism thesis was not really elaborated upon until 1975 when Simon revived it in her monograph on women in crime. A review of the post-1975 literature suggests that the chivalry thesis is now wholly accepted. Anderson (1976), Crites (1978), and, most recently and perhaps most comprehensively, Moulds (1980) elaborate on the propositions and implications of the thesis. Moulds makes the most important contribution because she tries to draw conceptual distinctions between chivalry and paternalism. Tracing the historical and etymological derivations of each term, she finds the roots of the chivalry concept in the Middle Ages. Then it was an institution of service rendered by the crusading orders to the feudal lords, to the divine sovereign, and to women (Moulds 1980, p. 279). Knights were sworn to protect women against dragons and devils. While the formal practice was ultimately discontinued, the legacy lived on in an informal set of conventions and a code of manners. What Moulds does not point out, but we believe to be equally important, is that chivalry dictated that women were to be put on a pedestal and treated with the most gallant of manners, while being presumed to be weak and in need of protection. There is

little, however, that one can consider "negative" in chivalrous treatment or a chivalrous attitude *if* one interprets the behavior in its temporal context.

Paternalism is, as Moulds aptly points out, very different from chivalry. By definition, paternalism is meant to imply a power relationship; the term has always had a pejorative connotation. Webster defines paternalism as "a relation between the governed and the government, the employed and the employer, etc., involving care and control." For Moulds the key element in paternalism is the likening of the female to a child. Paternalism presumes that one is dealing with a defenseless, propertyless individual who cannot be held responsible for his or her own actions, who is incapable of assessing information, and who is incapable of making a proper decision. Such a person is in need of guidance and protection. It follows that, if such a person "strays"—commits a crime—it is wholly appropriate to assume that, like a child, he or she is not responsible. Moulds (1980, p. 282) summarizes the difficulties with such a paternalistic attitude:

> It is important to be wary of a society which permits paternalism to color the perceptions of those who make and enforce the law. Those perceptions profoundly affect behavior of those in power and the behavior of those paternalized in a manner that is inconsistent with the operation of a democratic state. A basic denial of self-determination is what is taking place.

In sum, the chivalrous treatment of women in the arms of the law does not have the same negative implications as does paternalistic treatment. Unfortunately, Moulds does not provide a basis for identifying whether preferential treatment, as she observes it in California, results from a paternalistic or a chivalrous response.

Our own reading of the literature suggests that there is one additional implication of consciously or implicitly drawing the theoretical distinction between chivalry and paternalism. To the extent that researchers who found preferential treatment for female defendants in decisions at pretrial (e.g. Nagel 1981), plea (Crites 1978), and sentencing (e.g. Nagel 1969; Nagel and Weitzman 1971; Simon and Sharma 1978) assumed such preferential treatment was reflective of a chivalrous or even a mixed chivalrous/paternalistic response, there were no strident calls for redress or reform. Nor did the authors view these results as egregious examples of sex discrimination. However, to the extent that the same preferential patterns are interpreted as reflective of a purely paternalistic response—

see, for example, Datesman and Scarpitti (1980) and Moulds (1980)—then the findings are seen as consistent with other evidence of sex discrimination, and different reform measures are proposed.

We believe that future research should seek empirical evidence of the bases for the preferential treatment of females, and the conditions under which it is most and least pronounced. Hagan, Hewitt, and Alwin (1979), Kruttschnitt (1981), and Nagel, Cardascia, and Ross (1980) have begun to investigate the conditions under which females are more or less likely to be preferentially treated. But to our knowledge there is no research that provides empirical data to link the preferential treatment of women specifically with any of the following assumptions: Women (*a*) are less culpable; (*b*) are more emotional and less responsible for their actions; (*c*) commit crimes that are ephemeral and not part of a general criminal pattern; (*d*) are not dangerous; (*e*) are easily deterred without harsh sanctions; (*f*) are amenable to rehabilitation outside the prison; (*g*) are too sensitive to withstand severe sanctions that are harsh and traumatic. Until preferential responses are linked to particular assumptions, we will not be able to resolve whether preferential treatment stems from notions of chivalry or paternalism or from some combination. More important, the theoretical implications of preferential treatment, and the consequent appropriate policy suggestions, remain unclear.

2. *The evil woman thesis.* Despite widespread acceptance of the view that female defendants receive preferential treatment, whether reflecting chivalry or paternalism, there is a counterthesis—*the evil woman thesis*—that hypothesizes that women are more harshly treated in the arms of the law. One problem with this thesis is that it has been conceptually muddied by the evidence used to support it. It is argued that, under the guise of paternalism, female juveniles, and some adult women, are incarcerated for longer periods than are equivalent males (see e.g. Chesney-Lind 1977; Kratcoski 1974; Singer 1973; Smart 1977*b*; Velimesis 1975 for elaborations on this theme). The result is said to stem from the courts' belief that women who commit crimes are evil and must be "helped" to see the error of their ways. But if the evil woman thesis is the antithesis of the chivalry/paternalism thesis, then paternalistic responses that generate harsher outcomes cannot logically be used to substantiate the evil woman thesis.

The above notwithstanding, the evil woman thesis hypothesizes that women will be more harshly sanctioned because their criminal behavior violates sex stereotypic assumptions about the proper role of women. It follows that if women accrue benefits from a presumption that they

cannot commit wrongdoings, then, if that presumption is shown to be false, the benefits accrued will now be lost. Furthermore, such a loss might well be accompanied by an overreaction to their "falling from the pedestal." Rasche (1975) observes:

> The few references made about women in this regard show clearly that women were generally considered morally corrupt (as opposed to evil) when they transgressed the law, but were not taken seriously as a danger to society. Hence the terms "fallen" or "errant" which were so often applied to females who pursued criminal careers; women were seen as essentially virtuous unless they "fell" from their pedestals or were "led astray" by others. Very few women were labeled "evil," but when such labeling occurred, it was with a vengeance. Often, "evil" women were portrayed as supernatural, or as witches, and therefore, no longer deserving of the protection or politeness normally extended toward women. (1975, p. 15)

