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FAMILIAL PATERNALISM IN THE FEDERAL SYSTEM: DO THE TYPES OF

FAMILY ARRANGEMENTS MATTER?

A Thesis in

Crime, Law, and Justice

by

Melissa A Logue

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The thesis of Melissa A Logue has been reviewed and approved* by the following.

John H. Kramer
Professor of Sociology, and Crime, Law,
and Justice
Thesis Advisor
Chair of Committee

D. Wayne Osgood
Professor of Crime, Law, and Justice, and
Sociology

Michael P Johnson
Associate Professor of Sociology, African
and African American Studies, and
Women's Studies

Eric Silver
Associate Professor of Crime, Law, and
Justice, and Sociology

Glenn Firebaugh
Professor of Sociology, and Demography
Head of the Department of Sociology

*Signatures are on file in the Graduate School.

ABSTRACT

Extensive research exists on gender and race/ethnic disparities in sentencing. However, most of this research has either ignored or placed limited emphasis on the influence of offender's family circumstances on these types of sentencing disparities. In addition, most of this research has focused on municipal court data, or pre-guidelines sentencing patterns. The present study addresses this limitation by using a survey of Black, White, and Hispanic federal offenders of both sexes convicted of fraud or drug trafficking under the federal sentencing guidelines post-Mistretta to test the familial paternalism perspective on sentencing developed by Daly (1987). The results show that the type of family arrangements fails to explain gender differences in sentencing, although they do exert significant effects on sentence length. The results also indicate that the effects differ by type of offense. Regardless of offenders' type of family arrangements, fraud offenders receive lenient treatment, while drug traffickers receive punitive treatment. I argue that the findings reflect the need for further research on the influence of familial paternalism on gender and race/ethnic disparities in the federal system. I also argue that the findings raise significant policy issues regarding (1) clarity in the dissemination of the goals of punishment by the U.S Sentencing Commission, (2) the recognition of differences among offenders, such as family responsibilities, and the importance of reevaluating the notion of equality and sentencing from a perspective that works toward uniformity, proportionality, and justice in sentencing, but not at the expense of differences that may reflect legitimate mitigating factors depending on a judge's punishment rationale.

TABLE OF CONTENTS

List of Tables.....	viii
Acknowledgements	x
Chapter 1: Introduction	1
Incarcerated Parents and their Children	6
Research on Familial Paternalism	9
History of the Sentencing Reform Movement	11
Sources of Criticism of Federal Sentencing	12
Civil Rights Movement and Prisoners' Rights	12
Social Science and Legal Researchers and Crime Control	13
Chapter 2: Theoretical Perspective and Hypotheses	18
Attribution Theory	19
Focal Concerns	21
Chivalry/Paternalism Hypothesis	23
Familial Paternalism	25
Empirical Literature	27
Limitations of Research	34
Contributions of My Research	37
Hypotheses	37
Chapter 3: Data and Methods	40
Sample Design	41
Stage One	41

	v
Stage Two	42
Sample	43
Sampling Issues	43
Conceptual and Methodological Issues	44
Difficulties Studying Female Offenders	45
Drug Trafficking Measures	47
Dependent Variable	47
Independent Variables	47
Extralegal Factors	47
Legal Factors	51
Criminal History	52
Court Processing Characteristics	53
Fraud Measures	54
Dependent Variable	54
Independent Variable	54
Statistical Procedures	55
Chapter 4: Drug Trafficking	56
Descriptive Statistics	56
Bivariate Correlations	56
Part 1: Unpartitioned Gender and Race/Ethnic Effects on Sentence Length	59
Part1a: Gender Partitioned Models	60
Part 1b: Race/Ethnicity Partitioned Models	61
Part 2: Unpartitioned Influence of Familied Effects on Sentence Length	63

	vi
Part 2a: Gender Partitioned Models	64
Part 2b: Race/Ethnicity Partitioned Models	65
Part 3: Unpartitioned Models of Family Arrangements on Sentence Length	66
Part 3a: Gender Partitioned Models	67
Part 3b: Race/Ethnicity Partitioned Models	68
Summary of Findings	68
Chapter 5: Fraud	81
Descriptive Statistics	81
Bivariate Correlations	82
Part1: Unpartitioned Gender and Race/Ethnic Effects on Sentence Length	83
Part 1a: Gender Partitioned Models	84
Part 1b: Race/Ethnicity Partitioned Models	85
Part 2: Unpartitioned Influence of Familied Effects on Sentence Length	86
Part 2a: Gender Partitioned Models	86
Part 2b: Race/Ethnicity Paritioned Models	87
Part 3: Unpartitioned Models of Family Arrangements on Sentence Length	88
Part 3a: Gender Partitioned Models	89
Part 3b: Race/Ethnicity Partitioned Models	90
Summary of Findings	91
Chapter 6: Discussion and Conclusions	104
The Applicability of Familial Paternalism to Sentencing	106
Implications for Future Research	109
Implications for Theory	111

	vii
Implications for Policy	113
Appendix A: Format of the Federal Sentencing Guidelines	125
Relevant Conduct	127
Departures	128
Information Relevant to Departures and Other Sentencing Practices	130
Criticisms	132
Mandatory Minimums	132
Criticisms of Mandatory Minimums	133
Legal Challenges to the Federal Sentencing Guidelines	135
References	141

LIST OF TABLES

Table 4-1:	Descriptive Statistics: Federal Drug Trafficking Offenders	71
Table 4-2:	Bivariate Correlations: Federal Drug Trafficking Offenders	73
Table 4-3:	OLS Regression of Sentence Length on Gender, Race/Ethnicity and Family Arrangements	75
Table 4-3a:	OLS Regression of Sentence Length on Race/Ethnicity and Family Arrangements Partitioned by Gender	76
Table 4-3b:	OLS Regression of Sentence Length on Gender and Family Arrangements Partitioned by Race/Ethnicity	77
Table 4-4:	OLS Regression of Sentence Length on Marital Status and the Presence of Minor Children	78
Table 4-4a:	OLS Regression of Sentence Length on Marital Status and the Presence of Minor Children Partitioned by Gender	79
Table 4-4b:	OLS Regression of Sentence Length on Marital Status and the Presence of Minor Children Partitioned by Race/Ethnicity	80
Table 5-1:	Descriptive Statistics: Fraud Offenders	94
Table 5-2:	Bivariate Correlations: Fraud Offenders	96
Table 5-3:	OLS Regression of Sentence Length on Gender, Race/Ethnicity and Family Arrangements	98

Table 5-3a:	OLS Regression of Sentence Length on Race/Ethnicity and Family Arrangements Partitioned by Gender	99
Table 5-3b:	OLS Regression of Sentence Length on Gender and Family Arrangements Partitioned by Race/Ethnicity	100
Table 5-4:	OLS Regression of Sentence Length on Marital Status and the Presence of Minor Children	101
Table 5-4a:	OLS Regression of Sentence Length on Marital Status and the Presence of Minor Children Partitioned by Gender	102
Table 5-4b:	OLS Regression of Sentence Length on Marital Status and the Presence of Minor Children Partitioned by Race/Ethnicity	103

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Chapter 1

Introduction

Gender represents one of the most important social status determinants in American society (Belknap 2001). Early views of women emphasized “biological” differences, such as physical capabilities, weaker emotional and psychological states, and the importance of procreation. With regard to physical capabilities, society perceived women as weaker than men, fostering a division of labor in which women focused on carrying out domestic chores, such as child-rearing and household cleaning. Women also experienced blocked opportunities and relegation to the task of homemaker because of societal perceptions that they were less intelligent and rational than men. Due to these perceptions, women received fewer opportunities for higher education than men did until the creation of women’s colleges and the admission of women to traditionally male colleges and universities. Finally, procreation played an important role in furthering perceptions that women needed to remain in the home and take care of their children’s emotional and psychological needs, while the husband focused on the economic aspect of family life (Pleck 1991; Crosby 1987; Belknap 2001; Grana 2002).

The 19th century welcomed the birth of the first-wave of the women’s rights movement in the U.S. The leaders of the women's movement developed the major tenets of their ideology during the height of the abolitionist movement when white American women recognized similar philosophies regarding their treatment and that of African slaves. They noted that the patriarchal society considered them as intellectually inferior,

highly irrational and emotional, dependent, subordinate to white men, and in need of paternalistic treatment (Buechler 1990; Rosen 2001; Belknap 2001). These views directly affected the legal status of women in American society.

American society considered women and their children to be the property of her husband. Women enjoyed very limited avenues to contest their husband's treatment of them and their children. For instance, only men enjoyed the ability to own property, creating a situation in which women experienced almost total dependence on their spouses (Pleck 1991; Grana 2002). It was not until the 1970s and 1980s that many states implemented community-property systems for divorce proceedings. The intent of these states was to assist women in dealing with the significant economic loss they and their children faced upon the loss of their spouse's income after a divorce (Grana 2002).

Even though women continue to make strides in society, research on differences in gender roles provides examples of the devalued status of women. For instance, women have made significant advances in the labor market. However, research and statistics on women in the labor force show that women on average continue to experience lower wages and lower status jobs than men (Pleck 1991; Grana 2002).

Women's traditional involvement in the workforce consisted of performing acceptable feminine tasks, such as sewing, which resulted in many women becoming seamstress who worked in their homes. However, with the development of increasing educational opportunities, women entered the realm of traditionally male professions (e.g. medicine, law, and teaching). Even with these advancements, the majority of women continue to reside in stereotypically female professions such as nursing, clerical work, and social service (Pleck 1991; Grana 2002). In cases where women work in male-

dominated professions, such as medicine, they tend to specialize in appropriate gendered areas that carry less prestige in the medical profession (e.g. pediatrics, obstetrics and gynecology, and family medicine) (More 2000). Due in part to their location in the labor force, women continue to receive lower pay than men, even with similar experience and education. This pay differential becomes even more striking when race/ethnicity is considered. For instance, relative to white males, all females receive lower wages. When researchers partition females by race and ethnicity, the gap becomes even more salient as minority females receive lower wages than white females (Grana 2002; Sapiro 1999).

Another issue relates to the fact that women's increased involvement in the labor force has failed to change the fact that they continue to maintain primary responsibility for the family and household (Crosby 1987). One consequence is that women experience fewer promotional opportunities than men because employers assume that women will most likely get married, if not already, and therefore will not be permanent workers because of the need for maternity leave and other family responsibilities (Crosby 1987). Race and ethnicity play an important role in employers' considerations as well, since the odds of working differ according to one's racial group affiliation. Specifically, black women with children show higher odds of working than white women with children due to the higher percentage of female-headed households within black communities than within white communities (Pleck 1991)

The criminal justice system and sentencing in particular provides a significant venue to examine the impact of offenders' gender and race/ethnic characteristics on judges' decision-making. It is visible and constrained by concerns about reducing disparity based on extralegal factors, particularly race and gender. However, the criminal

justice system, has historically attempted to study decision-making without the crucial information, such as defendants' family responsibilities (Steffensmeier et al. 1993; Kramer and Ulmer 1996; Steffensmeier et al. 1998; Spohn and Holleran 2000; Crawford 2000). This neglect is surprising given gender and race/ethnic differences in family structures and responsibilities among offenders.

According to the Fields and Casper (2001), blacks were almost evenly divided between married couple households (46%) and those with females acting as the sole head (45%). Hispanics show much higher rates of married couple households (68%) and approximately half the amount of female-headed households as blacks (23%). For whites, the statistics show that 81% of whites resided in married couple households and 14% in female-headed households.

If gender and the presence of children are taken into account, black females (22%) accounted for more female-headed households with children than either Hispanic (14%) or white females (5%) as of 2002 (Fields and Casper 2001). In addition, with the lack of paternal involvement, whether because of high black male incarceration rates, lack of male employment, intraracial violence within inner cities, or outright abandonment, these women and their children pay high economic and emotional costs.

Traditional views of women's familial roles demand that women supply the nurturing and moral influences in their children's lives. However, black women in these situations are often forced to delegate many responsibilities to extended family members, such as their child's grandmother or aunt because of the need to work at multiple jobs in order to supply their families with a minimal level of financial support (Mumola 2000; Staples and Johnson 1993). Some of these mothers have relied on state aid to supplement

their income, but the restrictions on eligibility, the low amounts provided, and the current state of welfare reform continue to place black and other women with children serving as the head of a household into deep poverty (Staples and Johnson 1993). Specifically, our society continues to see evidence of the “feminization of poverty,” with even harsher consequences for women of color and their children (Bianchi 1999). In fact, Staples and Johnson’s (1993) citation of a 1991 study conducted by the Commission on Civil Rights, notes that even among fully employed black women, “poverty is endemic” (p.223).

In addition, studies continue to show that women perform “double duty” or a “second shift”¹ because of the amount of labor they perform outside of the home and the time they spend on family responsibilities relative to men. Stapinski (1998) found that women spend, on average, 15.6 hours on housework per week compared to 9.5 hours for men. Stapinski (1998) also found that women with children spend more time on housework than men with children regardless of their marital or employment status. Therefore, it seems that women enjoy greater opportunities for involvement with their children than men, making it more detrimental to the family, especially children when mothers are removed from the home.

Comparing these general statistics about race/ethnic and gender differences in family structures to those of offenders shows that offenders comprise a higher proportion of those with “dysfunctional” family structures than those found in the general population. For instance, Mumola (2000) notes that most federal offenders have never been married (38%) or are divorced, separated, or widowed (27%). Examining the data

¹ Hochschild (1999).

by gender, more females than males resided in households where they served as the head regardless of whether they were state or federal prisoners.

Incarcerated Parents and their Children

Statistics on federal inmates with children reveal that 59% of female inmates compared to 63% of male inmates had children. In terms of parental status by race/ethnicity, 44% of blacks were parents compared to 30% of Hispanics and 22% of whites. In contrast, whites dominate the proportion of offenders without children (43%) relative to 27% of blacks and 23% of Hispanics (Mumola 2000).

With regard to living arrangements, 55% of male inmates compared to 84% of female inmates lived with their children at the time of their admission to prison. Even more fascinating is the gender differences in the placement of children upon their parents incarceration. Females rely more strongly on extended kinship networks than men, who rely primarily on their child's mother. Specifically, among female inmates, 45% of children reside with their grandparents compared to 34% who reside with other relatives, and 31% who reside with their father. In contrast, among male inmates, 92% of their children reside with their mother compared to only 10% who live with their grandparents, 6% who live with friends, and 4% who live with other relatives. The importance of child placement is likely to influence sentencing decisions for judges given that perceptions of the traditional family developed from white, middle-class values of the two-parent family.

As Daly (1987a; 1987b) notes, this could have implications for women of color in either a positive or a negative direction. Judges might sentence these women more harshly than white women because of their failure to meet traditional images of a

“functional” family. In addition, many female offenders have drug/alcohol problems, which might make judges particularly harsh on women of color because they perceive them as further hindering the positive socialization and development of their children in the face of an already challenging society. However, judges might also perceive these women to be in more disadvantageous positions economically and socially than white women, which might have influenced their criminal activity. Rather than punishing these women, traditional views of motherhood may be excused so as not to further “victimize” an already oppressed individual.

When examining the household structures of offenders in the month prior to the arrest for the offense of their current incarceration, Mumola (2000) notes that more women in the federal system lived with their children in single-parent households compared to men (51% vs. 14%). With regard to two-parent households, more males experienced this type of family arrangement (33%) than females (22%). Gender differences in these two types of household structures are reflected in the actual composition of the residence. Specifically, for offenders who lived in two-parent households with their kids, 30% of males compared to 20% of females lived solely in households with their children and their child’s other parent. However, for offenders living in single-parent households, 35% of females lived with their children only compared to 4% of men. Male inmates in this situation tended to reside solely with their children and non-relatives (10%) (Mumola 2000).

It is also important to discuss race/ethnic differences in living arrangements of offenders with children prior to their incarceration. Unfortunately the statistics I reported

on federal offenders lacks this information.² Therefore, I relied on information about parents in state institutions. The similarity in the findings for parents housed in both types of institutions gave me confidence in relying on data regarding race/ethnic differences in living arrangements because the proportions are likely to be similar among federal prisoners.

More black state prison inmates lived with their children (76%) than white (69%) and Hispanic (66%) inmates (Snell and Morton 1991). With regard to the living situation of offenders' children upon their incarceration, more white inmates in state prisons reported that their children lived with the other parent (35%) compared to 24% of Hispanic inmates and 19% of black inmates. Instead, consistent with prior research on race/ethnic differences in family structures, the findings show that minorities rely more heavily on extended kinship networks than whites (Staples and Johnson 1993; Snell and Morton 1991; Mumola 2000). 57% of black inmates and 55% of Hispanic inmates reported that their children reside with their grandparents compared to 41% of white inmates. In addition, 24% of blacks and 23% of Hispanics reported that their children live with other relatives compared to 15% of whites. In contrast, whites relied more heavily on foster care (13%), whereas only 6% of blacks and 7% of Hispanics reported using this option.

² I relied on statistics for federal offenders because of my focus on sentencing decisions within the context of the federal sentencing guidelines.

Research on Familial Paternalism

Several studies have attempted to address the influence of familial circumstances on sentencing outcomes (Daly 1987a; 1987b; 1989; 1994; Bickle and Peterson 1991; and Flavin 2001), but suffer from limitations that I discuss in further detail in chapter 2. Even with the availability of these studies, most research on gender and race/ethnic differences in sentencing continues to ignore the role of familial circumstances, or treats it as a control variable measured by number of dependents (Kautt and Spohn 2002).

This neglect is startling given the differences in family responsibilities across race/ethnic groups, gender and the research that shows that a major rationale for departures continues to be family responsibilities (Albonetti 1997). This rationale persists despite the provision in the federal sentencing guidelines that expressly states “community responsibilities and family ties are not ordinarily relevant to sentencing decisions”.³ According to the Mumola (2000), 63% of federal prisoners and 55% of state prisoners in 1997 were parents of children under age 18. In 1999, the total number of children was an estimated 1,498,800, which was an increase of 500,000 since 1991. In fact, Mumola (2000) notes that of America’s 72 million minor children, 2.1% have an incarcerated parent. Federal prisoners are more likely to report multiple children (39% vs. 32%) than state prisoners. With regard to the age of the children of incarcerated parents, 58% of the children of federal and state inmates were under the age of 10, with an average age of 8 years old. In terms of the gender of the incarcerated parent, the number of children with a mother in prison nearly doubled (up 98%) since 1991, while

³ §5H1.6

the number of children with a father in prison grew by 58% during this period. Given the large number of mothers in the federal system who reported living with their children prior to incarceration compared to fathers (55%), it is evident that women often bear greater caretaking responsibilities than male offenders.

With regard to contact with their children, 70% of mothers in the federal system compared to 60% of fathers reported some form of contact with their children, although 84% of prisoners were held more than 100 miles from their last place of residence. Therefore, the type of contact must be considered rather than simply focusing on whether incarcerated parents have any contact with their children (Mumola 2000). Mumola (2000) notes that 56% of incarcerated mothers reported weekly telephone calls and 45% reported weekly contact by mail, compared to 49% of fathers' reports of weekly telephone calls and 49% of fathers' reports of weekly contact by mail.

In terms of the offense type and parental responsibilities, 2/3 of fathers and 3/4 of mothers are incarcerated for drug offenses, which might impact judges' decision making regarding the detrimental impact of removing parents from the homes, particularly given the dislike that many judges have for the drug policies created by the federal sentencing guidelines and their influence on sentence length. For instance, 44% of federal drug offenders reported receiving sentences of at least 10 years, which has implications for the psychological and economic well being of children and other dependents due to the long period of separation.

Having established the influence of traditional gender roles on women's treatment in society and how that is reflected in statistics about women offenders and the consequences for their ability to perform their gender-specific roles, I now turn to a

discussion of the sentencing reform movement. The purpose of this movement was to address the inequities in sentencing based on extralegal factors, such as race/ethnicity, gender and family responsibilities. The final result was the creation of the U.S.

Sentencing Commission and the federal sentencing guidelines.

History of the Sentencing Reform Movement

Prior to the 1970s, indeterminate sentencing models dominated the various sentencing structures throughout the U.S. Under this system, judges imposed sentences within specific ranges (e.g. 5 to 10 years). If an offender received 10 years, it was expected that he or she would be released after serving 5 years, if they adhered to prison regulations. The goals of indeterminate sentencing were to encourage positive pre- and post-prison adjustment that would decrease the odds of recidivism and to implement an explicit system that provided parole boards with the discretion to release inmates as prison conditions changed (e.g. level of crowding). In the federal system, the result was wide judicial discretion in which judges could consider a variety of factors when making their decisions. These factors included offender characteristics (e.g. education, family circumstances, employment history) and offense characteristics (e.g. offense severity). With regard to offense characteristics, judges were permitted to consider the present offense and related offenses (e.g. uncharged conduct). In addition, judges were not required to detail the rationale behind their sentencing decisions or to give an account of their decision. Consequently, judges' decisions were not up for review, except when they imposed sanctions contrary to statutory limits. This lack of accountability produced a climate of sentencing in which judges could impose different sentences for similarly situated offenders (Goodstein and Hepburn 1985; Spohn 2002).

Judicial behavior at this time was acceptable because of the focus on achieving rehabilitative goals. The premises of these goals came out of the Declaration of Principles drafted at the National Congress on Penitentiary and Reformatory Discipline in Cincinnati, Ohio in October 1907. Proponents perceived these principles to be crucial to achieving a reduction in crime. According to the rehabilitative ideal promulgated during this period, no two offenders were identical. Therefore, offenders should receive individualized treatment. In furtherance of this goal, judges retained wide latitude in determining whether to incarcerate offenders and the length of their incarceration. The only constraints they faced on their behavior came from statutory limits on the maximum penalties allowed for specific offenses (Goodstein and Hepburn 1985).

By the 1960s, this lack of judicial accountability regarding the rationale behind sentencing decisions and justifications of sentencing practices heralded the downfall of the indeterminate system as opponents began to perceive it as negating the goals of fairness and justice. Advocates of “truth in sentencing” policies feared that the public would perceive offenders as receiving lenient sentences. Although the number of offenders who commit new crimes is a small proportion of the total offender population, practical concerns regarding recidivism by offenders on supervised release also led to criticisms of this practice (Donziger 1996). In addition, critics perceived disparity in sentencing as unwarranted and ineffectual in achieving the goal of crime reduction (Ruback and Wroblewski 2001; Goodstein and Hepburn 1985; Tonry 1996; Hogarth 1971).

Sources of Criticisms of Indeterminate Sentencing

Civil Rights Movement and Prisoners’ Rights

Some major criticisms about unwarranted disparity came from civil rights activists who argued that judges determined sentencing outcomes based on racial and class biases that worked to the detriment of minority and poor defendants. For instance, during the late 1960s and early 1970s, riots occurred throughout many U.S. prisons, with one of the worst occurring at Attica in New York. These occurrences and the large numbers of minorities, particularly blacks incarcerated in America's prisons resulted in prisoners' rights becoming a central focus of the civil rights movement. Proponents of civil rights argued that minority prisoners suffered violations of their civil rights due to official brutality perpetuated by primarily white prison guards and staff (Griset 1991). Indeterminate sentencing became a focal point because of the inequities in sentencing outcomes that produced higher numbers of minorities in prisons for crimes committed by similarly situated white offenders (Griset 1991). Therefore, activists demanded limitations on judges' discretionary powers.

Social Science and Legal Researchers and Crime Control

During the 1960s, crime rates appeared to skyrocket, particularly for violent offenses, which increased the public's fear of crime (Donziger 1996). As a result, a shift towards engaging in a "war on crime" occurred in which tougher punishments were demanded in an effort to deter future criminal behavior (Donziger 1996). Proponents of these tough on crime policies also demanded that punishments be directed towards incapacitating criminals. It was assumed that judges needed guidance to improve their selection of those offenders who posed the greatest threats to society and thus, merited the harshest treatment by the criminal justice system.

In an attempt to ascertain the scope of the problem, academics and legal scholars who once supported the use of indeterminate sentencing as a means of achieving rehabilitative goals began to conduct evaluations of the effectiveness of these policies. Martinson (1974) found that indeterminate sentencing failed to achieve a significant reduction in crime, and thus, failed to support the idea that offenders should be incarcerated until rehabilitated. In short, Martinson (1974) argued, “nothing works.”

More recently, Spohn (2002:132) focused on distinguishing between types of “unwarranted” disparity, which she defined as “differential treatment that lacks intentional biases.” She claimed that disparity exists in three forms: inter-jurisdictional, intra-jurisdictional, and intra-judge. Inter-jurisdictional disparity refers to differential sentencing outcomes for similarly situated offenders in different jurisdictions. Intra-jurisdictional disparity refers to differential treatment by the courts within the same jurisdiction. Finally, intra-judge disparity occurs when the same judge imposes different sentences for offenders convicted of identical offenses and who have similar prior records.

In addressing these failures, opponents of indeterminate sentencing sought to limit the discretion of judicial and parole authorities since they determined when an offender was rehabilitated.⁴ Of the suggestions offered, the two most prevalent related to the use of mandatory minimum sentences for specific crimes and the use of specified sentencing ranges based on a structured guideline system. Regardless of the proposed corrective

⁴ Judges handed down the minimum and maximum sentences for offenders, but once incarcerated, parole authorities determined the actual amount of time an offender served based on their assessments of an offender’s behavior in prison and any good time credits earned.

measures offered, proponents of structured sentences sought to achieve fairness with clear rules and judicial review (Goodstein and Hepburn 1985; Griset 1991).

At the start of the 1970s, opposition to indeterminate models reached a crucial point. Whereas, early criticisms came from the citizenry and academics, the 1970s witnessed criticisms by a federal district judge, Marvin Frankel. In 1972, he proffered a strong demand for sentencing reform. Specifically, he complained that judges lacked structure in their decision-making. He contradicted proponents of the indeterminate model by stating that judges lacked the proper training to make equitable sentencing decisions. In accordance with this belief, Frankel (1973) demanded that the legislature limit judicial discretion through the creation of sentencing commissions (Frankel 1973).

In response to the criticisms levied by Frankel and others, Senator Edward M. Kennedy introduced a sentencing guidelines bill in 1975. The bill authorized the creation of the U.S. Sentencing Commission, whose duties included the development of sentencing guidelines, while reducing unwarranted disparity. Although the bill enjoyed bipartisan support in the U.S. Senate, it faced staunch resistance from the House Judiciary Committee who feared restricting judicial discretion. Due to the contentious debate within the Congress, the bill was refined and reintroduced in the next three Congresses. It was not until the 98th Congress in 1984 that the bill passed as title II of the Comprehensive Crime Control Act, which was signed into law by President Reagan.

The bill focused on three primary goals. First, Congress required the newly elected Commission to ensure that it drafted guidelines that met the four goals of sentencing: just deserts, deterrence, incapacitation, and rehabilitation (Spohn 2002). Second, Congress required the Commission to work towards achieving “uniformity,

honesty, and proportionality” in sentencing so that unwarranted disparity would decrease among similarly situated offenders. It was decided that the best method to ensure these goals was a significant reduction in judges’ discretion by creating mandatory provisions to direct their calculations of offenders’ sentences based on an offender’s prior criminal behavior and the seriousness of the current offense. However, Congress wanted judges to retain some discretion to consider differences among offenders with similar criminal backgrounds and offense seriousness because no two situations are identical. Judges enjoyed the ability to consider categories of aggravating and mitigating factors in an attempt to meet this second, yet highly significant goal. Third, Congress felt that the guidelines needed to be flexible in the face of research and analysis that indicated that they needed to be refined and amended to ensure their continual success in meeting the goals of sentencing and reducing unwarranted disparity (Spohn 2002; Goodstein and Hepburn 1985; Griset 1991).

In working to achieve these goals, Congress selected members that it believed would be successful in creating, promulgating, and continually evaluating the effectiveness of the guidelines in meeting their policy agendas. Congress established term limits for members to preserve the Sentencing Commission’s ability to ensure that the guidelines continued to serve their statutory purpose.

In addition, to its three policy goals, the Sentencing Reform Act abolished discretionary parole release and restricted the use of “good time” so that offenders had to serve at least 87% of their sentence before being eligible for release (Sabol 1999). This provision applied only to those offenders sentenced after the guidelines took effect in November 1987.

Although judges faced significant constraints due to the implementation of the Sentencing Reform Act, they did not lose all of their discretionary powers as evident in the provisions in the guidelines permitting them to make both upward and downward departures.⁵ The only constraints on their actions are that (1) they must supply written justification for their use of a departure and (2) any departure is eligible for appellate review.⁶ Appellate review ensures that the departure was appropriate under the circumstances and reasonable. Congress also insured that the U.S. Sentencing Commission would be able to continue to work towards the three goals of the Sentencing Reform Act by granting it the authority to submit annual guideline amendments to Congress between the beginning of a regular Congressional session and May 1. If Congress accepted the amendments, then they would automatically take effect 180 days after submission unless a law was passed to the contrary.⁷

⁵ 18 U.S.C. § 3553(b)

⁶ 18 U.S.C. § 3553(b) and 18 U.S.C. § 742

⁷ 28 U.S.C. § 994(p)

Chapter 2

Theoretical Perspective and Hypotheses

The central purpose of this study is to examine the influence of familial circumstances on gender and race/ethnic differences in sentencing within the context of the federal sentencing guidelines. The sentencing guidelines explicitly state that extralegal factors such as gender and race/ethnicity are not relevant in determining offenders' sentences⁸ and that family responsibilities are "not ordinarily relevant" in determining sentencing outcomes.⁹ Nevertheless, research on the influence of gender and race/ethnicity under the determinate structure of the federal sentencing guidelines demonstrate that these forms of disparities continue to persist (Steffensmeier and DeMuth 2000; Albonetti 1997; 1998). Several studies suggest that this continuing disparity may be a consequence of "hydraulic displacement such that discretion shifts from the control of judges to prosecutors who influence sentencing through charging decisions, plea bargains, and motions regarding grounds for departures (e.g. substantial assistance) (Miethe and Moore 1985; von Hirsch and Hanrahan 1981). Most of these studies, however address state sentencing guidelines rather than the federal sentencing guidelines. Some studies are available that examine the factors that influence sentence outcomes within the federal system, but only a few actually examine these issues within the context

⁸ § 5H1.10

⁹ § 5H1.6

of the federal sentencing guidelines (Steffensmeier and DeMuth 2000; Albonetti 1997; 1998; Maxfield and Kramer 1998; Everett and Nienstedt 1999).

To explain the continuing evidence of unwarranted gender disparity, several theoretical perspectives attempt to explain this persistent disparity, which I discuss in the following sections. First, I address attribution theory and its role in determining judges' decision-making. Second, I address Steffensmeier et al.'s (1998) focal concerns perspective on sentencing. Third, I discuss the traditional chivalry and paternalistic perspectives on sentencing. Finally, I focus on the theoretical perspective at the heart of the current study, Daly's (1987a; 1987b; 1989; 1994) familial paternalism perspective.

Attribution Theory

Applications of attribution theory occur in a variety of, but it is deeply entrenched in social psychology (Heider 1958; Wimer and Kelley 1982). Attributions develop from the information people use to determine causal explanations that reduce uncertainty. These causal explanations can be internal or external and influence subsequent responses regarding responsibility and blameworthiness.

Attributions of internal causality lead to perceptions that an individual possesses stable predispositions that increase the likelihood that a given behavior will be repeated. With regard to responsibility and blameworthiness, an individual attributed with characteristics that led to a given action are more likely to be perceived as responsible for their actions, and blameworthy. For instance, the executives of Enron cheated taxpayers, clients, and employees for years even though they all enjoyed a high socioeconomic status. Members of Congress and the general public believe that these businessmen are responsible for their actions and worthy of blame because they knew that their actions

were wrong and unnecessary given their high salaries and assets, and they lied to government officials, the public and their employees when pressed for information regarding the stability of the company. Consequently, several members received indictments by federal grand juries and await trial or have plead guilty.

In contrast, attributions of external causality lead to perceptions that something in an individual's environment produced their behavior rather than some facet of the individual's personality or character. For example, if a battered woman kills her abusive spouse after a long period of abuse, some judges find it difficult to impose severe penalties, or if imposed, the penalties are sometimes reduced. One reason rests with women's movement's activism in bringing the horrors of domestic violence into the public arena. Related to this increased awareness of the prevalence and frequency of domestic violence is the use of the battered woman syndrome as a form of self-defense argument Walker (2000). Therefore, judges who impose lenient sentences or who decide not to impose a sentence often perceive that the woman was driven to commit this crime because of her continued victimization, not because of any predisposition towards violence. Judges may perceive her as causing the death of her spouse, but are less likely to attribute responsibility or blame to her because of perceptions that her spouse precipitated the attack.

It is important to note that in the face of uncertainty regarding an individual's actions, the seriousness of the behavior and the personal characteristics of the individual and the decision makers play a role in determining the types of causal attributions made and the subsequent decisions regarding responsibility and blame. These factors make the application of attribution theory to the criminal justice system a natural outcome of

concern with relation to the causes, punishment, and reduction of criminal behavior.

Albonetti (1991; 1997; 1998) offers some of the best research in this area. Drawing on the work of March and Simon (1964), she developed a perspective of attribution theory in which she argues that judges make decisions based on the application of “bounded rationality.” According to this form of attribution theory, judges and prosecutors attempt to reduce the uncertainty they experience due to incomplete knowledge about a case or an offender by relying on stereotypes about different groups that influence perceptions of recidivism and dangerousness. However, she argues that judges can never accurately predict the risk of recidivism and future dangerousness. Therefore, she concludes that defendants thought to have stable predispositions for future criminal behavior, especially violence, are likely to face harsh penalties. Another perspective termed “focal concerns” draws in part from Albonetti’s (1991) research on bounded rationality, but extends its focus to the role of the court community and networks in determining judges’ decisions.

Focal Concerns

Similar to Albonetti (1991), Steffensmeier et al. (1993), Steffensmeier and DeMuth (2001; 2000), Kramer and Ulmer (1996), and Kramer and Steffensmeier (1993) note that judges receive limited information with which to make their sentencing decisions and may rely on a “perceptual shorthand based on stereotypes linked to offender characteristics such as race/ethnicity, gender, family responsibilities, and age (Steffensmeier et al. (1998: 768). Their research argues that sentencing decisions result from judges’ consideration of three focal concerns blameworthiness, dangerousness, and practical or organizational constraints.

Blameworthiness reflects an offender's culpability for an offense and influences the severity of punishment imposed. Among the factors considered in determining blameworthiness, judges focus on the severity of an offense, an offender's prior criminal record or victimization, and an offender's role in the offense. Perceptions of dangerousness focus on similar factors, and influence sentence outcomes by shaping punishment goals, such as incapacitation and deterrence. In addition to the legal factors considered when determining blameworthiness, extralegal factors such as employment status, education level, and social ties are often considered because they often act as informal social control mechanisms (Hirschi 1969). Finally, judges consider the practical and organizational constraints related to victim expectations, size of the court's caseload and financial resources, the level of public visibility of a case, the social costs of family disruption, and the financial and space burdens to be borne by the correctional system.

Although research suggests that focal concerns are universal, differences in jurisdictions may condition judges' prioritization of these concerns due to the nature of typical offenses that come before the court, the political aspirations of the judges and prosecutors, the financial and human resources available to the court, the level of visibility of a case and the wishes of victims. For instance, Kramer and Ulmer (1996) argued that in the sentencing of serious violent offenders, judges are likely to stress concerns with future dangerousness and blameworthiness, regardless of the jurisdiction. However, what factors go into determining an offender's level of culpability and their likelihood of reoffending or endangering the community or themselves may differ by judge or across courts.

Also, consistent with Albonetti (1991; 1997; 1998), Steffensmeier et al. (1993; 1998: 767) notes that judges' limited information regarding a case may cause them to develop a "perpetual shorthand" based on stereotypes linked to offender characteristics. Therefore, race/ethnicity, gender, family responsibilities, and age may interact to influence sentence outcomes because of images or attributions relating these social statuses to people in social groups thought to be dangerous and crime-prone.

A third theoretical perspective, chivalry/paternalism also focuses on attributions about offenders, but stresses that judges' decisions are influenced by patriarchal notions of appropriate gender roles for males and females. It accounts for the bulk of the research on sex discrimination in sentencing. In the following section, I discuss the origin of chivalry/paternalism and its development in criminal justice.

Chivalry/Paternalism Hypothesis

The term 'chivalry' originates from cheval, the French word for horse. Those conferred with the title of knight during this period received the title of 'chevalier' or knight. Many historians consider knighthood and chivalry to be identical, but originally, the chevalier was a horseman with weapons descended from the Germanic Goths who raided and invaded the Roman Empire from the 3rd to 5th centuries. However, by the end of the 11th century, those conferred with the title of knight came from the noble classes in which they often owned property and whose responsibility included upholding certain religious, moral, and social systems. During the Middle Ages, Europeans adopted the term of chivalry to refer to an institution of service performed to feudal lords, to divine rulers, and to womankind. Therefore, women deemed to be ladies (i.e. women of noble birth) were placed on pedestals and considered to warrant chivalrous treatment from

knights in an effort to protect their female weakness against immorality and danger.

However, the end of the institution of chivalry did not result in some of its major tenets disappearing from usage in society (Belknap 2001; Kaeuper 1999).

One of these tenets maintained that women were the “weaker sex” and needed male protection. Another aspect of chivalry argued that women were passive and submissive leading to their dependence on the care of men. As part of these ideologies, women’s role was considered to be in the home where they handled the daily caretaking responsibilities for children and other household duties such as cooking and cleaning. In line with these arguments women were viewed as the members of a “cult of true womanhood” in which they were perceived as the center of morality in society (Belknap 2001).