In assessing the empirical support for the evil woman thesis, there are two hypotheses that might be tested. The first is the generalized statement that female defendants will fare less well than male defendants in terms of the severity of court outcomes. Since all crimes committed by women can be seen as violating sex stereotypic assumptions about the proper role of women, female defendants will be sanctioned not only for their offenses, but also for their inappropriate sex role behavior. This prediction comes from a rather simplistic interpretation of the evil woman thesis. At a minimum, we would refine the hypothesis to state that female defendants will retain the advantage of being female until after such time as evidence of their law-violating behavior has been presented. Accordingly, we would predict that females will be preferentially treated in pretrial, full prosecution, and plea negotiation decisions. Only after an extensive evidentiary hearing, that is, posttrial, would the benefit of their female status be lost. Thus, at the time of conviction and sentencing, one might predict a reversal in the pattern. The second prediction consistent with the evil woman thesis assumes, as did the chivalry thesis, that females, relative to males, will fare better in general in terms of court outcome decisions. However, when one compares females with other females, those whose offense pattern most dramatically departs from sex role stereotype assumptions (e.g. those prosecuted for armed bank robbery, auto theft) will fare less well than their more traditional female counterparts (e.g. those prosecuted for shoplifting or embezzlement).

To assess the empirical support for the evil woman thesis and for the chivalry/paternalism thesis earlier discussed, we turn now to a review of the extant research on each of the major decision stages. Before presenting our review, we need to note three special problems that may affect the results reported in the research reviewed. First there is the potential problem of sample selection bias. Specifically, it may be that preferential treatment of women in the early decision stages results in the women who continue to conviction and sentencing decisions being the most serious and violent offenders. Thus a comparison of the effects of gender across decision outcome stages would, in the absence of a statistical control for this potential bias, not be fair. Second, if women do cluster at the less severe end of offense categories, then even when the nature of the crime is considered it might be appropriate for them to be more advantageously treated to reflect their less severe offenses. Unfortunately, most of the research reviewed will not provide data in sufficient detail to explore this issue. Third, most of the research reviewed contains no data on motive. This may be especially important since it is increasingly presumed that a substantial number of assaults and murders by females are motivated by self-defense. If the presumption of self-defense is justifiable, this might explain a finding of preferential treatment for women. With these limitations in mind, we proceed to our review.

We organize our review around decision stages because we believe that the determinants of decision outcomes change as a function of the particular decision being examined, the statutory and case law surrounding the making of that decision, and the general social context in which the decision is made (for an elaboration of this perspective, see Nagel 1981 and Nagel and Hagan 1983).

C. *The Role of Gender in Pretrial Decisions*

For most criminal defendants, the first decision of major consequence is the determination of the terms under which defendants may be free during the interim between arrest and the disposition of the case against them. "Bail" is the term commonly used to denote this stage of court processing, a term that refers to the amount of money necessary to obtain pretrial liberty. In fact, the pretrial release decision is at least two-tiered, and the amount of bail is the second tier. In most jurisdictions, the first decision concerns the type of release conditions offered the defendant. If the defendant meets the conditions of release, he or she may remain at liberty during the preadjudication period. Options range from release on

personal recognizance, that is, an unsecured promise of the defendant to return for all scheduled court appearances, to the outright denial of bail, a decision that denies the defendant any opportunity to be released. The second decision, the amount of money requested, is relevant only for those defendants for whom a monetary deposit is the release condition. The two most common monetary conditions are the request for a surety bond and the request for a cash deposit. The latter is often an alternative to the former. The former requires the sponsorship of a bail bondsman; the latter does not. In either case the critical issue is the amount of money requested. For our purposes, the important question is whether a defendant's sex affects the type of release condition offered or the amount of money requested.

In trying to assess the empirical evidence for these questions, one is immediately struck with three problems. First, many of the more robust studies that seek to model the bases upon which pretrial decisions are determined (e.g. Landes 1974) fail to include women in their sample. Second, the methods by which pretrial release decisions are measured vary dramatically from study to study. This makes it difficult to draw summary conclusions. Third, the samples of defendants vary, from those that focus on serious felony cases to those that focus on misdemeanor cases only. Also, the number and type of control variables other than sex—for example, prior record, nature of offense—vary as well. These problems notwithstanding, we note two general patterns. It is not unusual for researchers to report that gender has no effect on pretrial decisions, especially decisions on the dollar amount of cash or surety bond requested. To the extent that there are sex differences, female defendants are more likely to receive the less restrictive release options, such as release on recognizance.

Nagel (1969; also see Nagel and Weitzman 1971) examined pretrial outcomes for a sample of 11,258 defendants prosecuted in 1962, drawn from 194 counties across 50 states. Focusing on felonious assault and grand larceny, Nagel concludes: "male defendants in assault and larceny cases are much less likely than female defendants to be released on bail they can afford" (1969, p. 92). An analysis of his data suggests that this conclusion may not be fully supportable. First, females represent approximately 7 percent of his felonious assault ($N = 846$) and grand larceny ($N = 1,103$) cases. Thus inferences are drawn from patterns based on very small samples. Second, no factors other than a defendant's sex are taken into account. The analyses include no control for prior record, age, family composition, race, employment, and so forth, many of

which have been shown to mediate the relationship between gender and court outcomes. Third, the way the pretrial outcome variable is measured—Did the defendant make bail or not?—merges the judicial decision on type of release condition offered with the amount requested (if a monetary amount was requested) and the defendant's ability to raise the money (if money bail was the condition). Thus, while one can conclude that females were more likely to be released on bail they can afford, it is unclear whether this is because they were offered less restrictive options, or lower bails, or because they were more successful in raising bail money. Most important for our purposes, the research contributes little toward an understanding of whether, and how, gender affects pretrial decisions.

Swigert and Farrell (1977), in a study of persons arrested for murder between 1955 and 1973 in a large eastern state, improve somewhat upon Stuart Nagel's early research. Swigert and Farrell use a multivariate mode of analysis to examine pretrial release decisions for 444 defendants. However, they too confound the analysis by merging judicial decisions with defendant resources when they code the pretrial variable as released/detained. Thus their conclusion that males are more likely than females to be detained before trial is not particularly useful as evidence of the role of gender in pretrial judicial decisions. Again, if the question is whether judges accord preferential treatment to women on the basis of sex, one has to examine the decision unconfounded by other resources the defendant brings to subsequent outcomes. The pretrial decisions are the type of release and the amount of money requested. Whether a defendant meets the release conditions—for example, makes bail—may be a function of the amount requested, the amount the defendant can raise, the degree to which a bondsman may want to sponsor a defendant, or some combination thereof.

Three studies that do contribute more to our understanding of whether gender affects pretrial decisions are Goldkamp's (1979) study of 8,326 defendants prosecuted in Philadelphia in 1975, Nagel's (1981) study of 5,594 defendants prosecuted in New York between 1974 and 1975, and Nagel and Hagan's (1983) research on 9,068 defendants prosecuted in ten federal jurisdictions between 1974 and 1977.

Goldkamp looks first at whether the defendant was released on recognizance or if some other release condition was required. Examining the relation between sex and release on recognizance, he observes that in Philadelphia 62 percent of the female defendants were released on recognizance compared with 45 percent of the male defendants. This pattern

is similar to that reported by Nagel (1969). But when Goldkamp introduced into the analysis the host of other variables ordinarily expected to affect pretrial decisions (e.g. age, race, income, employment, type of charge), the effect of gender became negligible. In fact, Goldkamp finds that ascribed status characteristics of defendants, as a set, have very little influence on pretrial release decisions. Turning his attention next to the mean dollar amount requested from those asked to post money bail, when a variety of factors in addition to sex are simultaneously considered, Goldkamp finds gender to have no significant effect.

Ilene Nagel's (1982) study focuses on three pretrial decisions: (1) whether a defendant is released on recognizance or bail is set; (2) if money bail is requested, the amount requested; and (3) whether a cash alternative, lower in dollar value than the surety bond, is offered. Controlling for such factors as race, ethnicity, age, education, primary speaking language, severity of the charged offense, prior record, and the particular judge before whom the defendant appears, she notes the following results. For the decision whether to release the defendant on personal recognizance or to set bail, female defendants are more likely to be released than to have bail set. The effects of gender are statistically significant for those prosecuted for both more and less serious offenses. However, gender has no effect on the dollar amount of bail requested. Similarly, the decision whether to offer a cash alternative is not affected by a defendant's sex.

Finally, in some preliminary analysis of pretrial decisions for federal defendants, Nagel and Hagan (1983) analyze three pretrial decisions: (1) the type of release condition, ordered according to restrictiveness from release on recognizance through surety bond; (2) the amount of surety bond requested from those for whom surety bond is the release condition; and (3) the amount of cash deposit requested from those for whom a cash deposit is the release condition. The authors report a pattern similar to Nagel's (1982) findings for defendants prosecuted in New York State. For federal defendants, gender affects the first decision on type of release, with females being more likely to receive the less restrictive release options. Gender has no effect on the subsequent decisions concerning the amount of dollars requested.

In summary, with respect to our initial question, Does gender affect pretrial decisions? our review suggests the answer is a limited yes. There is support for the thesis that female defendants fare better in pretrial decisions. With respect to the circumstances in which this preferential treatment is more or less pronounced, we note that preliminary reports

by Nagel, Hagan, and Smith (1982) find greater advantages for women in small federal jurisdictions in southern states. We note too that there is some pattern of difference according to the particular pretrial decision being examined. While gender apparently has some effect on the decision between release on recognizance and bail, no study reported a significant effect of gender on the amount of money requested if money, either surety bond or cash, was requested (see Goldkamp 1979; Nagel 1982).[1]

We might speculate that these early findings suggest that, for decisions that can be ordered from low to high severity (e.g. type of release condition, type of sentence), the decision to give female defendants more of the least severe options can be empirically supported. However, as defendants become more similar in offense/offender patterns and are pushed along the conveyor belt of criminal justice processing, the effect of gender is reduced to insignificance. Finally, we note that, with the exception of the ongoing work of Nagel, Hagan, and Smith (1982), there is no known research that seeks to ascertain whether the determinants of pretrial decisions differ for males and females, nor is there research that explains, with empirical support, the rationale that gives rise to the patterns of preferential treatment noted.

D. *The Role of Gender in the Decision to Prosecute Fully toward Conviction*

Between the initial prosecutorial decision to charge a suspect with a crime and the adjudicative decision of guilt or innocence, be it by trial or by plea, the prosecutor continuously has the option to prosecute toward conviction or to terminate the case through a dismissal, deferral, nolle prosequi, discharge, or some other dispositionary tactic. In many state jurisdictions, upward of 40 percent of defendants' cases terminate in some form of a dismissal (see e.g. Hagan 1975; Zeisel, de Grazia, and Friedman 1975; Bernstein et al. 1977). In federal jurisdictions the number is similarly high. Accordingly, any effort to assess the effect of the defendant's sex on court outcomes must encompass the interim processing decision of whether to continue to prosecute toward conviction.

The primary problem in assessing the role of gender at this stage is that reliable information on the strength of the prosecutor's case is seldom included in the research literature. We, like Miller (1969), believe that

[1]One possible explanation for women's being less likely to be asked to post bail is that requesting bail often translates to detention, especially among the indigent. Detaining women, however, presents a special problem in that space is often not available.

the strength of the evidence in the case, along with other unmeasured variables, probably accounts for most of the variance between why some are prosecuted toward conviction and others are deferred, discharged, or otherwise diverted. Our review of the literature disclosed virtually no studies that included measures of evidence, or measures of the other factors highlighted by Miller as most important to the outcome—for example, attitude of the victim, cost to the system, harm to the suspect, alternative modes of disposition, and the general fit between the decision to prosecute fully any single case and prosecutorial priorities and caseload. Accordingly, we hesitate to draw conclusions about the role of gender at this stage, since it is always measured in a model of analysis that is likely to be misspecified. Nonetheless, for the sake of continuity, we review the extant research.