In applying this perspective to criminal justice processing, the theory maintains that judges’ decision making is influenced by their concerns with protecting women from the harsh realities of prison life. However, some scholars argues that only those women who adhere to traditional gender roles can expect lenient treatment from judges, while those who exhibit more “masculine” traits can expect to receive more punitive treatment (Chesney-Lind and Shelden 1998; Belknap 2001). In addition, some chivalry theorists claim that offender characteristics other than gender and adherence to gender roles are likely to influence sentencing outcomes. They postulate that women of color and women in the lower class will receive the most punitive sentences because they cannot match up to the image of women that fostered the development of the criminal justice perspective of chivalry, namely white, middle-class women (Young 1986). However, challenges have been made to this perspective theorizing sex differences in criminal sentencing, with

Daly (1987a; 1987b; 1989; 1994) being one of the most important critics of the traditional formulation of chivalry/paternalism. She has offered her own perspective on sex discrimination in sentencing that she terms “familial paternalism.”

Familial Paternalism

The familial paternalism perspective arose out of Daly’s concerns with the traditional focus on the protection of women at the heart of chivalry. She argued for a modification of the theory from its original focus to one that emphasized gender disparities in sentencing as a product of judges’ desire to protect children and other dependents through the maintenance of gendered labor within families. Daly (1987a; 1987b; 1989; 1994) claimed that as part of their attributions regarding appropriate sentences, judges considered whether offenders represented “good” or “bad” parents.

Through her interviews with judges, she asserted that judges’ attributions were shaped by their perception of women as “caregivers and nurturers” and men as “breadwinners.” As a result, judges’ decisions reflected their concern with the social costs of imprisoning offenders for their children and other dependents. For instance, she noted that judges felt that emotional support was virtually irreplaceable while economic support could be supplemented by the availability of supplemental finances obtained through state aid. In addition, Daly (1987a; 1987b) argued that the gender of an offender would also interact with considerations of this familial status such that female offenders with family responsibilities would receive greater leniency than male offenders with family responsibilities or offenders of either gender without family responsibilities due to perceptions of these offenders as being suitable rehabilitative risks. However, Daly (1987a; 1987b; 1989; 1994) noted that offense severity and prior record serve as the

strongest influences on sentence outcomes and shape the amount of discretionary power available to judges. For instance, if an offender receives a drug conviction that carries a mandatory minimum¹⁰, judges must rely on the prescribed sentence rather than choosing from a range of sentences permitted by the intersection of an offender's prior record and offense severity scores.

Daly also claimed that this family-based argument could explain class- and race/ethnic-based disparities because members of different socioeconomic classes and race/ethnic groups exhibit different levels of family responsibilities and support systems. For instance, black families tend to rely more strongly on extended kinship networks than other race/ethnic groups, particularly white offenders (Staples and Johnson 1993). In addition, blacks tend to have more single, female-headed households than other groups. Even with possible financial and emotional assistance from other family members, this high level of family disruption has implications for their ability to engage in continuous emotional and economic support at the levels that predominantly white, male judges may deem acceptable since they may have to work 2 or 3 jobs just to help the family survive. In fact, Staples and Johnson's (1993) citation of a 1991 study by the Commission on Civil Rights found "poverty endemic among fully employed black women" because the reality of a majority of black families with minor children living in female-headed households consigns these families to poverty and its adverse consequences (e.g. high infant mortality, high crime rates).

¹⁰ The federal sentencing guidelines mandate that a person convicted of possessing 5g of crack cocaine receive a mandatory 5-year sentence, which is the equivalent to a sentence for a person possessing 500g of powder cocaine.

Empirical Literature

Studies testing these theoretical perspectives show similar results with regard to the influence of legal and extralegal factors, particularly race/ethnicity and gender on sentencing decisions. With regard to the literature on attribution theory, studies indicate that a defendant's ethnicity has clear implications for perceptions of dangerousness and recidivism (Albonetti 1991;1997; 1998; Miethe and Moore 1986; Unnever 1982; Farrell and Swigert 1978). In addition, acceptance of responsibility is deemed an appropriate rationale for imposing a downward departure under the federal sentencing guidelines. One means of examining acceptance of responsibility is by studying the influence of guilty pleas on sentencing outcomes. Research consistently indicates that pleading guilty significantly reduces sentence severity compared to going to trial (Ulmer and Kramer 1996; Albonetti 1991; 1997; 1998; and Hagan et al. 1980).

As noted in the theoretical discussion, the focal concerns perspective relies on an attribution perspective as well. However, it places its emphasis on the influence of the court community in directing judges' consideration of three issues: blameworthiness, dangerousness, and practical/organizational constraints. Steffensmeier and his colleagues provide the bulk of research in this area (Steffensmeier and DeMuth 2000; 2001; Steffensmeier et al. 1993; Steffensmeier et al. 1998). Their findings indicate that racial/ethnic minorities, males, and young offenders receive the harshest penalties. Among racial/ethnic minorities, Hispanics often receive the harshest sentences. Steffensmeier et al. (1998) and Steffensmeier and DeMuth (2000; 2001) attribute this severity to judges' reliance on -stereotypical attitudes for drug offenders in the face of limited attributions that leads them to perceive Hispanics and other minority offenders as

more dangerous and poor rehabilitative risks. Other research supports the findings for Hispanic defendants (Spohn and Holleran 2000; Hebert 1997).

Nevertheless, even when considering the influence of gender on sentencing, the findings provide results similar to Albonetti's (1991; 1997; 1998) view of attribution theory. Specifically, considerations of blameworthiness are most strongly affected by legal factors such as prior record, offense severity, and acceptance of responsibility. Practical issues such as the impact of correctional resources, family responsibilities, and substance abuse also influence decision-making.

The majority of research on gender disparity in sentencing and other areas of criminal justice is based on the chivalry/paternalism hypothesis. Studies prior to 1980 found evidence of chivalrous treatment on the part of judges, but failed to control for an offender's prior record and offense severity (Armstrong 1977). Studies since then have rectified this problem and find less support for the chivalry hypothesis. Nevertheless, there remains support that some level of chivalry operates at the sentencing stage even after controlling for legal variables (Mann 1984). The problem is that studies that find chivalry face limitations because different factors were used to attribute blameworthiness to male and female offenders. For instance, Belknap cites a study by Spohn et al. (1985) in which they found that extremely punitive sanctions for black males compared to the other groups explained the chivalrous appearance of the findings indicating that the interaction of race and sex is important to consider.

One of the major findings in research espousing chivalrous/paternalistic treatment for women is that this attitude is likely to translate into leniency only for certain types of females. Studies show that women of color generally receive more severe sentences than

white women, even after controlling for legal factors (Kruttschnitt 1980-1981; Spohn et al. 1987; Visher 1983; Farnworth and Teske 1995). In addition, age also influences sentencing outcomes for females, such that younger women receive more severe sentences than older women (Visher 1983; Chesney-Lind and Shelden 1998; Chesney-Lind 1997). Specifically, research involving juvenile offenders indicates that juvenile females charged with status offenses faced more severe punishment than similarly situated juvenile males (Datesman and Scarpitti 1980). Nevertheless, the research on sentencing offenders to incarceration generally provides support for the chivalry hypothesis (Farnworth and Teske 1995; Gruhl et al. 1984; Steffensmeier et al. 1993; Kruttschnitt 1984).

The research also shows the importance of considering the type of offense committed because the chivalry hypothesis argues that women receive leniency due to judges' perceptions regarding traditional gender roles. Those women who stray from these traditional roles can be expected to receive more punitive sanctions at the sentencing stage, which is borne out by the research. In fact, studies show that women who commit more "masculine" offenses receive more punitive sanctions than women who engage in typical "feminine" offenses (Chesney-Lind 1997; Zingraff and Thomson 1984).

As noted previously, Daly (1987a; 1987b; 1989; 1994) felt that modifications needed to be done with regard to the traditional chivalry/paternalism theory such that the focus shifted from an examination of judges' attitudes regarding the protection of women to one examining judges' concern with protecting children and families through the maintenance of gendered labor relations within families. Her research supports this

argument and finds that not only do offenders perceived to be “familied”¹¹ by judges receive leniency, but that familied women receive more leniency than familied men. Furthermore, she finds that the leniency is strongest for black defendants due to judges’ perceptions of their greater economic and social disadvantage than white women and male offenders of any race/ethnic group (Daly 1987a; 1987b; 1989; 1994). Daly’s (1987) initial study developed, in part, out of the findings of Simon (1975), Kruttschnitt (1982; 1984), and Eaton (1986). Each of these studies addressed the importance of informal social control and the social costs of punishment. However, they continued to center their paternalism more strongly on a belief in the protection of women.

Kruttschnitt (1982) initially argued that judges would see women as greater rehabilitative risks due to fewer attributions of dangerousness (see focal concerns perspective, Steffensmeier et al. 1993; Albonetti 1997; 1998). Her argument stemmed from a focus on the importance of economic dependency and found it to be important in explaining the greater leniency accorded to females convicted of minor property offenses. In her later study, Kruttschnitt (1984) incorporated measures of family composition and the number of young children in a defendant’s home. Her findings offered support for prior research that addressed gender differences at the pretrial release stage. Specifically, she found that women faced higher odds of receiving release on one’s own recognizance (ROR) at the bail stage, if they lived with their children and had a number of young children.

¹¹ Familied status according to Daly (1987) reflected offender’s marital status, whether they had children, or whether they had other types of dependents.

Drawing on a global perspective of chivalry/paternalism, Daly (1987a; 1987b) examined a study by Eaton (1986) that focused on gender disparity in an English magistrate's court outside of London. This study found that the court seemed to endorse different roles for offenders based on societal expectations regarding household and family responsibilities, such that judges perceived males as the economic providers and females as emotional and childcare providers. In fact, Eaton (1986) noted a difference in the reports of probation officers depending on the sex of the offender. She found that probation officers described offenders' homes more frequently when the offender was female rather than male.

Daly (1987a; 1987b) suggested that researchers needed to use a more extensive gendered perspective regarding the object of judicial protection. She suggested that judges were concerned with the impact that incarcerating women would have on their responsibilities for caring for their children and other family members. However, she also argued that judges needed to apply equal attention to the impact of incarcerating fathers.

Current trends show a movement by the conservative right towards a "return" to "traditional family values" stressing the importance of the two-parent nuclear family, which reflect views of traditional femininity and masculinity created using white, middle-class values (Belknap 2001). However, racial and ethnic minorities have traditionally relied more heavily on extended kinship networks (McAdoo 1997). This deviance in family structure could result in sentences that are more punitive for members of minority groups. On the other hand, racial and ethnic minorities might also receive advantages in sentencing due to perceptions of greater disadvantage relative to white offenders (Daly

1987a; 1994). If one incorporates gender into this equation, minority females may receive greater leniency because of perceptions of their more disadvantaged circumstances relative to minority males given that they often bear primary or sole responsibility for the economic and emotional support of children and other dependents (Mumola 2000).

In furthering her examination of the influence of parenting and other forms of caregiving, Daly (1987a) conducted an initial test of her theory of familial paternalism by observing court proceedings and conducting interviews with court officials. She paid particular attention to defendant's marital status and the presence of social ties. Due to perceptions that social ties (e.g. marital status, dependents) acted as informal social constraints on recidivism, Daly (1987a) expected that married offenders and those with responsibilities for others would receive the greatest leniency. In a later study, using quantitative data from Seattle and New York, Daly (1989) found that the presence of dependents mitigated sentencing outcomes more strongly for women than men, ~~but~~ and greatest for black defendants.

The interviews that Daly (1987a) conducted in her initial study permitted her to delve deeper into explanations for these differences. With regard to responsibilities for others, specifically children, Daly noted that judges considered notions of "good" and "bad" parenting, which raised continuing concerns about the selective application of paternalism to a focus on the presence of family ties for men and women of different racial and ethnic groups. Her findings reflect judges' concern with the practical effects of incarcerating individuals. In particular, her findings raise questions about judges' decision-making when incarceration is almost inevitable and they have to consider the

length of incarceration to impose, especially in light of the current use of sentencing guidelines in the federal system.

At the time that Daly (1987a) conducted her study, however, she relied on municipal court actors operating under an indeterminate sentencing system. More recent research by Bickle and Peterson (1991) and Flavin (2001) has attempted to address Daly's (1987a; 1987b; 1989; 1994) concern with the influence of specific types of family ties on sentencing outcomes. Bickle and Peterson (1991) relied on forgery cases within the federal system between 1973 and 1978 in order to test the influence of emotional versus economic dependency. They found that both sexes benefited from the emotional support role, but white women were more likely to be beneficiaries of familial paternalism for having emotional dependence. Flavin (2001) extended this research further by examining the influence of family arrangements/living situations on sentencing outcomes for drug offenders in a mid-Atlantic city. Her findings indicate that judges focus primarily on the prior record of offenders regardless of sex. She also found that single mothers and childless offenders residing with adult family members faced lower odds of incarceration relative to offenders who are childless and living without any family members.

Limitations of Research

Daly (1987a; 1987b; 1989; 1994) made a significant contribution to the literature on sentencing disparity, but she faced several limitations. First, she relied on data from different municipal courts, which lessened the generalizability of her findings to other jurisdictions. Second, her controls for family ties fail to consider the weight attributed to different types of family ties (e.g. children, family members). Third, she only controlled

for a small number of offense and court-processing variables, which neglects other legally relevant factors found to be important predictors of a defendant's sentencing outcomes (e.g. plea type, pretrial release, attorney type). Fourth, although Daly (1987a; 1987b; 1989; 1994) collected some data on Hispanics, she primarily discussed black and white differences, further perpetuating the traditional duality of race/ethnicity presented in much of the research examining race/ethnic differences in sentencing.

Regardless of the theoretical perspective used and the important findings contributed to the sentencing literature, research using bounded rationality (attribution theory), focal concerns, chivalry/paternalism, and familial paternalism face several limitations. The research on attribution theory and "bounded rationality" often suffers from the fact that characteristics of the local court community are not considered among the factors influencing judges' decisions, particularly as considerations of practical and organizational consequences are concerned. Judges tend to be elected officials, so they have to consider how their decisions will impact their chance to be reelected, particularly with regard to the level of visibility of a case and the wishes of the victim(s). In addition, they have to consider the organizational consequences in terms of the caseload of the court, the maintenance of positive working relationships with prosecutors and other court actors, and the financial burden to the court and the correctional system (Eisenstein et al. 1999; Ulmer and Kramer 1996; Dixon 1995). For instance, the current President Judge of the Philadelphia Municipal Court, Fredericka Masiah-Jackson was nominated by former President Clinton for a federal judge position. The Philadelphia District Attorney objected to this appointment and went so far as to compile boxes of paperwork containing

court decisions imposed by Masiah-Jackson in an attempt to show that the judge displayed a pro-defense position.

The focal concerns perspective, which expands “bounded rationality” theory by including information about the court community where sentencing decisions occur also face criticisms. Some proponents of chivalry/paternalism argue that it fails to explain the continuing evidence of chivalry/paternalism evident in judicial decision-making because women continue to receive much more lenient sentences than men in both the state and federal courts (Curran 1983; Chesney-Lind 1997). A second factor is that most of the research using this perspective is done at the state level, specifically on Pennsylvania. This limits generalizability to the federal system, which operates under more complex guidelines. However, Steffensmeier and DeMuth (2000) have begun to address this limitation and find similar patterns with regard to race/ethnic differences, such that Hispanic offenders receive the most punitive sanctions, but more research remains to be conducted.

With regard to the literature on the chivalry/paternalism hypothesis, critics charge that evidence of leniency is not evidence of chivalry because other factors could be operating. In addition, the general propositions denoted by the chivalry hypothesis fail to address the interaction of race/ethnicity, and the importance of adhering to traditional gender roles.

Daly’s familial paternalism perspective also faces several limitations primarily due to the type of information available in official data sources. Most official records lack information on family responsibilities and even when collected in documents such as presentence investigation reports, these reports are not always readily available in court

records even when computer records indicate their presence. Another problem is that the studies that test Daly's theory focus on municipal courts with the exception of a study by Bickle and Peterson (1991) that examines federal cases. The problem with their study is that they focus only on forgery offenders and examine cases under the indeterminate sentencing structure during the pre-guidelines era.

Most offenses in the federal system involve drugs, the second largest fraud, and the third largest immigration violations. Bickle and Peterson's (1991) focus makes their findings less generalizable to most sentencing decisions made within the federal system. In addition, although they seek to address Daly's (1987a; 1987b) concern with examining the influence of types of family ties, they fail to specify exactly what is meant by emotional and economic dependents because they treat these categories as mutually exclusive when in fact offenders can have dependents that receive both types of support. Flavin (2001) improved on the types of family ties, but her study also provides limitations for determining the effectiveness of the theory in explaining gender differences in sentencing. She only examines black drug offenders in a mid-Atlantic city. There is no way of determining if the same measures of family arrangements/living situations would operate similarly for whites, Hispanics and other race/ethnic groups. Her study also makes it difficult to determine if the family arrangements operate similarly across offense types.

Contributions of my Research

My research seeks to address the limitation of prior research on gender differences in sentencing using Daly's (1987a; 1987b; 1989; 1994) familial paternalism perspective. Specifically, I seek to provide insight into the influence of specific types of

family arrangements under the federal sentencing guidelines given the explicit provision that family responsibilities are “not ordinarily relevant” in sentencing decisions.¹² In addition, I aim to strengthen prior research by providing insight into how family arrangements/living situations differ in their influence on sentence outcomes, not only by type of offense (i.e. fraud and drug trafficking), but also how these arrangements mediate the influence of gender on sentencing outcomes and the role of race/ethnicity in conditioning this effect. In furtherance of these goals, I developed several hypotheses that I discuss below.

Hypotheses

In creating my hypotheses I relied on knowledge obtained from existing literature when appropriate. Accordingly, this study examines the extent to which family arrangements/living situations mitigate the influence of gender on the length of incarceration and whether any effects differ across racial and ethnic groups. In conducting these analyses, I test each of the 5 hypotheses listed below for drug trafficking and fraud offenders separately.

H1: Women will receive shorter sentences than men.

H2: White offenders will receive the shortest sentences and Hispanic offenders will receive the longest sentences, with blacks receiving sentences somewhere in between.

With regard to hypothesis 1 prior research indicates that women continue to receive more lenient treatment than male offenders, although when race is taken into

¹² § 5H1.6

account black females receive sentences similar to white males (Greenfeld and Snell 1999). My expectation in hypothesis 2 comes from Steffensmeier and Demuth's (2000; 2001) study in which they found that Hispanic offenders received the most punitive sentences, whites the least punitive sentences and blacks somewhere in between. However, as they discovered, this hypothesis is likely to be offense-specific with the strongest effect for drug traffickers.

H3: Familied offenders will receive shorter sentences than non-familied offenders.

H4: Familied women will receive shorter sentences than familied men.

H5: The types of family arrangements that offenders have will mediate the effects of gender and race/ethnicity on the length of an offender's sentence.