Pope (1976), in a study of 1,196 defendants prosecuted for burglary in California between 1972 and 1973, examined the decision to terminate prosecution before trial. While the decision to dismiss is theoretically predicated on the assumption of a low probability of conviction, he finds that cases against female defendants are more likely to be terminated. This finding is robust even when the defendant's prior record is introduced as a control variable, although it varies somewhat depending upon the nature of the record. That is, when both males and females had no prior record, the cases against female defendants were proportionately more likely to be terminated. However, when they both had records, the sex differences in the termination rate disappeared.

Simon and Sharma (1978), in an analysis of defendants prosecuted in 1974 and 1975 in Washington, D.C., similarly report an interaction effect when examining the relation between sex and dismissal, controlling for the nature of the offense. They report that prosecutors are more willing to drop charges against females than males when the defendants are prosecuted for violent crimes. Conversely, when the prosecution is for a victimless crime, prosecutors are more willing to drop charges against males than females. For all other offense categories, no difference between sex and the dismissal rate was noted.

Myers (1977) studied the prosecution of 1,050 cases in Indiana between 1974 and 1976. In an analysis that included (1) the sex of the defendant, (2) the occupation, employment, age, and sex of the victim, (3) the victim's prior record, (4) a measure of the victim's helplessness, negligence, and degree of provocation, (5) the relationship between the defendant and the victim, (6) a host of other characteristics of the

defendant, such as occupation, employment, and age, and (7) characteristics associated with the charged offense, she finds a defendant's sex to have no notable effect on the decision to dismiss felony charges.

> The prosecutor's commitment to prosecute fully did not depend on the seriousness of the charge, the harm sustained by the victim, the defendant's relative status [the category in which sex was examined], predisposition outcomes and defendant threat. Full prosecution was more likely only if the victim was willing to prosecute, non-negligent and employed in a low status occupation. (1977, p. 181)

Parenthetically, in support of our earlier contention that many of the models of the decision to prosecute fully are misspecified, we note that Myers, using the same set of independent variables for the analysis of each stage of decision making, finds she can explain only 12 percent of the variance in the decision to prosecute fully compared with 30 percent of the variance in the conviction outcome and 59 percent in the type of sentence. Of interest too is that Myers finds the influence of gender to be significant in the conviction decision and sentence severity, although, as noted, she does not find it significant in the decision to prosecute fully toward conviction.

Moulds (1980), in an examination of 1974 rates of disposition for 267,904 felony arrests in California, notes:

> A very large number of felony arrests each year are subsequently charged as misdemeanors or dropped altogether from the courts. These cases never reach Superior Court. . . . the percent of male felony arrests reaching Superior Court in California in 1974 (16.6%) and the percent of female felony arrests reaching Superior Court (13.5%). (1980, p. 289)

While no multivariate analysis is done, and therefore no conclusions can appropriately be drawn, Moulds's data do conform to the pattern of slight preferential treatment for women. Whether these differences would be significant when other variables are controlled is doubtful.

Nagel, Cardascia, and Ross (1980), in a study of 2,972 male and female defendants prosecuted in New York in 1974 and 1975, directly address the question of sex differences in the decision to prosecute fully versus the decision to dismiss. Looking first at the relation between gender and the decision to prosecute toward conviction, they note that 57 percent of the male defendants have their cases dismissed compared

with 66 percent of the female defendants. However, when a multivariate analysis is employed that includes, in addition to gender, the severity of the arrest charge, the type of arrest charge, the defendant's prior record, release status pending adjudication, the particular court (criminal versus supreme) in which the case was prosecuted, and a host of other variables, the effect of gender is not significant. Moreover, like Myers (1977), they find they can explain very little of the variance in the decision to prosecute fully toward conviction. Again, since their model does not include measures of the strength of evidence and the other variables highlighted by Miller (1969), it is probably similarly misspecified. While the authors separately modeled decisions for male and female defendants for the sentencing decision, they did not do so for the decision to prosecute toward conviction because sex had no additive effect on the full prosecution outcome and because their set of independent variables taken together failed to predict well on this outcome.

To summarize, our conclusion is that, in the absence of research that includes measures of strength of evidentiary materials, and lacking other indicators such as the value to the prosecutor of obtaining a conviction in the case, we cannot at this time assess whether gender plays a role in the decision to prosecute fully toward conviction. The above notwithstanding, we can hypothesize that gender has no substantial influence on the decision to prosecute fully. Our hypothesis is based on our finding that the more comprehensive research efforts that include the greatest range of independent variables in addition to sex (e.g. Myers 1977; Nagel, Cardascia, and Ross 1980) report that gender has no significant effect. We would, however, add the following caveat: while in the aggregate, and perhaps in the great majority of cases, the sex of the defendant makes little difference in the decision to prosecute toward conviction, were research to be done where cases were sorted according to the strength of the evidence, we might hypothesize that, among those cases where the evidence is weakest, females may have a slight advantage in being offered more alternatives to prosecution, (e.g. nolle prosequi, deferred prosecution), especially at the early stages of prosecutorial discretion. This hypothesis is based on observational data we collected as part of our research on the processing of criminal defendants in federal district courts (Nagel and Hagan 1983). We would further point out that a finding that gender has little influence on the decision to prosecute fully toward conviction might reflect a pattern of early decisions by prosecutors not to charge women with crimes unless the crime is serious enough to warrant full prosecution.

E. *The Role of Gender in the Favorability of Plea Bargains*

Despite a rich tradition of research on court outcome decisions, a review of the particular decisions examined to test questions of equality and justice, discrimination, and hypotheses deduced from the variety of theoretical perspectives earlier discussed (e.g. labeling, conflict, attribution) reveals a dearth of quantitative research on the favorability of plea bargains. This dearth is particularly important since upward of 90 percent of all cases are disposed of by a plea of guilty, and the outcome of the plea negotiation has a substantial effect on sentence severity (see Hagan, Nagel, and Albonetti 1980). The absence of a substantial body of research on the favorability of the plea bargain stems, in part, from two major sources. First, and probably most important, it is difficult to obtain the necessary data. Most research on decision outcomes is limited to data made available from court records. Most of these data sets contain *either* the charge at arrest, the charge at arraignment, the charge at the preliminary hearing, *or* the charge for which the defendant was convicted. Few include the charge(s) at each point. Since measures of the favorability of the plea require data on changes in charges, the requisite data are not often available.