Daly (1987b) considers "familied" offenders to be those with dependent children, those who are married, and those who have ties to other family members or significant others. Although she noted that specific types of family ties were important to examine, her data did not permit this type of analysis, leaving other researchers to take up the cause (Bickle and Peterson 1991; Flavin 2001). Flavin (2001) provided the most significant evidence to date of the importance of distinguishing between family arrangements/living situations. In her creation of specific types of family arrangements, she moved beyond determining whether an offender had children or other dependents and whether they were married to a focus on offenders' living situations prior to their incarceration. Flavin (2001) argued that judges perceived offenders differently depending on whether they

lived with their children or other family members.¹³ Hypotheses 3 through 5 address the importance of specific family arrangements/living situations in comparison to a focus on general family status measures (i.e. marital status, offender has children). In chapter 3, I discuss the data used for the study in detail and the analytical procedures used to test the hypotheses.

¹³ As noted previously, she only examined black offenders convicted of drug offenses. She provides no information on white and Hispanic offenders, the impact of specific living situations/family arrangements on other types of offenses (e.g. property and violent crimes), and by using data from a mid-Atlantic city, faces generalizability issues.

Chapter 3

Data and Methods

The research challenge is to merge information on family circumstances with information on the sentencing decision in order to study Daly's familial paternalism perspective as it relates to unwarranted gender and race/ethnic disparities. Unfortunately, most data sets fail to provide the necessary information to adequately test Daly's perspective. However, I draw on a self-report survey of federal offenders that contains information solicited from inmates on (1) current offense and sentence characteristics, (2) criminal history, (3) family background and personal characteristics, (4) prior drug and alcohol treatment programs, (5) weapon possession and use, and (6) victim information. This information was obtained through personal interviews from June through October 1997. Interviewers relied on computer-assisted personal interviewing (CAPI) techniques in which the computer provided the interviewer with a question and then provided a follow-up question based on the response to the preceding question. Prior to the interview, inmates received assurances in writing and verbally that their participation was entirely voluntary and that their information was confidential. The Census Bureau conducted the first version of this survey in 1991 and decided to conduct it every six years. For the 1997 survey, researchers combined the data for both the state and federal prisons into one data file, from which I selected only those cases involving federal offenders.

My primary goal in choosing federal offenders was to examine the factors relevant to continued unwarranted disparity based on gender and race/ethnicity in the federal system in the face of sentencing guidelines¹⁴ that deem them irrelevant to sentencing decisions.¹⁵ In addition, the use of the survey of federal offenders assured that I obtained data on offenders convicted under a uniform sentencing structure, which permitted me to improve external validity to an extent not possible in much of the research on the influence of familial paternalism on sentencing outcomes because of its use of municipal court data in one or several jurisdictions (Daly 1987a; 1987b; 1989; 1994; Kruttschnitt 1982; 1984; Eaton 1986; Flavin 2001).

Sample Design

In obtaining the final sample of federal inmates to be interviewed, the Bureau of the Census relied on the 1995 Census of State and Federal Correctional Facilities (CSFCF) and the Bureau of Prisons' list of 127 federally owned and operated facilities housing sentenced inmates on June 30, 1996. Next, researchers employed a stratified two-stage selection procedure (BJS 1997).

Stage One

During the first stage, researchers selected prisons for inclusion in the project using two sampling frames: one for prisons housing male inmates and one for prisons housing female inmates. In the federal system, however, co-correctional facilities also exist. Researchers decided to treat inmates in these facilities independently in sample

¹⁴ For a discussion of the format of the federal sentencing guidelines and relevant case law, see the appendix.

¹⁵ § 5H1.1-§ 5H1.12

selection depending upon their relevant male and female populations. The federal prison universe included 105 prisons with only male inmates, 14 prisons with only female inmates, and 8 co-correctional facilities. In selecting the final sample of prisons, one male and two female prisons were chosen with certainty. The remaining male prisons were grouped into 5 strata according to their security levels,¹⁶ while the remaining female prisons were grouped into 2 strata using their security levels.¹⁷ Within each stratum, researchers organized the facilities by the size of their populations and selected based on probability proportional to size. Systematic samples of federal facilities were drawn from each strata using a random start and sampling interval resulting in a final sample consisted of 40 facilities (32 male and 8 female) (BJS 1997).

Stage Two

Next, researchers selected inmates from the sampled prisons. They used the Bureau of Prisons' (BOP) central list and provided the names of inmates to designated prisons the week prior to the start of interviews. Similar to the selection of prisons, inmates were selected using two steps in order to obtain a sufficient number of non-drug offenders for analysis (BJS 1997).¹⁸

First, 5,854 males and 1,875 females were selected using a random start and predetermined sampling interval. Second, 1 in every 3 drug offenders were selected from the first set in conjunction with all non-drug offenders. Ultimately, the Census Bureau

¹⁶ Security levels for males in the federal system include administrative, high, medium, low, and minimum.

¹⁷ Security levels for females in the federal system include minimum and other security levels, including administrative, high, and low.

¹⁸ According to BJS (1997), drug offenders accounted for 41% of male offenders in federal prisons and 32% of female offenders.

sampled 3,525 males and 954 females, excluding those ineligible for participation. Their procedures resulted in a 10% nonresponse rate. These procedures translated into 4,041 federal surveys (BJS 1997).

Sample

From this sample, I selected only black, white, and Hispanic offenders of both sexes who were U.S. citizens. Second, I selected only those offenders currently sentenced as adults at the time of the interviews. Third, I selected only those offenders who had served 7 years or less by the time the survey was conducted. I placed this cap on time served in order to capture those offenders sentenced since the implementation of the federal sentencing guidelines.¹⁹ My intent was to determine the success of the guidelines in eliminating unwarranted disparity based on gender, race, and family ties. Due to these selection criteria, the final complete sample contained information on 3,788 offenders (2,976 males and 812 females). My analytical focus on sentencing outcomes for drug trafficking and fraud offenders produced a sample of 804 offenders for the analyses involving drugs and a sample of 352 offenders for the analyses involving fraud.

Sampling Issues

Since the data came from interviews with inmates, I discuss several issues related to the use of self-report data. First, some inmates provided extensive information for some questions (e.g. offense type, substance use) and not other questions (e.g. type of victim). Second, some inmates may have experienced difficulty comprehending the questions in the survey due to their education level, IQ, or other personal circumstances.

¹⁹ I also conducted analyses of various other levels of time served (i.e. ≤ 1 year, ≤ 3 years, ≤ 5 years) and found similar patterns of results.

However, these issues are likely to produce limited effects since interviewers can elaborate about the questions. Third, respondents may be unwilling or unable to provide correct information due to poor recall abilities or fear of sanctions for their revelations. Fourth, interviewers have different styles that may affect a respondent's comfort with responding to certain questions. Fifth, interviewers may code data incorrectly (Babbie 1998). However, the high level of participation by federal inmates and the extensive training provided to interviewers leads me to conclude that these issues are not sufficient to negate the results of the analyses. Other conceptual and methodological issues also exist.

Conceptual and Methodological Issues

First, a limitation of my study is its sole focus on the length decision, whereas most studies examine both the length and in/out decisions (Ulmer and Kramer 1996; Steffensmeier and DeMuth 2000; 2001). However, a focus on the length decision is not indefensible. Recent studies by Anderson et al. (1999) and Kautt and Spohn (2002) examined only the length decision and noted the high rate of incarceration in the federal system compared to many states. According to the Sourcebook of Federal Sentencing Statistics (1997), the overall incarceration rate was approximately 80%, while the rate for specific offenses varied. The highest rates of imprisonment occurred for drug traffickers (95%), fraud/embezzlement (61%), immigration (88%), firearms (92%), racketeering/extortion (93%), robbery (99%), and other violent offenses (73-100%).

In addition, given my focus on judges' consideration of the impact of offenders' sentences on the maintenance of family bonds, the federal survey proves useful for a variety of reasons. First, it permits an examination of the influence of family separation

on judges' sentencing decisions because it provides further insight into the mechanisms through which judges' family values orientations operate on sentencing outcomes.²⁰ In the pre-guidelines era, judges often considered family circumstances a relevant mitigating factor when determining whether to incarcerate offenders and for how long. Their concern with the maintenance of families and the welfare of children contributed to gender disparity in the federal system since female offenders tend to bear the brunt of family responsibilities more frequently than male offenders.²¹ Therefore, the U.S. Sentencing Commission drafted a provision that stated that family circumstances do not constitute extraordinary circumstances, and therefore, are "not ordinarily relevant" to judges' decision making.²² Nevertheless, studying female offenders poses several difficulties.

Difficulties Studying Female Offenders

One problem associated with the study of female offenders relates to the small samples available for study. However, this limitation is not surprising given the low rate of female offending overall. Second, in examining the role of gender, research recognizes the possibility of confounding effects with socioeconomic status and other factors. For instance, women tend to work in more low-status professions than men and

²⁰ Specifically, the data provide information on a number of family variables. These variables include: (1) whether an inmate lived alone or with others in the month prior to arrest, (2) if an offender lived with others, were any children under 18 living with the offender, (3) number of children under 18 living with the offender in the month prior to arrest, (4) relationship of those living with the offender, (5) whether the offender had children and how many, (6) ages of the offender's children (up to 6 children), (7) whether any of the offender's children were under 18 when the offender was incarcerated, (8) the offender's marital status, and (9) an indicator of dependence that I created based on offender's employment status and whether they received any form of public assistance.

²¹ Refer to the statistics presented in the introduction regarding incarcerated parents and their children.

²² § 5H1.6

make lower incomes. This sex disparity becomes more striking when one incorporates race/ethnicity into the consideration of offenders' socioeconomic status.²³

Third, women fail to conform to traditional categories of offenders and victims. In many cases, women act in peripheral roles to their intimate partners when engaging in criminal acts. A prime example occurs with drug trafficking, in which women often act as couriers, answer phones, or reap the financial benefits of their partner's offending, while not playing a significant role in the conspiracy. Another example exists in the case of women's violent offending. Many women convicted of assault and homicide experienced persistent abuse at the hands of their victims prior to engaging in a final solution to their problem. Fourth, sources of data also raise issues in the study of women. Self-report studies traditionally reflect questions geared more towards male offending patterns than female offending patterns. Fifth, traditional theories used to test hypotheses represent ideas developed based on male offending patterns. In contrast, Daly's (1987a; 1987b; 1989; 1994) familial paternalism perspective focuses on traditional constructs of masculinity and femininity, and their influence on attitudes and behavior within the judicial structure of the criminal justice system. In the next two sections I discuss the measures used for the drug trafficking and fraud offenses, respectively.

²³ I reiterate that although women as a group make lower incomes than men, women experience racial/ethnic income stratification such that white women enjoy higher incomes than black women and other women of color (Sapiro 1999).

Drug Trafficking Measures

Dependent Variable

Typically, scholars use two sentencing outcomes when studying sentence disparity: the in/out and the sentence length decisions. I focus on the length of incarceration decision using the length of incarceration capped at 240 months (i.e. 20 years). I relied on this criterion because the sentence length distribution indicated that the majority of offenders received sentences of 20 years or less. In addition, most convicted drug traffickers receive incarceration as all, or part of their sentence.

Independent Variables

The variables used to predict length of incarceration include several aspects of criminal justice processing. These factors include extralegal characteristics (e.g. race, gender, and family arrangements) and legal characteristics (e.g. criminal history, attorney type, offense seriousness). A discussion of the measures covered by each category follows in the next section.

*Extralegal Factors*²⁴

I analyzed the impact of a variety of offender characteristics: (1) family arrangements/living situation, (2) whether offender has minor children, (3) gender, (4) race, (5) age, (6) employment status, (7) marital status, and (8) education. My indicator of an offender's family arrangements/living situation used a series of 6 dummy

²⁴ Descriptions of the variables are located in Table 1-chapter 4 (drug trafficking) and Table 1-chapter 5 (fraud).

variables.²⁵ I based these measures on research by Flavin (2001). They indicated whether an offender was a parent and who he or she resided with in the month prior to their arrest.²⁶ Each dummy variable was coded 1 for those individuals who fit a given category and 0 otherwise. The categories included: (1) a person who has no children and lives alone or with non-family only²⁷, (2) a person who has no children and lives with family members, (3) a person who has a child and lives alone or with non-family only, (4) a person who has a child and lives their family, but not their minor child, (5) a person who has a child and lives solely with their minor child or with their minor child and non-family only, and (6) a person who has a child and lives with their minor child and family members. The first category served as the reference group because I expected that these offenders would face the longest periods of incarceration relative to other groups.

Flavin (2001) also relied on 6 categories.²⁸ Her last category representing whether an offender was a parent who lived with their child only served as her reference group. She expected offenders who fell into the other 5 categories to receive significantly higher odds of incarceration than those offenders comprising her reference group. However, she did not analyze the influence of family circumstances on the length of incarceration as I do in my study. I chose those who were childless, and lived without

²⁵ For those offenders residing with family members, they may also reside with non-family members. The criterion for inclusion in a category indicating residence with family members was simply whether an offender lived with any member of their family.

²⁶ Family members included [step] parents, grandparents, grandchildren, [step] siblings, adult children, spouses, and other relatives.

²⁷ Non-family includes boyfriends or girlfriends, minor children unrelated to the inmate, and other friends or non-relatives.

²⁸ The six categories were (1) childless, living without family, (2) childless, living with family, (3) parent, living without family or child, (4) parent, living with family, (5) parent, living with both family and child, and (6) parent, living with child only.

family members as my reference group. Theoretically, I believe that judges will consider other family circumstances in relationship to this category and punish offenders who appear to have some form of family ties less severely at the sentencing stage than those without family ties. The only exception I can foresee pertains to those in the category, parents who live without family members and/or their child. I believe that judges will punish this group of offenders more severely than the reference group because they perceive them to have abdicated their responsibilities.

The survey provided no information on the “dependent” nature of the offender’s ties to family members. Therefore, it was impossible to determine whether a person who lived with his or her family members, had primary caretaking responsibilities for these family members, economically or emotionally, or whether the offenders were the recipients (Flavin 2001).²⁹ Second, although the survey provided information on the ages of the inmates’ children, upon inclusion in the analyses, this measure exhibited no significant influence on the dependent variable.

In addition, identical to Flavin’s (2001) study, no variables indicate the quality of care a parent provided prior to their incarceration. Simply living with a parent does not guarantee that children receive adequate care. Children may receive economic, but not emotional support, while for those children not residing with their parents, several situations are possible. First, they may be the recipients of economic, but not emotional

²⁹ I attempted to get an indication of economic dependence by creating a dependence indicator based on an offender’s response to questions regarding their employment status and their status regarding public assistance prior to arrest. I created four categories: (1) employed and not receiving public assistance, (2) employed and receiving public assistance, (3) unemployed and not receiving public assistance, and (4) unemployed and receiving public assistance. Most offenders fit the first description. Therefore, I believe that most of the offenders provided some type of financial contribution to their households prior to arrest, although the amount in comparison to others is unknown.

support. Second, they may receive emotional support through visits and other forms of communication with their parents, but lack economic support due to their parents' financial circumstances. Regardless of the lack of indicators of the quality of care a parent provides, I expect that judges will perceive those offenders who are parents, but not living with their children as forsaking their responsibilities, and sentence them more harshly.

I also incorporated several other offender characteristics into my analyses. These variables included sex, race, age, employment status, education, and marital status and whether an offender has a child under 18 years of age. I coded sex, employment status, education, and whether an offender has a minor child as dichotomous variables. Sex was coded 1 for males and 0 for females. Employment status indicated whether an offender was employed in the month prior to his or her arrest. Offenders received a 1 if they were employed and a 0 otherwise. Education referred to the highest level of education completed by offenders. Offenders who had a college education or higher received a 1, while those with a high school education or less received a 0. With regard to whether an offender has minor children, respondents received a 1 if they have minor children and a 0 if they have no children or if their children are adults.

I coded age as a continuous variable.³⁰ Race/ethnicity and marital status were coded as dummy variables. With regard to race/ethnicity, I created 3 dummy variables:

³⁰ However, in the regression analyses I entered age both in its original form and as a quadratic variable to test for the presence of a curvilinear relationship in its effects on sentence length

(1) white, (2) black, and (3) Hispanic.³¹ For each dummy variable, an offender received a 1 if they met the criterion and 0 otherwise. The excluded category was whites. Based on findings by Steffensmeier and Demuth (2000; 2001), I predicted that whites would receive the most lenient sentences and Hispanics the harshest sentences. I expected blacks to receive sentences somewhere between these two groups of offenders. I also expected that this pattern would be especially salient for drug offenders as opposed to property offenders because Steffensmeier and Demuth (2000; 2001) noted that negative attributions towards blacks and Hispanics seemed to be particularly strong for drug offenses.

The three dummy variables for marital status included: (1) single, (2) married, and (3) divorced, separated, or widowed. Each dummy variable was coded 1 for those individuals who fit the description and 0 otherwise. The reference group was comprised of the married offenders. I predicted these offenders would experience greater leniency from judges due to judges' perceptions of stronger informal social controls in comparison to those never married or who are no longer in a committed relationship (Daly 1987a; 1987b).

Legal Factors

Given that most offenders within the federal system in 1997 were those involved in drug and fraud offenses, the present study focuses on drug trafficking and fraud offenders. I chose this method because I expect that the influence of family

³¹ In the partitioned analyses, I collapse blacks and Hispanics into a nonwhite category to compare them with whites due to the small number of Hispanics in the respective family arrangements categories. However, I conducted analyses with the 3 variables collapsed and will be happy to provide them upon request, although the pattern of results is similar regardless of which race/ethnic categorization I use.

circumstances on gender disparities will differ by type of offense. I selected cases for analyses based on the most serious charge resulting in a conviction (Spohn and Cederbloom 1991). For drug offenses, I initially sought to include measures indicating the type of drug and amount of drugs charged in an offender's indictment. Unfortunately, the bulk of data for these variables were missing. Instead, I conducted analyses using a measure of whether offenders received sentence enhancements for the type of drug involved in their offense. This measure was coded 1 if respondents indicated they received enhancement penalties and 0 otherwise. Other legal factors included those related to criminal history and court processing.

Criminal History

The federal sentencing guidelines established a prior record score. Unfortunately, the federal survey lacks this information, so I relied on prior literature regarding suitable measures of prior record (e.g. the number of prior arrests or incarcerations, history of violence, prior convictions, and prior incarceration). I selected two of these measures: (1) the number of prior arrests and (2) previous incarceration history. I coded number of prior arrests as a 5-category variable.³² Prior research consistently shows that those with more extensive arrest histories receive more severe punishments at the sentencing stage (Spohn 2002).

I treated prior incarceration as a dichotomous variable in which offenders received a 1 if they had a history of prior incarceration and a 0 otherwise. Steffensmeier et al. (1993: 416) concluded that “the appropriate” indicator is prior convictions “

³² (0) none, (1) one, (2) two to three, (3) four to six, (4) seven or more

because it is the only indicator authorized in statutes as a criterion for judicial decision-making. I chose prior incarceration for several reasons. First, it not only serves as an indicator of prior convictions, but it may also influence judges to perceive offenders with previous incarcerations as being unrepentant and incorrigible even after their experiences with the prison system. Therefore, I predicted that judges would impose a longer period of incarceration for the current offense to teach the offender a lesson. Second, I believed that judges concerned with protecting children would perceive these offenders as poor role models. Judges' concern with offenders' relationships with their children relates to their concern with offenders' relationships with extended family members. I predicted that judges would consider offenders with prior incarcerations as posing a threat to the stability of their family and punish them accordingly. In fact, those with prior incarcerations generally experience harsher penalties than those without prior incarcerations (Spohn 2002).