Second, for reasons not always obvious, research traditions have a way of developing in nonparallel ways. Sentencing decisions have been the most thoroughly researched, and most of the research is quantitative. Research on plea bargains and plea negotiations has only recently become abundant, and most of this research is qualitative. For example, there is an enormous wealth of descriptive data provided in the work of Alschuler (1968); Bequai (1974); Blumberg (1967); Buckle and Buckle (1977); Cressey (1968); Eisenstein and Jacob (1977); Hagan and Bernstein (1979); Heumann (1978); Katz (1979); Mather (1979); Rosett and Cressey (1976); and Utz (1978). Yet, with few exceptions (e.g. Eisenstein and Jacob 1977) most of this research is more qualitative than quantitative. For our purposes in this review, this means that in much of this research literature there is no easy way to assess the influence of gender, relative to other considerations, on the favorability of the negotiated plea.

There are, however, three studies that we can identify. The first is a study by Bernstein et al. (1977) examining the favorability of pleas for 1,435 male and female defendants prosecuted for burglary, larceny, assault, or robbery in New York State between 1974 and 1975. The data are separately analyzed for defendants whose cases were settled at their first court appearance and for those whose cases included several court appearances. The favorability of the plea is measured two ways: (1) by a

measure of the magnitude of the reduction in charges, constructed by subtracting the statutorily prescribed maximum severity of the final charge for which the defendant is convicted from the maximum severity of the charge at first court presentation and dividing that by the maximum severity of the lowest charge for which the defendant might have been convicted, subtracted from the maximum severity of the charge at first court presentation; (2) by the maximum severity of the most serious charge for which the defendant was convicted.

Looking first at the correlation between sex and the two outcomes measuring the favorability of the final measures of plea, the authors conclude that being male is correlated with less reduction, relative to what is possible, and that being male is correlated with being convicted for a *less* serious offense. However, when other variables are controlled (e.g. type of crime, number of charges, whether a weapon was involved, whether the defendant was charged with resisting arrest, prior record) gender turns out to have no significant effect on the magnitude of the reduction in charge severity, relative to the reduction possible. Gender does have an effect on the severity of the final charge for which the defendant is convicted, but only for cases not disposed of at first presentation. Somewhat surprisingly, male defendants were more likely to be convicted of the less severe charges. If we presume that only the more serious cases are not disposed of at first presentation, it is possible that this surprising finding may have occurred because females charged with more serious offenses were compared with males charged with less serious offenses. This would mitigate the authors' conclusion that their findings are consistent with the evil woman thesis. Alternatively, this may be an instance in which the propositions of the evil woman thesis are in effect.

The second study, Sterling and Haskins (1980), includes an analysis of data for 2,600 felony cases filed between 1974 and 1977 in Denver, Colorado. All 2,600 defendants were charged with robbery, burglary, theft, murder, assault, narcotics, forgery, or fraud. (Cases filed as misdemeanors, cases dismissed, or cases reduced to misdemeanors before or during the preliminary hearing were not included.) Charge reduction was categorized as no reduction, reduction to a lesser felony, or reduction to a misdemeanor. Controlling for type of counsel, age, race, education, prior record, employment status, pretrial status, and the like, Sterling and Haskins conclude that sex has trivial effects on charge reduction compared with the other factors considered. As before, the fact that the potential for sample selection bias has not been controlled limits the robustness of the conclusions.

Finally, Crites (1978), in a review of research on women in the criminal court, refers to a study conducted in Alabama in 1974, analyzing data on male and female defendants prosecuted in seven judicial circuits. Although no primary data are presented, Crites (1978, p. 164) reports the following:

> An interesting finding of the study was the comparative percentages of women and men who had charges against them reduced. In cases of grand larceny and violations of the Alabama Uniform Controlled Substance Act, almost three times as many women as men had their charges reduced.

Without access to the original research publication, we can only report that Crites's review suggests that prior record and type of offense may have been entered as control variables.

This concludes our review of research on the favorability of plea bargains. Since there are so few studies that report quantitative data on the influence of gender on the favorability of the negotiated plea, it is difficult to draw conclusions. The two studies that used multivariate analyses, Sterling and Haskins (1980), and Bernstein et al. (1977), were limited to studies of decisions in single jurisdictions. Both focused on defendants prosecuted for serious violent offenses. Accordingly, we do not know whether the same results would hold if defendants prosecuted for a greater variety of offense categories were included, especially if there were greater representation of those prosecuted for property offenses and misdemeanors. Moreover, as was the case for research on the decision to prosecute fully toward conviction, the role of evidence was not considered. Clearly, more research is needed on the favorability of plea bargains and on the factors that affect how favorable any bargain is. With respect to the role of gender, we suggest that future researchers include in their studies samples of cases from a variety of types of offense (e.g. embezzlement, narcotics, theft, fraud, robbery) and examine sex differences within offense categories. The same strategy might be adopted for levels of offense severity. If our early speculation has any merit, we can expect sex differences to be more pronounced in the bargaining of misdemeanor cases and in the bargaining of nonviolent property offenses.

F. *The Role of Gender in Conviction and Sentencing Decisions*

We group these final two decisions not because we believe that conviction and sentencing decisions should be aggregated, but because much of the research aggregates these two disparate decisions into single var-

iables. We strongly disapprove of any such aggregation, for we believe each decision occurs in a social and legal context that differentiates it from all others. Thus, while the study of decisions to arrest and to prosecute fully and the favorability of a negotiated plea may be complementary to studies of sentencing, the contextual setting is so different that it is essential to analyze each decision separately.

1. Adjudication. There are four relevant studies related to the question of the adjudication of guilt. Chiricos, Jackson, and Waldo (1972) report research on a pattern perhaps unique to Florida, that is, a decision to withhold an adjudication of guilt despite the establishment of guilt by plea, by judge, or by jury. In examining dispositions for 2,419 felony cases filed between 1969 and 1970, the authors find that the Florida statute, section 948.01—adjudication withheld—is not affected by the gender of defendants. The authors report surprise at their finding, since it is commonly believed that women are preferentially treated. To explain their finding, they suggest that sex differences may occur in the earlier sifting of cases. However, when only the serious cases are left, such as at the point of adjudication, sex differences may be muted by concerns for prior record and other offense-related variables.

The next two publications, by Farrell and Swigert (1978) and Swigert and Farrell (1977), derive from analyses of one body of data. Data for a sample of 444 defendants prosecuted for murder in New York State between 1955 and 1973 are examined. The analysis considers the role of the defendant's sex. While Swigert and Farrell report that females are preferentially treated, the way they code their dependent variable is open to question. Specifically, they create one single ordered dependent variable that includes dismissal, acquittal, conviction for first-degree misdemeanor, conviction for second-degree felony (voluntary manslaughter), conviction for first-degree felony (second-degree murder), and conviction for first-degree murder. This coding decision creates interpretative problems because there are at least three conceptually distinct decisions included in this one ordered variable. Dismissals are related to the decision to prosecute fully toward conviction. As noted, that decision may be substantially affected by the strength of evidence and by prosecutorial values and priorities. Moreover, previous research has shown that it is not affected in the same way or by the same variables as are sentencing decisions (see e.g. Myers 1977; Bernstein, Kelly, and Doyle 1977). Acquittals are an option only for cases that go to trial; yet the vast majority of dispositions are by pleas of guilt. Furthermore, acquittal decisions, because they result from trials, are far more affected by evidence and other factors related to the trial (e.g. jury composition)

than are sentencing decisions. Finally, the seriousness of the final charge for which a defendant is convicted is also likely to be affected by evidence, especially if all defendants were initially charged with the same offense, as in the Swigert and Farrell (1977) sample. Swigert and Farrell include no measure of the strength of the evidence. In sum, the coding of their dependent variable limits our confidence in their conclusions. They conclude that sex is related to the severity of disposition, with females receiving preferred outcomes.

The fourth study is a comprehensive work by Myers (1979*c*). Her research focuses on the adjudication decision for 201 felony cases tried by jury in Marion County, Indiana, between 1974 and 1976. Controlling for seven measures of evidence (as inferred from data in the court records rather than directly observed), indicators of witness credibility (e.g. defendant's and victim's prior record of convictions), defendant and victim status characteristics (e.g. age, employment) and a host of other variables, Myers concludes that the sex of defendants has no significant effect on the adjudicative decision.

2. Sentencing: Tabular studies. This brings us to the final outcome decision—sentencing. Of the variety of court outcome decisions, sentencing decisions are most studied, and studied by the most sophisticated techniques. Our review led us to sixteen studies of sentencing that considered gender as one of the independent variables. Since the number of studies is so much greater than those identified for the earlier decisions reviewed, we organize our review by the methodological approaches used to analyze the data. We do so because many of the studies that base their results on tabular analyses, where few variables in addition to sex have been considered, report findings that fail to hold up under more rigorous statistical tests.

Looking first at the group of studies that relies on bivariate analyses of sex by sentence severity, or tabular analyses of sex by sentence severity, controlling perhaps for prior record or nature of the offense, we find two fairly consistent patterns. First, to the extent that there is preferential treatment by gender, it is the female defendants who receive the more favorable outcomes. Second, when preferential treatment is observed, it is more pronounced in the least severe sentencing options. More women are given suspended sentences or probation, whereas fewer sex differences are noted when examining variation in the harsher outcomes, such as imprisonment or length of incarceration.

Martin (1934), in an early study of sentencing, concluded that females were no more likely than males to be sentenced to prison terms. However, females were more likely to receive suspended sentences. Green

(1961) reported that females more often receive probation, fines, and suspended sentences; and they were sentenced more often to indeterminate terms of imprisonment, whereas males were given determinate terms. However, males were more likely than females to be sentenced to imprisonment. When Green controlled for prior felony convictions and the severity of the convicted offense, he found that the preferential treatment for females held only for misdemeanor cases.

Nagel (1969) and Nagel and Weitzman (1971) report that male offenders are more likely to be sentenced to incarceration, whereas female offenders are more likely to be given probation. Those sentenced to imprisonment for less than one year are more likely to be females than males (45 percent to 33 percent).

Baab and Furgeson (1967), in analyzing the sentences of 1,720 felony offenders convicted between 1965 and 1966 in one of twenty-seven Texas courts, create a twelve-category ordered variable of sentence severity. They conclude that gender does affect sentence severity. Their results show a definite pattern of preferential treatment for female offenders.

Pope (1975), in an analysis of felony offenders convicted in California, does tabular analyses, controlling for race, age, prior record, criminal status, charge at arrest, and gender, to examine simultaneously the relation between two and three variables in the decision to sentence an offender to probation, to jail, or to some other sanction. He also examines the determinants of the length of probation and the length of jail term. He reports the following:

1. Among offenders sentenced in misdemeanor court, females are preferentially treated, especially when convicted in urban areas.
2. Among offenders sentenced in misdemeanor court, females are more likely to receive probation; females are less likely to be sent to jail, especially when convicted in an urban area.
3. Among offenders sentenced in felony court, there are no differences in the sentence by sex.
4. In the length of jail term, males are more likely to receive a longer term when sentenced in felony court; there are, however, no differences by sex in the misdemeanor court sentences.
5. In the length of probation, there are no differences by sex.

To summarize Pope's findings, the pattern of preferential treatment for females is somewhat more pronounced in the courts that deal with less severe offenses—lower courts—and in the giving of less restrictive sen-

tences (e.g. probation). But, the pattern is not wholly consistent; males sentenced in felony court—superior court—are more likely to receive longer jail terms.