Court Processing Characteristics

Previous research has also found that legal factors related to case processing act as significant predictors of offenders' sentencing outcomes (Barak et al. 2001; Donziger 1996). I included measures of three of the most consistent predictors: pretrial release, attorney type, and mode of conviction. Each of these measures was treated as a dichotomous variable coded 0 and 1. I based pretrial release on a question asking an offender whether they had been released between their arrest and trial. Offenders received a 1 if they were released prior to trial and 0 otherwise. Findings consistently show that offenders detained prior to trial fare worse at sentencing (Spohn 2002).

Attorney type measured whether offenders relied on assigned counsel or hired their own

attorneys. A value of 1 indicates that an offender relied on assigned counsel, while a 0 indicates that an offender hired their own counsel. Research shows that offenders who use assigned counsel or public defenders tend to receive more severe sanctions than those who hire their own attorneys (Spohn 2002). Mode of conviction measured whether offenders plead guilty or opted to go to trial. A value of 1 indicates that an offender opted for trial while a value of 0 indicates that an offender plead guilty. Findings indicate that offenders who opt for trial face higher odds of incarceration and for longer terms of imprisonment than those who plead guilty (Spohn 2002).

Fraud Measures

Dependent Variable

Similar to the drug trafficking offenses, I focus on the length of incarceration decision. However, I placed a cap of 120 months (i.e. 10 years) on the measure because the sentence length distribution indicated that the majority of offenders (94.6%) received sentences of 10 years or less.

Independent Variables

The same explanatory measures were used for both the drug trafficking and fraud offenses with slight differences. Given the similarity in the measures, I will focus the discussion solely on the measures that are different from the drug trafficking analyses. Specifically, the measures of extralegal factors were altered in the case of race/ethnicity. Given the small number of Hispanics relative to the number of blacks and whites, all of the analyses use a dichotomous measure of race/ethnicity indicating whether an offender was white (0) or nonwhite (1). With regard to the legal variables, I altered the measure

for the number of prior arrests³³ and removed the measure of whether an offender received a penalty enhancement due to specific drugs since the focus of these analyses was on fraud offenses. In addition, I omitted the measure indicating that an offender has a history of substance abuse. In the final section, I discuss the statistical procedures used to analyze the data for both offenses. Since the procedures were identical, I report the analytical methods only once.

Statistical Procedures

Prior to the multivariate analyses for drug trafficking and fraud offenders, I calculated descriptive statistics (Tables 4-1 and Table 5-1) and bivariate correlations for the drug trafficking and fraud offenses to assess the relationships between each of the independent variables and the dependent variable prior to the inclusion of controls (see Tables 4-2 and 5-2). Second, given my use of a continuous dependent variable, I used ordinary least squares (OLS) regression to model length of sentence.³⁴ My initial analyses examined the mitigating effect of family arrangements for drug trafficking and fraud offenders. Next, I partitioned the analyses for drug trafficking by race/ethnicity and gender in order to examine potential interactions between the variables of interests (i.e. gender, race/ethnicity, and family circumstances) and the other independent variables. Although, I conducted gender and race/ethnic partitioned analyses for the fraud offenders, I do not include them because of the small sample sizes that resulted in the family arrangements categories. However, copies of the analyses will be provided upon

³³ Rather than the five category measure used in the drug trafficking analyses, the fraud analyses relied on a 4-category measure: [0] none, [1] one, [2] two to three, and [3] four or more.

³⁴ I reiterate that sentence length is capped at 120 months for fraud offenders and 240 months for drug traffickers.

request. Then, I conducted analyses of the influence of the “familied” measures (i.e. marital status and the presence of minor children) on sentence length for both offender types.

In Daly’s (1987a) research, she measured offender’s familial status by creating variables that indicated an offender’s marital status and whether they had dependents. Specifically, she created 4 categories: [1] single with no dependents, [2] single with dependents, [3] married with no dependents, and [4] married without dependents. She treated the first category as the reference category. In addition, she included offenders who were separated, divorced, and widowed into the single category. I conducted some preliminary analyses using her format, but found no significant results. However, I also conducted analyses where I created separate categories for those who are separated, divorced, or widowed rather than include them with the single (never married) offenders because I believed that judges would view these offenders as qualitatively different from each other. The results of these analyses also produced no significant differences. Therefore, in the final analyses, I simply entered marital status as a series of dummy variables in which married offenders served as the reference group and were compared to single and divorced/separated/widowed offenders. I also included a dichotomous measure that indicate whether an offender had minor children compared to an offender without children or whose children were adults. Daly considered dependents to be anyone living with an offender because she could not adequately assess the relationship of those living with an offender at the time of their arrest. My use of an offender’s children is more in line with Daly’s (1987a) initial study in Springfield, MA, where she found that judges used the presence of dependents, primarily children as the major

criterion in their decision-making after considering prior record and offense severity. Daly's (1987a) measure is limiting because simply living with someone does not make them dependent on an offender. In addition, there is no indication of the type of dependence that may be involved, such as economic and/or emotional dependence. This information is very important given Daly's (1987a) interviews with judges in which they discussed their ideas of "good" and "bad" familial offenders.

For instance, the "good" family man maintained some form of legitimate employment, while the non-familial man was unemployed, had no dependents, or "lived with their parents or an adult authority figure" (Daly 1987a: 17). Judges viewed the "irresponsible" family man as one who may be employed or unemployed, has dependents, but is not contributing to their support. In contrast, Daly (1987a: 17) noted that although judges relied on similar criteria, their focus for "good" family women refers to whether a woman is a mother or has other dependents for whom she performs regular care-taking duties, while an "irresponsible family woman has young children, but does not care or provide for them regularly."

Finally, I analyzed gender and race/ethnic partitioned models for both drug traffickers and fraud offenders. I expected the variables of interest to have different effects across offense types.³⁵ . For ease of presentation, I present the results of the analyses for drug trafficking and fraud offenders in chapters 4 and 5, respectively.

³⁵ For some variables in the partitioned models, I calculated the z-test for the equality of coefficients across models in order to identify any gender and race/ethnic differences in the effects of the independent variables on sentence length (see Paternoster et al. 1998).

Chapter 4

Drug Trafficking

Descriptive Statistics

Table 4-1 displays the percentages and sample sizes for the explanatory and outcome variables for the sample of drug traffickers. Consistent with federal statistics regarding the demographic composition of federal inmates, the majority of drug traffickers are racial and ethnic minorities. Blacks comprise the largest group of minority offenders by representing 51.2% of my sample. Hispanics, in contrast, comprise only 14.2% of my sample. Therefore, these 2 groups account for 2/3 of my sample. Whites comprise 34.6% of my sample. In terms of marital status, 45.9% of my sample is single (i.e. never married), while equal numbers of my sample are either married (26.9%) or divorced/separated/widowed (27.2%). Also consistent with statistics on federal inmates, the mean age of my sample is 36.13 years. With regard to the family arrangements variables, most of the offenders are parents living with their minor child and family members (30%).

Bivariate Correlations

In this section, I discuss the bivariate correlations presented in Table 4-2. These correlations reflect the relationship between the independent variables and the dependent variables prior to the inclusion of statistical controls. As expected, I found significant relationships between the dependent variable and a variety of legal and extralegal factors.

The extralegal factors exhibit a significant bivariate relationship between several of the explanatory variables (i.e. sex, education, age, and substance abuse) and the dependent variables. Specifically, being male or an older offender significantly increases an compared to female and younger offenders. The age variable is unexpected since offenders tend to age out of criminal activity. However, the results may indicate that older offenders are those with the longest sentences to prison, or they may be a curvilinear relationship between age and sentence length. This latter possibility and prior research on age and sentencing outcomes (Steffensmeier et al. 1998) lead to the inclusion of a quadratic age term within the multivariate models discussed in the sections using OLS. With regard to the family arrangements variables, I focus on the type of living situation an offender has in model 2 of Table 4-3 and for the main familial model presented in Table 4-4, a measure of an offender's marital status and whether an offender has a minor child. None of these variables are significantly related to length of incarceration.

Several legal variables also exhibit significant effects on an offender's sentence length. These variables include mode of conviction, number of prior arrests, previous incarceration history, the drug enhancement penalty, and pretrial release. As expected, offenders who go to trial, those with large numbers of prior arrests, those with a previous incarceration, and those receiving an enhancement penalty for the type of drug involved in the offense receive lengthy sentences compared to those who plead guilty, those with few prior arrests, those with no previous incarceration and those receiving a drug enhancement penalty. However, offenders released prior to trial receive shorter sentences than those detained during this period.

In the next part of this chapter, I divide the chapter into 3 parts in order to discuss the multivariate models used to test the 5 hypotheses of the present study. The first part discusses models 1 and 2 of Table 4-3. Model 1 examines hypotheses 1 and 2, which focus on gender and race/ethnic differences in sentencing. Model 2 shows the effects of controlling for offenders' family arrangements. The purpose is to test hypothesis 5, which states that the type of family arrangements an offender has will mediate any gender and race/ethnic effects on their sentence length. Next, I partition models 1 and 2 by gender and race/ethnicity to determine whether the influence of any of the relevant variables depends on an offender's gender or race/ethnicity (see Tables 4-3a and 4-3b). The second part focuses on the influence of being "familied" on length of incarceration as measured by the inclusion of marital status variables and a measure of whether an offender has minor children (see Daly 1987a; 1989). I use this analysis to test hypothesis 4, which states that familied offenders will receive shorter sentences than non-familied offenders. As with models 1 and 2, I partition the familied model by gender and race/ethnicity. The gender partitioning is to permit a test of hypothesis 4, which states that familied women will receive shorter sentences than familied men. For all of the partitioned models, I examined the possibility of differences between the regression coefficients using the test created by Paternoster et al. (1998). Finally, I present a section summarizing the findings of all the models.

Part 1: Influence of Gender, Race/Ethnicity, and Family Arrangements on
Sentencing

The first analysis discusses model 1 of Table 4-3, which examines the direct effects of gender and race/ethnicity on offenders' length of incarceration.³⁶ As expected, males receive longer sentences than females. However, only blacks experience a significantly different sentence from whites. Hispanics experience a non-significant decrease in sentence length compared to whites. With regard to the other offender characteristics, age shows an inverted-U shaped curvilinear relationship with sentence length and education shows a significant negative relationship with sentence length. Specifically, younger offenders receive longer sentences up to a certain point, where their sentences began to decline in length. Three legal variables exert significant effects on sentence length: pretrial release, mode of conviction, and the drug enhancement penalty. Offenders released prior to trial receive significantly shorter sentences than those detained during this period. In contrast, those who go to trial and those who receive a drug enhancement penalty receive significantly longer sentences than those who enter a guilty plea or who do not receive a penalty enhancement.

Given my interest in determining the influence of an offender's family arrangements, including whether they perform a mediating effect on gender and race/ethnicity, I included these measures to model 1 of Table 4-3 (see model 2, Table 4-3). The results indicate that family arrangements do not mediate the influence of gender and race/ethnic disparity on sentence length. The other variables found to be significant in model 1 of Table 4-3 retain their effects. With regard to the direct effects of family

³⁶ See Hypotheses 1 and 2. Hypothesis 1 states that males will receive longer sentences than females. Hypothesis 2 states that whites will receive the shortest sentences, Hispanic the longest sentences, and blacks sentences somewhere in between these two groups.

arrangements on sentence length, the results show a marginal positive effect on sentence length at the $p < .10$ level of significance for parents living with their minor child or with their minor child and non-family only ($b = 14.32$, $p = .069$) compared to the reference group (childless living alone or with non-family only).

Part 1a: Gender Differences in Sentence Length

In this section, I discuss the gender-partitioned models for model 1 and 2 of Table 4-3 (see Table 4-3a). With regard to the model without the inclusion of the family arrangements variables, the findings indicate that both sexes experience race/ethnic effects on sentence length. Black males receive a significant increase in their sentence length compared to white males. Black females experience a marginal increase in sentence length compared to white females at the $p < .10$ level of significance ($b = 17.75$, $p = 9.74$). In terms of the other offender characteristics, only males experience any significant or marginal effects. The legal variables, however, display significant effects for both sexes in terms of pretrial release and mode of conviction. In contrast, only males receive any significant sentence increase due to a drug enhancement penalty.

When I partition model 2 of Table 4-3 by gender (see Table 4-3a), the results indicate that the family arrangements variables fail to mediate the race/ethnic effect for males. However, their inclusion produces an effect on sentence length only for males. Specifically, males who are parents living with their minor child or with their minor child and non-family only receive a marginal increase in sentence length ($b = 17.49$; $p = .068$) at the $p < .10$ level compared to the reference group (childless living alone or with non-family only).

Part 1b: Race/Ethnic Differences in Sentence Length

In part 1b, I discuss models 1 and 2 of Table 4-3 partitioned by race/ethnicity. Given the small sample size in the Hispanic category that would have occurred by using 3 separate race/ethnic groups, I collapsed Hispanics and blacks into one category that I term nonwhite. The results of partitioning model 1 (see Table 4-3b) indicate that offender characteristics matter only for nonwhites, whereas legal factors significantly influence sentence length for both groups. The results of partitioning model 2 (see Table 4-3b) indicate that the type of family arrangements an offender has does not mediate the gender differences in sentencing for nonwhites. In addition, their inclusion results in an effect on sentence length solely for males. Specifically, fathers living with their minor children or those living with their minor children and non-family only receive marginal increases in sentence length ($b = 18.31$, $p = .087$) at the $p < .10$ level of significance. In the next part of the chapter, I focus on Daly's (1989) notion of familial status, namely the influence of offenders' marital status and whether they have minor children.

Part 2: Influence of "Familied" Status on Sentence Length

Table 4-4 shows the results of the analysis of "familied" status on sentence length. The results indicate that marital status and whether an offender has minor children exert no significant effect on sentence length. However, other offender characteristics such as sex, race/ethnicity, age, and education do significantly affect sentence length. Males and blacks receive significantly longer sentences than females and whites. Age displays an inverted U-shaped curvilinear relationship in which younger offenders receive longer sentences while older offenders receive shorter sentences. Education indicates that those with a college education or higher receive significantly longer sentences than those with a high school education or less. The legal factors also produce results consistent with prior

research (Albonetti 1997). Specifically, those who go to trial and those who receive a drug enhancement penalty receive longer sentences than those who enter a guilty plea and those who do not receive a drug enhancement penalty. In addition, those released prior to trial receive shorter sentences than those detained during this period.

Part 2a: Gender Differences in the Influence of “Familiated” Status on Sentencing

In this section, I discuss the effects of “familiated” status on sentence length when I partition the model in Table 4-4 by gender (see 4-4a). The results indicate that offender characteristics exert significant effects solely for males. In terms of the legal variables, both sexes experience significant effects on sentence length based on whether they were released prior to trial and their mode of conviction. However, a drug enhancement penalty significantly effects sentence length solely for males. The measures of the “familiated” variables reveal no significant influence on sentence length due to marital status or whether an offender has minor children. Nevertheless, the findings are interesting because males experience a sentence increase for being single or divorced/separated/widowed compared to married offenders, while females experience a punitive effect only if they are single. Those females who are divorced/separated/widowed receive a reduction in sentence length compared to married females. In addition, both sexes receive an increase in their sentence if they have minor children compared to if they have no children or adult children. However, males receive an increase approximately 3 times higher than that of females (males: $b = 6.64$; females: $b = 2.67$).

Part 2b: Race Differences in the Influence of Familiated Status on Sentencing

The focus in this part of the chapter is to determine whether familial status operates similarly or differently across race/ethnic groups (whites, blacks, and Hispanics). Only blacks experience any significant effect on their sentence length due to one of the familial variables. Specifically, blacks with minor children receive significantly longer sentences than blacks with no children or with adult children. Although not statistically significant, the influence of the marital status is interesting in that whites and Hispanics receive sentence increases when they are single or divorced/separated/widowed compared to their married counterparts, while blacks only face sentence increases if they are single. Compared to married black offenders, blacks who are divorced/separated/widowed receive shorter sentences. An examination of the other offender variables indicates that blacks are the sole group to face differing sentence outcomes based on their demographic characteristics. In contrast, all three race/ethnic groups experience significant influences on their sentence length due to legal factors such as pretrial release, mode of conviction, and penalty enhancements.

Summary of Findings

The purpose of my analyses was to test the 5 hypotheses of the study. I tested the first two hypotheses using model 1 of Table 4-3. The results provide support for hypothesis 1 (males receive longer sentences than females), but not hypothesis 2. Specifically, blacks experienced significantly longer sentences than whites, but Hispanics experienced non-significant sentence reductions compared to whites. Of further importance, the family arrangements variables failed to mediate the gender and race/ethnic differences when I included them in model 2 of Table 4-3. This model also sought to test hypothesis 5 that an offender's type of family arrangements would

significantly affect their sentence length. The model failed to provide support for this hypothesis, although the results indicate that being a parent living with one's minor child or with one's minor child and non-family only exerts a marginally positive effect on sentence length compared to the reference group (childless living alone or with non-family only).

I partitioned models 1 and 2 of Table 4-3 by gender and race/ethnicity to examine these hypotheses in greater detail (see Tables 4-3a and 4-3b). Table 4-3a shows the gender partitioned models and indicates significant race/ethnic differences for males and marginal race/ethnic differences for females when the offenders are black compared to when they are white. Other offender characteristics are only relevant for males, while the legal factors significantly affect sentencing outcomes for both sexes. The gender-partitioned models for model 2 of Table 4-3 indicate that family arrangements matter solely for males as shown by the marginally positive effect at the $p < .10$ level for offenders who are parents living with their minor child or with their minor child and non-family only compared to childless offenders living alone or solely with non-family.

Table 4-3b shows the race/ethnic-partitioned models for models 1 and 2 of Table 4-3. Given concerns with sample size for Hispanic offenders when I partitioned model 2 in this fashion, I combined blacks and Hispanics into one category labeled nonwhites and compared the results for this group to that for whites. The results of the partitioned model for model 1 of Table 4-3 indicate that offender characteristics exert significant effects solely for nonwhites, although whites experience a marginally positive effect on sentence length at the $p < .10$ level if they are male compared to female. When I partitioned model 2 of Table 4-3, the results indicated that family arrangements mattered

only for nonwhite offenders. Specifically, nonwhites who are parents living with their minor child or with their minor child and non-family members only receive marginally positive increases in their sentence length compared to nonwhites who are childless and living alone or solely with non-family members.

In part 2, I focused on examining the influence of “familied” status as discussed by Daly (1987a) in order to test hypotheses 3 and 4. The unpartitioned model fails to support hypothesis 3 which states that familied offenders would receive shorter sentences than non-familied offenders (see Table 4-4). Partitioning the model by gender also shows that the results fail to support hypothesis 3 that familied women would receive shorter sentences than familied men. I also partitioned the models by race/ethnicity and found that blacks were the only group to experience a significant effect on sentence length due to the familied variables. Specifically, blacks with minor children received significantly longer sentences than blacks without children or with adult children. . To further test whether any significant differences exist between males and females and nonwhites and whites, I conducted an examination using the test suggested by Paternoster et al. (1998) that focuses on determining whether any differences exist between the regression coefficients between 2 groups.³⁷ The results of this test showed no race/ethnic or gender differences for the gender or race/ethnic partitioned models discussed in part 1. In addition, the results of this test showed no race/ethnic or gender differences for the partitioned models addressing the influence of “familied” status discussed in part 2. In chapter 5, I discuss test the 5 hypotheses for fraud offenders.

³⁷ $Z = \frac{b_1 - b_2}{\sqrt{\sigma^2 b_1^2 + \sigma^2 b_2^2}}$

Table 4-1. Descriptive Statistics: Federal Drug Trafficking Offenders^a

Variable	N	%
<i>Dependent Variable</i>		
Sentence Length (capped at 240 months)		
<i>Independent Variables</i>		
Offender's Gender		
1 = male	583	72.5
0 = female	281	27.5
Offender's Age ^b		
18-29	252	31.5
30-39	283	35.3
40-49	172	21.4
50 and older	97	11.5
Offender's Race/Ethnicity		
[White]	278	34.6
Black	412	51.2
Hispanic	114	14.2
Offender's Marital Status		
Single	369	45.9
[Married]	216	26.9
Divorced/Separated/Widowed	219	27.2
Offender's Education		
1 = College or higher	188	23.4
0 = High School or less	615	76.5
Offender's Employment		
1 = Employed	506	62.9
0 = Unemployed	284	35.3
Offender's Parental Status		
1 = Has children under 18 yrs	529	65.8
0 = No children or adult children only	268	33.3
Offender's Family Arrangements		
[Childless living alone or with non-family only]	88	10.9
Childless living with family	61	7.6
Parent living alone or with non-family only	163	20.3
Parent living with family	82	10.2
Parent living with minor child or with minor child and non-family only	153	19.0
Parent living with minor child and family	241	30.0

Table 4-1. Descriptive Statistics: Federal Drug Trafficking Offenders

Variable	N	%
Number of Prior Arrests		
0 = none	210	26.1
1 = one	149	18.5
2 = two to three	193	24.0
3 = four to six	152	18.9
4 = seven or more	87	10.8
Previous Incarceration		
1 = yes	362	45.0
0 = no	442	55.0
Mode of Conviction		
1 = trial	213	26.5
0 = guilty plea	578	71.9
Attorney Type		
1 = Assigned Counsel	472	58.7
0 = Hired own counsel	302	37.6
Pretrial Release		
1 = yes	399	49.6
0 = no	403	50.1
Enhancement Penalty		
1 = yes	255	31.7
0 = no	527	65.5
Substance Abuse History		
1 = yes	524	65.2
0 = no	275	34.2

^a Those variables in which percentages do not total 100% reflect missing cases. In addition, those variables in brackets represent reference categories.

^b Age is a continuous variable, but I displayed it by categories for ease of presentation. The mean age of the sample is 36.13 years.

Table 4-2. Bivariate Correlations: Federal Drug Trafficking Offenders (N = 804)

Variables	1	2	3	4	5	6	7	8	9	10
1 Length of Incarceration		.199**	.134**	-.008	.017	-.075*	.055	-.001	.067	.093*
2 Gender	.199**		.033	-.063	-.071*	.031	.143**	.054	-.071*	.323**
3 Age	.134**	.033		-.252**	.528**	.107**	.058	-.292**	.114**	.003
4 Race/Ethnicity	-.008	-.063	-.252**		-.229**	-.114**	-.009	.196**	.134**	-.013
5 Marital Status	.017	-.071*	.528**	-.229**		.107**	.053	-.072*	.193**	-.068
6 Education	-.075*	.031	.107**	-.114**	.107**		.101**	-.051	-.029	-.107**
7 Employment	.055	.143**	.058	-.009	.053	.101**		.021	.098**	-.060
8 Parental Status	-.001	.054	-.292**	.196**	-.072*	-.051	.021		.572**	.055
9 Family Arrangements	.067	-.071*	.114**	.134**	.193**	-.029	.098**	.572**		-.053
10 Number of Prior Arrests	.093*	.323**	.003	-.013	-.068	-.107**	-.060	.055	-.053	
11 Previous Incarceration	.098**	.216**	.018	-.053	.008	-.087*	-.002	.038	-.038	.568**
12 Mode of Conviction	.431**	.030	.158**	-.021	.055	.004	.045	-.132**	.012	-.107**
13 Attorney Type	-.013	-.123**	-.077*	.016	-.115**	-.153**	-.096**	.070	.022	.063
14 Pretrial Release	-.297**	-.187**	.021	-.078*	-.009	.047	.045	-.008	.054	-.212**
15 Enhancement Penalty	.240**	.060	-.023	.089*	-.051	-.085*	-.019	-.003	-.008	.114**
16 Substance Abuse History	-.109**	.008	-.055	-.166**	.050	.033	-.059	-.003	-.076*	.160**

* p < .05, ** p < .01

Table 4-2. Bivariate Correlations: Federal Drug Trafficking Offenders (N = 804)

Variables	11	12	13	14	15	16
1 Length of Incarceration	.098**	.431**	-.013	-.297**	.240**	-.109**
2 Gender	.216**	.030	-.123**	-.187**	.060	.008
3 Age	.018	.158**	-.077*	.021	-.023	-.055
4 Race/Ethnicity	-.053	-.021	.016	-.078*	.089*	-.166**
5 Marital Status	.008	.055	-.115**	-.009	-.051	.050
6 Education	-.087*	.004	-.153**	.047	-.085*	.033
7 Employment	-.002	.045	-.096**	.045	-.019	-.059
8 Parental Status	.038	-.132**	.070	-.008	-.003	-.003
9 Family Arrangements	-.038	.012	.022	.054	-.008	-.076*
10 Number of Prior Arrests	.568**	-.107**	.063	-.212**	.114**	.160**
11 Previous Incarceration		-.077**	.111**	-.193**	.118**	.148**
12 Mode of Conviction	-.077*		-.047	-.044	.090*	-.185**
13 Attorney Type	.111**	-.047		-.071*	.038	.104**
14 Pretrial Release	-.193**	-.044	-.071*		-.147**	-.021
15 Enhancement Penalty	.118**	.090*	.038	-.147**		-.044
16 Substance Abuse History	.148**	-.185**	.104**	-.021	-.044	

* $p < .05$, ** $p < .01$

Table 4-3. OLS Regression of Sentence Length on Gender, Race/Ethnicity, and Family Arrangements

Variables	Model 1		Model 2	
	B	S.E.	B	S.E.
Offender's Gender (Male = 1)	16.40***	5.14	17.70***	5.82
Offender's Race/Ethnicity				
Black	19.46***	5.08	16.82***	5.27
Hispanic	-9.56	6.87	-11.28	6.94
Offender's Age	4.13***	1.22	3.71**	1.24
Offender's Age ²	-.04**	.02	-.04**	.02
Offender's Education	-10.98*	5.07	-10.93*	5.09
Offender's Employment	2.83	4.49	2.73	4.52
Substance Abuse History (yes = 1)	-3.93	4.65	-3.99	4.66
Number of Prior Arrests	-.66	2.00	-.68	2.01
Previous Incarceration (yes = 1)	5.10	5.15	4.78	5.15
Mode of Conviction (trial = 1)	57.49***	4.89	58.41***	4.92
Attorney Type (assigned = 1)	-3.55	4.45	-4.34	4.47
Pretrial Release (yes = 1)	-30.58***	4.28	-31.42***	4.30
Enhancement Penalty (yes = 1)	20.47***	4.19	20.58***	4.21
<u>Family Arrangements</u>				
Childless living with family	-	-	-6.05	9.65
Parent living alone or with non-family only	-	-	4.36	7.67
Parent living with family	-	-	3.62	9.05
Parent living with minor child only or with minor child and non-family only	-	-	14.32	7.85
Parent living with minor child and family	-	-	6.41	7.18
Constant	-2.42	25.20	2.86	25.86
N		755		760
R ²		.352		.357

* p < .05, ** p < .01, *** p < .001

Table 4-3a. OLS Regression of Sentence Length on Race/Ethnicity and Family Arrangements Partitioned by Gender

Variables	Males				Females			
	Model 1		Model 2		Model 1		Model 2	
	B	S.E.	B	S.E.	B	S.E.	B	S.E.
Black	18.97**	6.05	15.31*	6.40	17.75	9.74	16.21	9.99
Hispanic	-10.01	8.80	-12.13	8.93	-4.63	11.39	-6.15	11.56
Age	4.74***	1.46	4.30**	1.49	1.98	2.31	1.46	2.39
Age ²	-.05**	.02	-.04**	.02	-.02	.03	-.09	.03
Education	-10.52	5.95	-10.72	5.98	-9.98	10.07	-10.28	10.29
Employment	3.51	5.41	3.71	5.46	2.19	8.25	1.21	8.44
Substance Abuse	-3.91	5.47	-4.78	5.50	-3.26	8.99	-1.71	9.16
Number of Prior Arrests	-1.14	2.27	-1.27	2.30	1.35	4.31	1.04	4.41
Previous Incarceration	6.52	5.85	5.74	5.88	-2.95	11.15	-1.10	11.49
Trial	54.89***	4.87	56.12***	5.73	65.54***	9.88	65.76***	9.98
Assigned Counsel	-3.31	5.16	-4.15	5.19	-5.68	9.21	-5.98	9.36
Pretrial Release	-34.51***	5.11	-34.78***	5.14	-21.02**	8.22	-20.88*	8.60
Enhancement	25.49***	4.87	25.81***	4.90	5.50	8.57	5.30	8.67
<u>Family Arrangements</u>								
Childless living with family			-4.25	11.22			-6.41	19.51
Parent living alone or with non-family only			5.42	8.97			-2.15	16.02
Parent living with family			4.16	10.13			-7.63	24.11
Parent living with minor child only or with minor child and family			17.49	9.56			6.31	14.97
Parent living with minor child and family			4.26	8.42			10.16	14.44
Constant	3.52	30.30	11.45	31.15	36.32	45.82	42.29	48.17
R ²	.347		.354		.299		.307	
N	552		557		215		220	

* p < .05, ** p < .01, *** p < .001

Table 4-3b. OLS Regression of Sentence Length on Gender and Family Arrangements Partitioned by Race/Ethnicity

Variables	Nonwhites				Whites			
	Model 1		Model 2		Model 1		Model 2	
	B	S.E.	B	S.E.	B	S.E.	B	S.E.
Male	22.98***	6.64	24.05***	6.74	13.74	8.47	15.58	8.60
Age	5.12***	1.46	4.69**	1.50	3.32	2.48	2.81	2.53
Age ²	-.05**	.02	-.05**	.02	-.03	.03	-.03	.03
Education	-10.67	6.99	-10.49	6.99	-10.43	7.68	-10.73	7.78
Employment	.97	1.38	1.38	5.80	4.45	7.57	3.92	7.71
Substance Abuse	-4.10	5.64	-4.09	5.65	-4.31	8.87	-4.52	8.96
Number of Prior Arrests	.67	2.48	.62	2.50	-.79	3.70	-.90	3.73
Previous Incarceration	4.84	6.41	4.04	6.42	4.72	9.38	3.93	9.47
Trial	61.06***	6.21	61.90***	6.23	56.43***	8.35	58.08***	8.56
Assigned Counsel	4.51	5.73	4.10	5.75	-10.56	7.36	-12.62	7.63
Pretrial Release	-24.46***	5.46	-25.70***	5.49	-39.57***	7.26	-39.99***	7.38
Enhancement	22.43***	5.05	22.48***	5.07	18.39*	8.11	18.38*	8.24
<u>Family Arrangements</u>								
Childless living with family			-4.63	13.11			-.91	15.86
Parent living alone or with non-family only			2.32	11.12			13.44	11.53
Parent living with family			8.96	12.40			.51	15.01
Parent living with minor child only or with minor child and family			18.31	10.68			15.52	14.01
Parent living with minor child and family			7.02	10.57			7.37	10.34
Constant	-21.08	28.86	-19.66	30.21	25.48	50.90	31.48	51.80
R ²	.329		.339		.339		.346	
N	495		500		270		275	

* p < .05, ** p < .01, *** p < .001

Table 4-4. OLS Regression of Sentence Length on Marital Status and the Presence of Minor Children

Variables	B	S.E.
Male	15.92**	5.18
Black	17.31***	5.35
Hispanic	-10.50	6.94
Age	4.15***	1.27
Age ²	-.04**	.02
Education	-10.93*	5.07
Employment	3.26	4.50
Substance Abuse	-3.74	4.66
Single	8.40	5.91
Divorced/Separated/Widowed	5.26	5.82
Minor Children	6.64	4.93
Number of Prior Arrests	-.93	2.01
Previous Incarceration	5.20	5.15
Trial	57.73***	4.93
Assigned Counsel	-4.36	4.48
Pretrial Release	-30.33***	4.32
Enhancement	20.61***	4.19
Constant	-13.77	26.99
R ²	.355	
N	758	

* p < .05, ** p < .01, *** p < .001

Table 4-4a. OLS Regression of Sentence Length on Marital Status and the Presence of Minor Children Partitioned by Gender

Variables	Males		Females	
	B	S.E.	B	S.E.
Black	17.04**	6.44	15.86	10.32
Hispanic	-10.27	8.96	-5.25	11.61
Age	4.59**	1.53	2.25	2.48
Age ²	-.05**	.02	-.02	.03
Education	-10.42	5.95	-8.65	10.32
Employment	4.31	5.44	2.57	8.36
Substance Abuse	-3.97	5.49	-3.03	9.11
Single	10.30	7.00	1.67	11.72
Divorced/Separated/Widowed	9.85	7.05	-7.74	11.22
Minor Children	6.64	5.93	2.67	9.52
Number of Prior Arrests	-1.48	2.28	1.19	4.37
Previous Incarceration	6.68	5.86	-2.40	11.26
Trial	54.66***	5.74	65.16***	9.97
Assigned Counsel	-3.86	5.17	-6.66	9.50
Pretrial Release	-33.24***	5.20	-20.86**	8.33
Enhancement Penalty	25.73***	4.87	6.57	8.72
Constant	-7.46	32.59	27.98	50.48
R ²	.352		.302	
N	555		218	

* p < .05, ** p < .01, *** p < .001

Table 4-4b. OLS Regression of Sentence Length on Marital Status and the Presence of Minor Children Partitioned by Race/Ethnicity

Variables	Whites		Blacks		Hispanic	
	B	S.E.	B	S.E.	B	S.E.
Male	13.83	8.63	16.33*	8.30	8.71	10.96
Age	3.63	2.62	5.98**	2.21	4.48	2.16
Age ²	-.04	.03	-.06*	.03	-.04	.02
Education	-11.18	7.74	-13.30	8.17	-8.56	12.43
Employment	5.76	7.66	1.75	6.71	2.44	10.51
Substance Abuse	-4.51	8.97	-4.62	6.50	1.05	11.00
Single	9.14	11.46	4.21	8.38	11.24	14.89
Divorced/Separated/Widowed	10.93	8.27	-2.51	10.92	4.76	13.02
Minor Children	-1.85	8.23	15.57*	7.71	-2.78	12.29
Number of Prior Arrests	-1.02	3.72	-1.31	2.87	-1.40	5.09
Previous Incarceration	4.53	9.44	4.19	7.39	13.10	12.46
Trial	55.84***	8.48	55.10***	7.14	74.35***	12.50
Assigned Counsel	-10.03	7.44	3.71	6.86	-20.19*	10.18
Pretrial Release	-38.50***	7.33	-33.11***	6.64	-7.12	9.06
Enhancement Penalty	17.47*	8.19	23.50***	5.83	15.44	10.13
Constant	12.50	55.47	-34.57	41.79	-35.71	51.59
R ²	.345		.328		.406	
N	273		391		121	

Chapter 5

Fraud

Descriptive Statistics

Table 5-1 displays the percentages and sample sizes of the outcome and explanatory variables for the sample of fraud offenders. In contrast to the sample of drug offenders, whites comprise the majority of offenders in this sample at 68.8%. This pattern is consistent with 1997 federal sentencing statistics in which whites made up the bulk of fraud offenders at 55% (USSC 1997). As in my sample, nonwhites (i.e. blacks and Hispanics) comprised 39% of the fraud offenders. My marital status variables indicated that contrary to the drug trafficking offenders, the majority of my sample is married (45%). Divorced, separated, or widowed offenders (i.e. those included in the other marital status category) make up the second largest group at 34.9%. Single offenders comprise less than half the percentage found among drug trafficking offenders in that 19.9% of the fraud sample stated they were married compared to 46% in the drug trafficking sample.

With regard to age, the fraud offenders show that the majority of offenders are between 30-49 years of age. Specifically, 32.6% of offenders report being between 30-39 years of age and 34.4% report being between 40-49 years of age. This is in marked contrast to drug trafficking offenders in which the majority of offenders are between the ages of 18-39 years. Of this group, 32.6% report being between the ages of 18-29 years

of age and 35% reported being between the ages of 30-39 years. With regard to the family arrangements variables, the majority of offenders are parents living with their minor child and family members (34.7%). Very few offenders are childless, with only 22.5% of offenders belonging in either of the two childless categories (i.e. childless living alone or with non-family only (16.5%) or childless living with family (6%).

Bivariate Correlations

In Table 5-2, I depict bivariate correlations in order to test the influence of the independent variables on the dependent variables prior to the inclusion of controls. Only sex and age exert any significant influences' on offenders' sentence length. Consistent with prior research on gender differences in sentencing (Steffensmeier et al. 1993), males receive longer sentences than females and older offenders receive longer sentences than younger offenders do. However, since many studies find a curvilinear age effect, I include a quadratic term in the multivariate analyses. Given the focus on the influence of family arrangements on sentencing outcomes, I examined the bivariate correlations between the family arrangements variables and the dependent variable and also found no significant relationships.

With regard to the legal variables, only mode of conviction and pretrial release make a difference. Going to trial increases the length of an offender's sentence compared to when an offender enters a guilty plea. However, release prior to trial decreases an offender's sentence compared to pretrial detention. These findings are consistent with prior research on the presence of a trial penalty and the impact of pretrial detention at the sentencing stage (Crew 1991; Maxwell and Davis 1999).

In the next section, I discuss the multivariate models used to test the 5 hypotheses of the current study. The division of this chapter is identical to that found in chapter 4. First, I discuss the models 1 and 2 of Table 5-3. Model 1 focuses on determining whether any race/ethnic and gender differences exist in sentence length. Model 2 includes the family arrangements variables in order to determine whether any gender or race/ethnic disparities are mediated by these factors.³⁸ Second, I discuss models that test Daly's traditional notion of being "familied" by incorporating indicators of marital status and whether an offender has minor children into model 1 of Table 5-3 (see Table 5-4). Third, I conduct gender and race/ethnic partitioned analysis of the model in Table 5-4 to determine any gender and race/ethnic differences in the influence of these variables. Due to my partitioning the models in this manner, I conducted an analysis of differences in the regression coefficients using the test advocated by Paternoster et al. (1998).