More recent studies reporting bivariate relationships and results based on tabular analyses include Crites (1978), Simon and Sharma (1978), Moulds (1980), and some preliminary work reported by INSLAW (1981). Crites (1978) finds no difference by sex when she examines offenders given suspended sentences. Yet she finds that the mean sentence length for females is lower than that for males, except for those convicted of violations of drug laws. Simon and Sharma (1978) find that women are more likely than men to be sentenced to probation and less likely to receive long terms of imprisonment for some offense categories, such as robbery. Generally, this is the predominant pattern. However, for other offense categories, for example, victimless crimes, they find females less likely to receive probation than males. And for still other offense categories, for example, violent crimes, males and females are reported to be approximately equal in their likelihood of receiving long terms of imprisonment. Simon and Sharma's research suggests that sex interacts with the type of offense in its effect on the type of sentence. It also suggests that sex differences vary, depending on whether one is examining the type of sentence or the length of imprisonment.

Moulds (1980), looking at adult felons arrested in California between 1970 and 1974, finds that females receive comparatively gentler sentences. Forty-two percent of the female offenders received probation compared with 20 percent of the males. Moreover, even when the defendant's race, offense type, and prior record were controlled, the pattern of preferential treatment for women held. Finally, INSLAW (1981), in a preliminary draft summarizing the results of their study of sentences for offenders prosecuted for one of eleven offenses between 1974 and 1978 in federal jurisdictions ($N = 5{,}781$), reports that male offenders are more likely than female offenders to be sentenced to incarceration or to longer terms of imprisonment.

3. Sentencing: Multivariate studies. This brings us to the final set of studies, those that control for a variety of variables in addition to sex in multivariate analyses of the determinants of sentence severity. These studies vary in the way they measure sentence severity, in the particular set of independent variables included, and in the nature of the samples studied. Nonetheless, we see three patterns, each with limited support: (1) to the extent that gender is found to affect the sentencing decision

significantly, female offenders receive preferential treatment (for an exception, see Myers 1979*b*);[2] (2) the pattern of preferential treatment noted for female offenders is more pronounced in the receipt of the less severe sentence outcomes; that is, female offenders are more likely to receive probation, suspended sentences, or fines; (3) in examining the determinants of the most severe outcomes, such as imprisonment, when all other variables have been controlled, (e.g. prior record, type of offense) gender has little if any effect.

In a reanalysis of data from twenty studies of sentencing, Hagan (1974) concluded that the demonstrated effect of gender was negligible. Rhodes (1976), in a study of felony cases closed during 1970 in two county courts in Minnesota, controlling for race, age, sex, type of crime, number of charges, plea, judge, and the like, found that among offenders convicted of burglary, narcotics possession, larceny, or forgery, men were more likely than women to receive sentences of imprisonment. Rhodes coded sentences as imprisonment or some other sentence. He did not, however, include controls for prior record, a variable often found to mediate the relation between gender and sentence.

Hagan, Hewitt, and Alwin (1979) analyze data for 504 felons convicted in the state of Washington in 1973. In an attempt to be sensitive to the way the coding of the sentencing variable may affect results, they code sentence severity in two ways. First, they examine the antecedents of the decision to give an offender a *deferred sentence versus the decision to sentence* him or her *to any other sentencing term*. Second, they examine the antecedents of the decision to sentence the offender to *incarceration versus all other sentencing terms*. By coding the variable in these two ways, they can explore differences between results obtained when one examines the least severe option versus all others and the most severe option versus all others. For the first outcome, deferred sentence versus all other sentences, the authors report that the zero-order correlation between gender and deferral (.258) is substantially reduced when other variables are added to the multivariate model as controls (.082). However, although the effect of gender decreases, females remain significantly more likely than males to be deferred. But when they examine the second outcome, incarceration versus nonincarceration, the zero-order correlation between gender and incarceration of .09 is reduced to .025 in the regression model when other variables are added. The effect of gender (.025) is *not*

[2]In analyzing her data, Myers finds female offenders slightly more likely than male offenders to be sentenced to prison. She carefully notes, however, that her sample of eleven female offenders is so small as to preclude any sweeping conclusions.

statistically significant. Thus, for the incarceration decision, gender ultimately has no significant influence.

Nagel, Cardascia, and Ross (1980) similarly explore the effect of different codings on their results. In looking at the sentencing decision, where probation and incarceration are coded as the harsh sentence and fines, suspended sentence, and deferred prosecution (a judgment of guilt that can be expunged if the offender commits no new crimes in a specified period following the conviction) are coded as the less harsh sentence, they report that males are more likely than females to be sentenced to the harsher outcomes.[1] The authors subsequently examined the effect of gender on the question whether the defendant spent any time imprisoned, either before or after conviction. Here the effect of gender was far more substantial. Controlling for other factors, the effect of gender in the harsh/gentle sentence analysis was .04; for the variable "any time imprisoned," the effect was .10.

In addition to the above, the authors explored the question of sex differences in the bases upon which these two outcome decisions were made. They concluded:

1. In the variable harsh versus lenient sentence, there were few differences between males and females in the determinants of the decision. That is, the decision structures were basically the same. Moreover, they were consistent with prior research based only on male samples.

2. In the variable "any time imprisoned," there were several significant differences between the way the decision was determined for females and the way it was determined for males. These differences included:

a) the advantage of being married was much stronger for female defendants than for male defendants;

b) the adverse effect of a prior record was stronger for male defendants than for female defendants;

c) the adverse effect of having a case pending in another court was stronger for male defendants than for female defendants;

d) whereas the statutorily defined severity of the charged offense had a strong effect for male defendants, it was not significant for female defendants;

[1]The authors categorize probation *or* imprisonment as harsh in accordance with interview data. Their interviewees argued that for this sample of misdemeanor defendants, probation was considered harsh. Both probation and imprisonment were deemed harsher sentences than fines, suspended sentences, deferred prosecution, or the other sentencing alternatives.

e) whereas female defendants charged with personal crimes fared less well than females charged with property crimes, this was not so for male defendants.

Nagel, Cardascia, and Ross's (1980) interpretation is that while women are preferentially treated compared with men, when women are compared with one another, those whose offense/offender patterns most depart from sex role stereotypes fare least well. Thus, while their research provides some support for the chivalry thesis, some support is also provided for the evil woman thesis, within the context of comparing women with one another. The theoretical implications of this may be that the chivalry thesis should not be pitted against the evil woman thesis. Rather, future research might best explore the conditions under which evidence of both patterns is simultaneously manifest.

Finally, Hagan, Nagel, and Albonetti (1980), in a study of sentences given 6,562 offenders convicted in ten federal district courts, find additional support for the preferential treatment of women. In an analysis focusing on differences in the sentencing of white-collar offenders versus others, they find that gender affects sentence severity, controlling for such variables as prior record, severity of the charged offense, number of charges, ethnicity, physical health, age, education, and type of offense. While gender is not the most salient influence, it is nonetheless consistently significant.

Clearly, the research on sentencing produces the strongest evidence for the thesis that gender does affect court outcome decisions and that women receive preferential treatment. The effect of gender is small relative to other factors (e.g. statutory seriousness of the charged offense, prior record), yet it is demonstrably present.

III. Summary

However measured—with official agency data or alternative sources—the relation between criminal behavior and gender is strong and is likely to remain so. This does not mean that the involvement of women in crime is unchanging. For property crime, especially petty forms of theft and fraud, and particularly for younger women, changes *are* occurring. However, these changes are more significant in terms of relative than of absolute numbers—from very small absolute frequencies to slightly higher frequencies. The relative change in these areas may be large, but the absolute involvement is still small. An unanswered question is how these changes have affected and will affect sanctioning decisions.

The defendant's sex appears to affect decisions differently at different stages in the criminal process. At the pretrial stage, the research suggests that gender affects the decision to release on recognizance rather than to set bail. However, once the decision to set bail is made, gender does not appear to affect the amount of surety bond or cash requested. With reference to decisions to prosecute fully toward conviction, to plea bargain, or to convict, there is no clear evidence that gender makes a systematic difference. It is at the sentencing stage that the best evidence of significant gender differences is found. As was true at the pretrial stage, it is differential leniency that is most often observed. Although this effect is small, it nonetheless frequently withstands control for a variety of other variables. These findings tentatively support the proposition that where decisions can be clearly ordered from low to high severity (e.g. type of pretrial release condition, type of sentence), and particularly where careful attention can be given to less severe options, female defendants can be found to receive more of the less severe sanctions.

The theoretical implications of our review for the evil woman versus chivalry/paternalism debate are not easily determined. First, there is the problem discussed earlier about the lack of conceptual clarity among the terms evil woman, chivalry, and paternalism. Second, there is a lack of agreement on the proper measurement of these terms and what they suggest for proposed reform. Despite these difficulties and in an effort to advance the debate, we offer the following conclusions, pending further research.

When court outcomes for male defendants are compared with those meted out to female defendants, females are more likely to receive the more favorable outcomes. This supports the chivalry/paternalism thesis. This pattern is more pronounced when the courts are responding to defendants charged with less severe offenses and when the option is whether or not to give the least harsh outcome (e.g. release on recognizance, probation).

This may suggest that the evil woman thesis is not contrary (opposite) to the chivalry/paternalism thesis, but rather its corollary. Thus it may be that women are preferentially treated, compared with men, until such time as the basis for that preferential treatment—chivalry or paternalism—is rendered inappropriate. Then, by virtue of the seriousness of the offense charged, the lessening of the presumption of innocence, and the evidence of deviation from traditional female patterns of behavior, the

woman is moved into the evil woman category, and preferential treatment ceases. This would be consistent with our finding that women charged with more serious offenses or women placed in the harsher categories for further decision (e.g. those asked to post bail, those required to serve long sentences) are treated no differently than are comparable men.

High on the agenda for future research should be a planned inquiry into the relation between outcomes, the sex of the defendant, and assumptions based on sex made by criminal court personnel.

We have been careful to emphasize that the patterns we have observed may vary by type of offense, and that the factors that lead to decisions may be different for women and men. Thus we have found some evidence that gender-based leniency is more likely for less severe crimes, and that women thought evil in terms of other attributes are more likely to receive severe treatment. However, research to date has not extensively examined these possibilities. They remain important avenues for future research.

What is most striking about the two bodies of research literature we have reviewed is that they remain disconnected. Research on the criminal court processing of women has given little or no attention to changing patterns in the involvement of women in crime. Yet, if there are indeed gender differences in criminal sanctioning, they presumably have their base in sex role attitudes. Among the best reflections of changes in these attitudes are changes in the involvement of women in crime. We would therefore expect gender-based patterns of criminal sanctioning to be sensitive to these changes. One way to focus future research better is to pay increased attention to those particular crimes that are showing the greatest signs of change (for example, petty theft and fraud), ideally by considering those time periods in which significant changes have occurred. We have noted already that these crimes are among those where differential leniency has been most frequently observed. One hypothesis that we offer for further research is the suggestion that gender-based disparities may be decreasing alongside these changes. That is, as women are seen to be increasingly like men in these areas of criminality, the sanctions imposed may be converging as well.

Also valuable would be direct measurement of the sex role attitudes of decision makers. As noted, patterns of chivalry and paternalism are difficult, if not impossible, to separate in sanctioning decisions. Moreover, aggregations of decision makers who vary individually in their sex role attitudes may conceal disparate patterns in the treatment of men and

women. Direct measurement of these attitudes and correlation with decisions made would allow exposure of these patterns, as well as changes in them, if considered over time.

Finally, there is need for research that is sensitive to variations in jurisdictional context. There is good reason to believe that sex role attitudes vary by region; jurisdictions in the South, for example, may be different from those in the North or West. Similar arguments might be made about urban and rural jurisdictions. Federal court jurisdictions, involving an identical body of law that is differently applied in a wide variety of settings, provide an ideal opportunity to examine these kinds of possibilities.

In the preceding pages we have explored a variety of ways to build variation in sex role attitudes into the data sets used to study gender and criminal sanctioning. This body of research may have reached the point where accumulating additional single-setting studies may no longer appreciably increase our understanding of this issue. Studies that systematically vary the social context in which sanctioning occurs are much more likely to yield results that are informative and generalizable. This is true not only of studies that focus on gender and criminal sanctioning, but of those that focus on other status attributes as well. We will come to understand the criminal law better as we observe its operation in the variety of social contexts that give it form and character.

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