Part 1: Influence of Gender, Race/Ethnicity, and Family Arrangements on Sentencing

Model 1 of Table 5-3 test hypotheses 1 and 2³⁹ by focusing on the direct effects of gender and race/ethnicity on sentence length, net of the other extralegal and legal factors included in the model. The findings indicate the presence of gender, but not race/ethnic disparity such that males receive significantly longer sentences than females ($b = 16.86, p = .000$). In terms of other offender characteristics, a marginal age effect is present

¹ I also conducted gender and race/ethnic partitioned models. However, given the small number of cases in each of the family arrangements categories associated with model 2 of Table 5-3, I do not include the results of these models in this study.

³⁹ Hypothesis 1: Males will receive longer sentences than females. Hypothesis 2: Whites will receive the shortest sentences and Hispanics the longest, while blacks will receive sentences somewhere in between these two groups.

showing an inverted-U shaped curvilinear relationship with sentence length such that younger offenders receive significant longer sentences while older offenders receive significantly shorter sentences. In addition, employment status shows a marginal negative effect on sentence length such that those employed prior to their arrest receive significantly shorter sentences than those unemployed during this period.

Of the legal characteristics, pretrial release and mode of conviction serve as the sole significant predictors of sentence length. Specifically, offenders released prior to trial receive shorter sentences than those detained during this period. In addition, offenders who opt to go to trial receive significantly longer sentences than those who enter a guilty plea.

Model 2 of Table 5-3 tests hypothesis 5⁴⁰ because it seeks to ascertain whether the inclusion of the family arrangements variables mediates the effects of gender on sentence length. The results indicate that they do not as males continue to receive significantly longer sentences than females ($b = 18.14, p = .000$). However, the family arrangement variables are interesting because parents living with their minor child or with their minor child and non-family only receive marginally longer sentences than the reference group (childless living alone or with non-family) at the $p < .10$ level of significance. In addition, offenders in this category experience the most severe enhancement of their sentence length. The other offender and the legal characteristics mentioned in model 1 remain robust in their effects. In the next section, I discuss the influence of “familied” status on sentence length.

⁴⁰ Hypothesis 5: Offenders’ family arrangements will mediate the effects of gender and race/ethnicity on sentence length.

Part 2: Influence of “Familiated” Status on Sentence Length

In this set of analyses, I test hypotheses 3 and 4⁴¹ to examine whether marital status and having a minor child influences sentence length similar to measures used by Daly (1989) in her work on the influence of being “familiated.”⁴² The results indicate that marital status and having minor children exerts no significant influence on sentence length for offenders. However, compared to the reference group (married offenders), single offenders and those who are divorced, separated, or widowed receive shorter sentences. In addition, those with minor children receive longer sentences, although the increase is only 1.32 months, and as previously stated these variables are not significantly related to sentence length.

In terms of the other offender variables in the model, only sex is significant such that males receive significantly longer sentences than females ($b = 16.82, p = .000$). Of the legal variables, all are in the expected direction, but only pretrial release and mode of conviction show any significant relationship with sentence length.

Part 2a: Gender Differences in the Influence of Familiated Status on Sentencing

In this section, I examine gender-partitioned models of the influence of “familiated” status on sentence length (see Table 5-4a). The results indicate that offender characteristics matter solely for males. Specifically, males receive a marginal decrease in sentence length for being employed in the month prior to their arrest compared to males

⁴¹ Hypothesis 3: Familiated offenders will receive shorter sentences than non-familiated offenders. Hypothesis 4: Familiated women will receive shorter sentences than familiated males. Although, I did not create a hypothesis regarding race/ethnicity, I sought to ascertain whether any differences arise that could aid in guiding future research, as well as theoretical or policy implications.

⁴² See discussion of “familiated” status in chapter 3 explaining the data and methods of the study.

unemployed during this period. The legal variables, however, show that both sexes experience significant or marginal effects due to being released prior to trial and their mode of conviction. For those released prior to trial, their sentences are shorter than those detained during this period. In addition, those who choose to have a trial receive longer sentences than those who enter guilty pleas. In part 2b, I discuss the results of the “familied” variables for Table 5-4 partitioned by race/ethnicity.

Part 2b: Race/Ethnic Differences in the Influence of Familied Status on
Sentencing

My analysis of the marital status variables exhibits no significant results for either race/ethnic group. However, the variable indicating whether an offender has minor children shows significant positive effects for nonwhites ($b = 12.42$, $p = .044$) such that those with minor children receive longer sentences than those with no children or whose children are adults. In addition, this variable provides interesting results because whites experience a 1.77-month decrease if they have minor children compared to the other category, although the difference is not statistically significant. With regard to the other offender characteristics, both race/ethnic groups exhibit significant gender effects “favoring” women (nonwhites: $b = 14.14$, $p = .019$; whites: $b = 15.96$, $p = .000$). However, only nonwhites experience any significant effect on sentence length due to other offender characteristics such as employment status. Specifically, those employed during the month prior to their arrest receive significantly shorter sentences than those unemployed during this period.

With regard to the legal variables, both groups experience significant effects on sentence length although they differ in which variables significantly or marginally

influence their sentence length. For instance, pretrial release leads to a significant reduction in sentence compared to pretrial detention for whites, but not nonwhites. In addition, going to trial produces a significant increase in sentence solely for whites ($b = 20.74$, $p = .000$) although nonwhites also experience an increase. Finally, attorney type proves relevant for nonwhites because it results in a marginal reduction in sentence length ($b = -9.63$, $p = .094$) at the $p < .10$ level of significance.

Summary of Findings

Consistent with my analysis of sentencing patterns with drug traffickers, I relied on my analyses to test 5 hypotheses. I tested the first two hypotheses using model 1 of Table 5-3. Hypothesis 1 argued that males would receive longer sentences than females. Hypothesis 2 claimed that race and ethnicity would work to the benefit of white offenders and to the detriment of minority offenders. The results provide support for hypothesis 1, but not for hypothesis 2. I relied on model 2 of Table 5-3 to test hypothesis 5, which stated that an offender's type of family arrangements will mediate gender and race ethnic effects on sentence length. The results provide no support for this hypothesis, although one category of family arrangements marginally increases sentence length for offenders at the $p < .10$ level of significance. This category consists of parents living with their minor children or with their minor child and non-family only compared to the reference group (childless living alone or with non-family only). I mention hypothesis 5 before discussing hypotheses 3 and 4 because it refers to model 2 of Table 5-3 which sought to

examine the possibility of mediation effects on sentence length due to one's family arrangements.⁴³

In the second group of analyses, however, I conducted an analysis of the full fraud sample adding marital status and child variables to test Daly's notion of being "familied" as it impacts sentence length. I then conducted gender and race/ethnic partitioned analyses to test hypotheses 3 and 4. Hypothesis 3 states that familied offenders will receive shorter sentences than non-familied offenders, while hypothesis 4 states that familied females will receive shorter sentences than familied males. The results of the main familied model (see Table 5-4) indicate no support for Hypothesis 3. With regard to hypothesis 4, the results of the gender-partitioned models fail to support this hypothesis.

Although, no hypotheses were created regarding possible differences between the various race/ethnic groups with regard to the effects of marital status and whether having minor children influenced sentence length, I conducted race/ethnic-partitioned analyses in order to determine their possible effects. My examination of these models shows that marital status does not matter for either nonwhites or whites. However, having children is a significant predictor of sentence length for nonwhites, but not whites. Specifically, having a minor child as opposed to having no children or having adult children leads to an increase in sentence length. To further test whether any significant differences exist between males and females and nonwhites and whites, I conducted an examination using

⁴³ Given the small sample sizes in my respective family arrangements categories when I partitioned model 2 of Table 5-3 by gender and race/ethnicity, I do not include a discussion of the partitioned models. However, I believe this is important to ascertain in future research with a larger sample size in order to determine whether the influence of family arrangements operates in a similar fashion for different groups.

the test suggested by Paternoster et al. (1998) that focuses on determining whether any differences exist between the regression coefficients between 2 groups.⁴⁴ With regard to the models partitioned by race/ethnicity, the tests indicate that a marginal race/ethnic difference exists for whites and nonwhites in terms of the effect of education on sentence length at the $p < .10$ level ($Z = 1.64$, $p = .101$). In addition, having minor children is marginally influenced by an offender's race/ethnicity ($Z = 1.89$, $p = .059$).

⁴⁴ $Z = (b_1 - b_2) / \sqrt{\sigma^2 b_1^2 + \sigma^2 b_2^2}$

Table 5-1. Descriptive Statistics: Fraud Offenders^a

Variable	N	%
<i>Dependent Variable</i>		
Sentence Length (capped at 120 months)		
<i>Independent Variables</i>		
Offender's Gender		
1 = male	208	59.1
0 = female	144	40.9
Offender's Age ^b		
21-29	32	9.1
30-39	114	32.6
40-49	120	34.4
50 and older	84	23.9
Offender's Race/Ethnicity		
1 = nonwhite	110	31.3
0 = [white]	242	68.8
Offender's Marital Status		
Single	70	19.9
[Married]	159	45.2
Divorced/Separated/Widowed	123	34.9
Offender's Education		
1 = College or higher	211	59.9
0 = High School or less	138	39.2
Offender's Employment		
1 = Employed	271	77.0
0 = Unemployed	73	20.7
Offender's Parental Status		
1 = Has children under 18 yrs	171	48.6
0 = No children or adult children only	177	50.3
Offender's Family Arrangements		
[Childless living alone or with non-family only]	58	16.5
Childless living with family	21	6.0
Parent living alone or with non-family only	57	16.2
Parent living with family	54	15.3
Parent living with minor child or with minor child and non-family only	31	8.8
Parent living with minor child and family	122	34.7

Table 5-1. Descriptive Statistics: Fraud Offenders

Variable	N	%
Number of Prior Arrests		
0 = none	182	51.7
1 = one	44	12.5
2 = two to three	64	18.2
3 = four or more	57	16.2
Previous Incarceration		
1 = yes	101	28.7
0 = no	249	70.7
Mode of Conviction		
1 = trial	80	22.7
0 = guilty plea	262	74.4
Attorney Type		
1 = Assigned Counsel	164	46.6
0 = Hired own counsel	182	51.7
Pretrial Release		
1 = yes	251	71.3
0 = no	99	28.1

^a Those variables in which percentages do not total 100% reflect missing cases. In addition, those variables in brackets represent reference categories.

^b Age is a continuous variable, but I displayed it by categories for ease of presentation.

Table 5-2. Bivariate Correlations: Fraud Offenders (N = 804)

Variables	1	2	3	4	5	6	7	8	9	10
1 Length of Incarceration		.359**	.216**	-.081	.054	.060	-.075	-.043	-.024	.091
2 Gender	.359**		.194**	-.062	-.026	.017	.168**	-.049	-.087	.178**
3 Age	.216**	.194**		-.241**	.232**	.135*	-.066	-.373**	.044	-.310**
4 Race/Ethnicity	-.081	-.062	-.241**		-.140**	-.105*	-.039	.204**	.072	.125*
5 Marital Status	.054	-.026	.232**	-.140**		.040	-.029	.051	.201**	.033
6 Education	.060	.017	.135*	-.105*	.040		.062	-.065	.032	-.218**
7 Employment	-.075	.168**	-.066	-.039	-.029	.062		-.038	-.039	-.116*
8 Parental Status	-.043	-.049	-.373**	.204**	.051	-.065	-.038		.567**	.139**
9 Family Arrangements	-.024	-.087	.044	.072	.201**	.032	-.039	.567**		-.073
10 Number of Prior Arrests	.091	.178**	-.310**	.125*	.033	-.218**	-.116*	.139**	-.073	
11 Previous Incarceration	.101	.170**	-.263**	.116*	-.037	-.239**	-.073	.036	-.155**	.710**
12 Mode of Conviction	.310**	.201**	.293**	-.156**	.029	.124*	.009	-.121*	.003	-.200**
13 Attorney Type	-.083	-.026	-.290**	.247**	-.025	-.155**	.013	.084	-.110*	.281**
14 Pretrial Release	-.183**	-.115*	.098	-.108*	.022	.126*	.174**	.040	.096	-.337**

* p < .05, ** p < .01

Table 5-2. Bivariate Correlations: Fraud Offenders (N = 804)

Variables	11	12	13	14
1 Length of Incarceration	.101	.310**	-.083	-.183**
2 Gender	.170**	.201**	-.026	-.115*
3 Age	-.263**	.293**	-.290**	.098
4 Race/Ethnicity	.116*	-.156**	.247**	-.108*
5 Marital Status	-.037	.029	-.025	.022
6 Education	-.239**	.124*	-.155**	.126*
7 Employment	-.073	.009	.013	.174**
8 Parental Status	.036	-.121*	.084	.040
9 Family Arrangements	-.155**	.003	-.110*	.096
10 Number of Prior Arrests	.710**	-.200**	.281**	-.337**
11 Previous Incarceration		-.113*	.285**	-.387**
12 Mode of Conviction	-.113*		-.128*	.111*
13 Attorney Type	.285**	-.128*		-.228**
14 Pretrial Release	-.387**	.111*	-.228**	

* $p < .05$, ** $p < .01$

Table 5-3. OLS Regression of Sentence Length on Gender, Race/Ethnicity, and Family Arrangements

Variables	Model 1		Model 2	
	B	S.E.	B	S.E.
Offender's Gender (Male = 1)	16.86***	3.37	18.14***	3.47
Offender's Race/Ethnicity (Nonwhite = 1)	-.33	3.40	-.89	3.46
Offender's Age	2.01	.92	2.29*	.94
Offender's Age ²	-.02	.02	-.02*	.01
Offender's Education	2.43	3.18	2.81	3.19
Offender's Employment	-6.85	3.89	-7.25	3.92
Number of Prior Arrests	1.84	1.91	1.59	1.93
Previous Incarceration (yes = 1)	2.16	4.89	2.32	4.93
Mode of Conviction (trial = 1)	18.27***	3.81	18.12***	3.82
Attorney Type (assigned = 1)	-4.44	3.30	-4.57	3.32
Pretrial Release (yes = 1)	-10.48**	4.28	-10.50**	3.50
<u>Family Arrangements</u>				
Childless living with family	-	-	7.04	7.08
Parent living alone or with non-family only	-	-	4.30	5.23
Parent living with family	-	-	-2.07	5.41
Parent living with minor child only or with minor child and non-family only	-	-	11.89	6.36
Parent living with minor child and family	-	-	.46	4.43
Constant	-14.30	21.02	-23.83	21.61
N	346		351	
R ²	.256		.270	

* p < .05, ** p < .01, *** p < .001

Table 5-4. OLS Regression of Sentence Length on Marital Status and the Presence of Minor Children

Variables	B	S.E.
Male	16.82***	3.40
Nonwhite	-.19	3.48
Age	1.77	.95
Age ²	-.02	.01
Education	2.65	3.19
Employment	-6.44	3.91
Single	-5.75	4.58
Divorced/Separated/Widowed	-3.19	3.45
Minor Children	1.32	3.46
Number of Prior Arrests	1.81	1.94
Previous Incarceration	2.92	4.92
Trial	18.57***	3.82
Assigned Counsel	-4.10	3.31
Pretrial Release	-10.72**	3.49
Constant	-7.84	22.29
R ²	.261	
N	349	

* p < .05, ** p < .01, *** p < .001

Table 5-4a. OLS Regression of Sentence Length on Marital Status and the Presence of Minor Children Partitioned by Gender

Variables	Males		Females	
	B	S.E.	B	S.E.
Nonwhite	-.88	5.30	.48	4.35
Age	2.64	1.42	1.53	1.34
Age ²	-.02	.02	-.02	.02
Education	4.27	4.96	.17	3.78
Employment	-12.80*	6.62	-2.67	4.23
Single	-3.97	-3.97	-5.31	5.34
Divorced/Separated/Widowed	-1.56	-1.56	-4.22	4.20
Minor Children	-.12	-.12	.73	4.24
Number of Prior Arrests	3.36	3.36	.52	2.47
Previous Incarceration	-1.32	7.28	7.35	6.38
Trial	18.49***	5.25	19.53***	5.78
Assigned Counsel	-3.10	4.93	-5.59	4.29
Pretrial Release	-11.75*	4.81	-8.84	5.18
Constant	-8.73	34.74	1.71	28.77
R ²	.172		.159	
N	211		148	

* p < .05, ** p < .01, *** p < .001

Table 5-4b. OLS Regression of Sentence Length on Marital Status and the Presence of Minor Children Partitioned by Race/Ethnicity

Variables	Nonwhites		Whites	
	B	S.E.	B	S.E.
Male	14.14*	5.90	15.96***	4.25
Age	.04	1.90	1.69	1.21
Age ²	.01	.02	-.02	.01
Education	-4.83	5.24	6.12	4.06
Employment	-15.81*	6.40	-.81	4.99
Single	-5.70	6.85	-8.06	6.17
Divorced/Separated/Widowed	-7.62	6.19	-4.10	4.25
Minor Children	12.42*	6.08	-1.77	4.31
Number of Prior Arrests	-.90	3.03	2.89	2.53
Previous Incarceration	6.09	7.74	1.75	6.44
Trial	12.79	7.90	20.74***	4.42
Assigned Counsel	-9.63	5.68	-1.14	4.18
Pretrial Release	-4.25	5.97	-12.13**	4.32
Constant	24.56	39.40	-9.71	29.10
R ²	.385		.257	
N	116		243	

* $p < .05$, ** $p < .01$, *** $p < .001$

Chapter 6

Discussion and Conclusions

The impetus for this study arose out of an interest in examining how American gender roles shape the way that men and women are treated by the criminal justice system. Traditional formulations of masculinity and femininity maintain that women serve as the nurturers and caretakers of the home and family in order to ensure the psychological well being of children and other family members for whom they shoulder responsibilities. Constructions of masculinity maintain that men represent the breadwinners or economic providers of the family. The roles preclude the notion that men and women can exist without the support of the other, although societal reactions tend to be harsher towards women as compared to men who fail to adhere to their designated roles (Grana 2002). The criminal justice system, and sentencing in particular provided a crucial means of assessing the influence of gender roles, especially as they pertained to family responsibilities because judges' decisions are constrained by legislation, or in the case of this project, sentencing guidelines that limit the amount of discretion enjoyed by judges.

Considering the limits on judicial discretion and notions of appropriate gender roles for males and females, the goal of this project was to examine whether the nature of offenders' family circumstances accounted for some of the gender and race/ethnic disparity present at the sentencing stage. More specifically, the intent of this project was to examine whether offenders' family circumstances influenced gender and race/ethnic

disparities within the federal system in spite of sentencing guidelines that expressly state that family circumstances are “not ordinarily relevant” to sentencing decisions.⁴⁵ As part of this inquiry, I also sought to examine whether family circumstances influenced sentencing outcomes differently depending on the type of offense committed.

Previous research by Daly (1987a; 1987b; 1989; 1994) and others (Bickle and Peterson 1991; Flavin 2001) has sought to address this issue, but failed to consider several issues. Some studies focus on minor offenses (Bickle and Peterson) or on cases adjudicated in municipal courts (Daly 1989; 1994; Flavin 2001) limiting generalizability due to differences in sentencing policies across jurisdictions. In addition, the only study to date that has examined the influence of family circumstances on gender and race/ethnic disparities within the federal system focused solely on cases during the preguidelines era, specifically, the late 1970s (see Bickle and Peterson 1991). As part of my attempt to rectify these limitations, I selected a survey of federal offenders, choosing only those offenders sentenced since the implementation of the federal sentencing guidelines. I also selected two offenses that account for the two most frequent types of offenders convicted in the federal courts (i.e. drug trafficking and fraud).

My findings contribute to the study of sentencing and criminology in several ways. First, I apply a theory typically ignored by much of the research on gender disparity in sentencing. Second, my use of familial paternalism provides greater understanding into the influences that aid in the persistence of gender and race/ethnic disparity in sentencing, particularly as they occur within the context of the federal

⁴⁵ § 5H1.6

sentencing guidelines that were developed as a means of combating unwarranted disparity based on offender characteristics (e.g. race/ethnicity, age, gender, family responsibilities).⁴⁶ Third, the findings provide important implications for future research, for theory, and for policy with regard to furthering the goal of the federal sentencing guidelines in reducing unwarranted disparity. In addition, the findings contribute to the debate initiated by many feminist criminologists and feminist legal theorists regarding the use of family circumstances as a legitimate mitigating factor that although being overly advantageous to women maintains the gender-neutral goals of the federal sentencing guidelines.

The applicability of familial paternalism to sentencing

In applying Daly's (1987a; 1987b; 1989; 1994) theory of familial paternalism, I tested 5 hypotheses. Hypothesis 1 asserted that women would receive shorter sentences than men. Hypothesis 2 asserted that white offenders would receive the shortest sentences, Hispanics the longest sentences, and blacks somewhere in between. Hypothesis 3 argued that familial offenders would receive shorter sentences than non-familial offenders. Hypothesis 4 argued that familial females would receive shorter sentences than familial male offenders. Hypothesis 5 claimed that living situations/family arrangements would mediate any gender and race/ethnic effects on

⁴⁶ The federal sentencing guidelines explicitly state that age, mental and emotional conditions, physical conditions (including drug/alcohol dependence or abuse), employment record, family ties and responsibilities, community ties and military, civic, charitable, or public service, employment related contributions, and record of prior good work are "not ordinarily relevant" in determining an offender's sentence (see § 5H1.1-§ 5H1.6; -§ 5H1.11). The guidelines also state that race/ethnicity, sex, national origin, creed, religion, lack of guidance as a youth or similar circumstances, and socioeconomic status are "not relevant" in determining a sentence (see -§ 5H1.10; -§ 5H1.12). However, an offender's role in the offense, their criminal history, and their dependence upon criminal activity for a livelihood are "relevant" in determining an offender's sentence (see -§ 5H1.7-§ 5H1.9).

offenders' sentencing outcomes. Of these hypotheses, only hypotheses 1 and 5 were supported by my research.

My findings indicate that knowledge of the influence of gender roles, particularly those related to family responsibilities can add to our understanding of gender and race/ethnic disparities in sentencing. The bulk of research on gender and sentencing does not examine family responsibilities. Because the federal sentencing guidelines were not introduced until 1987, earlier studies considered family responsibilities as one among many mitigating factors. Since the implementation of the guidelines, research includes issues of family responsibilities merely as controls rather than examining the influence they have on sentencing. However, these studies rely on the use of the number of dependents an offender has without any information regarding the living situation or family arrangements the offender had prior to their sentence. Only Flavin (2001) attempts to address this issue, but falls short because of her sole focus on black offenders and her usage of a municipal court system, rather than taking advantage of the uniformity provided by the federal system.

The results also indicate that offenders' living situations/family arrangements exert significant influences on their outcomes depending on their gender and race/ethnicity, especially in light of their conviction offenses. Therefore, evidence exists that familial paternalism provides useful insight into the mechanisms through which gender and race/ethnicity operate in sentencing generally, and how they perpetuate continual circumvention of the federal sentencing guidelines specifically.

The use of familial paternalism in sentencing research underscores how the effects of offenders' family responsibilities and associated gender roles shape the effects

of gender and race/ethnicity on sentencing outcomes. Specifically, an offender's family arrangements fail to mediate gender differences in sentence length for drug traffickers and fraud offenders. Given that an offender's type of family arrangements produces a marginal increase in sentence length for drug traffickers and fraud offenders when the offender is a parent living solely with their minor child or with their minor child and non-family only (see Table 4-3 and Table 5-3), the lack of mediation may reflect my inability to examine the in/out or departure decisions, which I aim to do in future research.

Second, it may be a reflection of my inability to control for actual offense gravity and prior record scores as used by the federal sentencing guidelines instead of relying on traditional measures (e.g. number of prior arrests, previous incarceration). Third, it may also be possible that the effects of family arrangements would not only become significant, but also mediate the effects of gender given that judges continue to cite an offender's family circumstances as one of their considerations in sentencing (). Fourth, the lack of mediation may reflect my inability to control for departures such as substantial assistance, the type and amount of drugs involved in a drug trafficking case, or the possibility that an offender's employment facilitated their ability to commit fraud.

Nevertheless, the marginal effects of family arrangements on sentence length, specifically, that for parents living solely with their minor child or with their minor child and non-family only compared to the reference group, as well as the influence of having a minor child as measured in the "familied models" highlights the need for future research.

Implications for Future Research

Future research using familial paternalism should adhere to the lessons learned in this project, with primary focus on measuring theoretical constructs. The findings

highlight the need to use measures directly relevant to family responsibilities when examining sentence disparities based on gender and race/ethnicity. First, I advocate continued usage of living situation/family arrangements as measures of familial responsibility. However, I also advocate the inclusion of measures that estimate dependency, especially economic dependency because of Daly's (1987) findings that judges believed that the removal of economic support can be replaced through state aid. Third, when examining family responsibilities and their effect on gender and race/ethnic disparities in sentencing, it is necessary to examine the role played by parents not living with their children or other family members. This examination should include information regarding offenders' life circumstances that may be responsible for them living apart from their children and other family members. These life circumstances include drug/alcohol use or treatment, mental illness and counseling, and physical illness or disabilities.

In addition to improving the measures relevant to familial paternalism, it is necessary to extend the analysis of the theory in several ways. First, future research must examine differences among other race/ethnic groups (e.g. Asians, Native Americans). With regard to Hispanics, research should examine whether the influence of family responsibilities on sentence outcomes differs by ethnic group, with primary focus on Mexican-Americans, Cuban-Americans, and Puerto Ricans as they represent the largest populations of Hispanics in the U.S. Research suggests that among Hispanics, Puerto Ricans often receive harsher penalties than other groups (Steffensmeier and DeMuth 2000; 2001). One supposition is that their darker complexions lead to attributions similar to those applied to black offenders (Steffensmeier and DeMuth 2000; 2001). In light of

this possibility, research should also focus on whether differences exist in treatment between those labeled as white-Hispanics and those labeled as black-Hispanics. Given my interest in studying Hispanics, I also believe it would be interesting to examine immigration violations in order to determine whether family responsibilities influence decisions to deport offenders, and if so, whether this decision is equally applied across Hispanic ethnic groups.

A second agenda must be the study of the influence of familial paternalism on a variety of sentencing decisions, particularly the in/out and departure decisions. Third, tests of the theory must be expanded to other offenses, especially violent offenses because these types of offenses could provide insight into some of the issues raised in my discussion of feminist issues regarding the use of familial paternalism in light of concerns with changing the patriarchal ideologies that perpetuate gendered notions of appropriate roles. In particular, a focus on violent offenses raises the issue of victim's influence in shaping how much weight judges attribute to offenders' responsibilities when determining appropriate sentences. For instance, as with capital cases, the race/ethnicity, gender, and age of the victim may be important factors in determining offenders' sentencing outcomes. Other factors that might affect sentencing include the relationship between the victim and the offender.

Other measures, such as indicators of whether an offender's job facilitated their criminal activity and the types of objects obtained are likely to be important factors in research on fraud and other property offenses. Furthermore, future research on drug trafficking and other drug offenses should include information on the type, amount, and purity of drugs involved, an offender's role in the drug trade, and their level of

involvement. Many of the aforementioned issues were addressed in the survey used for this project, however, many responses were left blank, precluding their use in this study.

A fourth agenda must be an analysis of contextual factors related to court communities and their impact in shaping whether judges consider family responsibilities, and if the pattern of influence is similar or different across various federal courts. For instance, conservative courts or those located in conservative communities might exhibit sentencing patterns in which family responsibilities are considered through a traditional family values orientation. In contrast, liberal courts or those located in liberal communities might be more gender neutral in their consideration of this issue.

Implications for Theory

The primary implication of this project for the future of familial paternalism is its applicability to multiple types of offenses and sentencing decisions. My findings indicate that family responsibilities exert significant effects across offense types and influences sentence length. However, my project lacks information on the influence of familial paternalism on other sentencing outcomes (e.g. in/out and departure decisions), although this limitation will be addressed in my future research. The original theory was to provide an explanation for gender disparities in sentencing and how these differences were conditioned by race/ethnicity (Daly 1987a; 1987b; 1989; 1994). Since then, familial paternalism has been applied to minor property offenses (Bickle and Peterson 1991; Kruttschnitt 1982; 1984) and drug offenses (Flavin 2001). No research has extended the theory to sentencing decisions within the context of the federal sentencing guidelines.

My findings indicate that familial paternalism can be successfully applied to sentences imposed under the federal guidelines even with the explicit provisions that family responsibilities are “not ordinarily relevant” to sentencing decisions. However, considerations of individual court communities and examining the usefulness of the theory for explaining sentencing outcomes other than length of incarceration are the key to providing greater application to familial paternalism theory to all types of sentencing decisions. Therefore, it is crucial that future examinations of familial paternalism include conceptualizations related to the context of the court communities in which sentences are adjudicated, judicial attitudes, and prosecutorial discretion.

In addition, the findings regarding the differences by type of offense stress the importance of considering the situational factors (e.g. role in the offense, presence of co-defendants) and motivations (e.g. obtain finances to support one’s children) underlying certain types of offenses. Although the original formulation of familial paternalism focused solely on offenders’ marital status and the presence of social ties or dependents, my findings and those of Flavin (2001) illustrate the need to focus on specific types of family arrangements when examining the influence of family responsibilities on sentencing decisions. Considering the strong differences in the effects of familial paternalism based on the type of offense, further study of the factors that judges use in making their decisions are necessary, which is best undertaken through the use of in-depth interviews to determine their attitudes regarding the use of family responsibilities as a mitigating factor, regardless of the provisions in the sentencing guidelines. In addition, it is necessary to determine under what conditions they perceive family

responsibilities as representing an extraordinary circumstance worthy of lenient sentences such as non-incarceration, short lengths of incarceration and downward departures.

Implications for Policy

In conducting an analysis of the influence of family responsibilities on gender and race/ethnic disparities in sentencing within the context of the federal sentencing guidelines, my rationale was to provide clearer policy recommendations than have resulted from previous research. Much of the impetus behind a familial paternalism approach is its potential to provide insight into the way that traditional notions of appropriate gender roles continue to influence sentencing decisions. In the case of the federal system, there is a set of sentencing guidelines that preclude the use of family responsibilities in sentencing decisions except under extraordinary circumstances.

Therefore, the implications for policy presented here, rather than suggesting the development of new programs, urge fine-tuning the existing guidelines to encourage the most realistic and fair means of sanctioning criminal defendants. In achieving this goal, it is paramount that we recognize the real differences that exist in overall offending patterns and criminal histories between men and women, the nature of the responsibilities they face, and whether these responsibilities should influence sentencing outcomes.

Specifically, sentencing operates as a tool to impose punishment on criminal offenders. The level of severity or leniency of sentences depends on the goals of punishment. Traditionally, four types of punishment goals influenced sentencing practices: retribution, deterrence, incapacitation, and rehabilitation. More recently, restoration has received attention as a viable goal of punishment (Braithwaite 2002).

According to Spohn (2002), these typologies fall under two classes of justifications for punishment: retributive and utilitarian.

As its name suggest, retribution fits into the first category. It advocates punishment as a response to the commission of a crime and asserts a “just-deserts” philosophy in which “the punishment should fit the crime” (). In making this assertion, retribution suggests a hierarchical structure of crimes and punishments. It also focuses on the harm caused by offenders and their level of culpability (see focal concerns perspective in Steffensmeier et al. 1998). As part of its rationale, retribution explains the need for punishment as a moral issue and an issue for the maintenance of the social contract created by members of society. It suggests punishment is a moral issue because offenders committed immoral acts. It relates to maintenance of the social contract because criminal behavior causes societal instability through a weakening of social solidarity. Punishment addresses these issues and restores societal equilibrium.

The other four categories: deterrence, incapacitation, rehabilitation and restoration reflect utilitarian justifications for punishment in which the ultimate goal is crime prevention. At the center of each of these punishment philosophies is an implication for individualized treatment. In the case of deterrence, the focus is on developing a costs-benefits structure in which the punishment outweighs the benefits of the crime. The effectiveness of this philosophy rests on the punishment being “certain, swift, and severe” (). However, deterrence is not solely focused on the offender, but on the society at large because it seeks to deter members of society generally as well as the specific offender.

In contrast, incapacitation operates from a risk perspective that focuses on assessing an offender's dangerousness to the community, particularly their odds of recidivism. Incapacitation operates in two forms: collective and selective. Collective incapacitation focuses on specific offenses such that all offenders found guilty of a particular type of crime receive the same penalties regardless of their prior criminal records and background characteristics. Selective incapacitation focuses on both the offense and the offender, which necessitates prediction of recidivism as a measure of future dangerousness. Consequently, prior record and other background characteristics become a central focus (Spohn 2002).

Rehabilitative philosophies, which served as the punitive model through the 1970s focused on reforming offenders through individualized treatment. The emphasis on treatment resulted in a "medical model" of punishment in which offenders could be cured of their criminal propensities through the diagnosis (or identification) of factors that led to their criminality in order to apply the most effective treatments.

A more recent punitive philosophy that is receiving significant attention is restoration. According to this philosophy, punishment serves as a tool of repairing harm done by offenders to victims and the community. As part of this reparation, restoration seeks to facilitate the reintegration of an offender into society. Contrary to the other utilitarian justifications, restoration focuses almost exclusively on the offender rather than crime prevention generally. However, its application is typically limited to crimes committed by juveniles or to minor offenses committed by adults such as fraud.

Given the wealth of punitive philosophies, conflict between them is only expected. According to Spohn (2002), two major conflicts emerge: why punish, and how

much to punish. With regard to punishment goals, the American criminal justice system employs no uniform structure. Its various forms of punishment reflect different rationales, such as deterrence and incapacitation that influence the second major conflict, how much to punish. Specifically, judges support a wide variety of punishment goals, which produces different positions on the appropriate amount of punishment. In fact, von Hirsch (1976) asserted that punishment involves competition between “conflicting aspirations”.

The U.S. Sentencing Commission concluded that their creation of the federal sentencing guidelines incorporated each punishment philosophy, ensuring that judges retained the discretion to impose the most suitable punishment for offenders (see U.S.C. title 18 § 3553(a)(2)). However, von Hirsch (1989) criticized the Commission by arguing that they failed in their endeavors and instead created a sentencing structure that focused primarily on a retributive philosophy.⁴⁷ For instance, the abolishment of the U.S. Parole Commission, and the provision that offenders must serve at least 85% of their imposed sentence ignores the focus of rehabilitation and restoration philosophies that seek to reintegrate the offender back into society. Of particular relevance to the current study, the lack of rehabilitative, incapacitation, and restoration philosophies into the federal sentencing guidelines given their relevance to issues of dangerousness, family and community ties, employment, and education ignores the abundant research that indicates

⁴⁷ “The U.S. Sentencing Commission...paid little attention to defining a sentencing rationale. No penal purpose explicitly is given primary emphasis, nor did the Commission develop a multi-purpose conception in which it identified priorities among the aims. Instead, the Commission specifically rejected the notion of fashioning a rationale...The Commission’s conclusion can be summarized thus: since people disagree over the aims of sentencing, it is best to have no rationale at all.”

that the presence of social ties operates as informal social control mechanisms that constrain further criminal offending.

The lack of a coherent, consistent sentencing philosophy is one of the most common complaints. However, the Commission operates under the direction of the Sentencing Reform Act (SRA) enacted by Congress. Consequently, even with the constant amending of the Sentencing Guidelines since their implementation in 1987, the Commission has been unable to ensure the use of a consistent philosophy promulgated to each participant in the system. For instance, Congress has implemented habitual offender statutes and mandatory minimums that seem more remnant of retributive or incapacitation philosophies than rehabilitation and restorative philosophies even in the face of research and testimony by Commission members, legal scholars, and academics who show that these policies disproportionately affect minority and low-income communities and fail to reduce recidivism rates (). The result has produced intra- and inter-judicial disparity because of judges differing punitive philosophies and prosecutorial decision-making regarding charges, plea bargains, and motions to impose mandatory minimums or departures.

Although the Commission states that it incorporated the four traditional punishment philosophies (retribution, deterrence, incapacitation, and rehabilitation), it acknowledges that it failed to prioritize the goals or address how the conflicts between them should be resolved. While traditional notions of justice suggest that similarly situated offenders receive similar treatment, I agree with incorporating the various punitive philosophies in principle in order to ensure individualized treatment of offenders since no two offenders are truly similar. For instance, they may differ in their rationale

for offending, or in their level of culpability. In addition, I believe that the lack of a consistent philosophy hinders the development of standards to evaluate the effectiveness of the system, although the SRA directs the Commission to evaluate this issue as part of its mandate.

The lack of a consistent punitive philosophy also has implications for judges in that it hinders their decision-making ability by leaving them open to pressures related to practical and organizational constraints such as the level of visibility of a case, the burdens on the correctional system and financial and human resources of the various courts. It also leaves judges faced with ambiguous provisions such as that concerning family and community ties, which states that they are “not ordinarily relevant” with no clear means of interpreting what constitutes extraordinary circumstances. If judges knew the punitive goal sought by the sentencing guidelines or even those goals that deserved the greatest priority they would have a clearer framework from which to operate.

After all, “family circumstances” remains one of the most frequently cited reasons for departures. In fact, they have increased in their influence on downward departures from representing 6% of the cases in 1991 to approximately 15% in 1999 (Segal 2001). The problem is the inconsistency across circuit courts as to the types of situations warranting a departure for family ties. First, circuits face the dilemma of deciding what constitutes exceptional family ties, which necessitates the consideration of several factors. The most salient factor relates to determining the nature of “typical” family ties in order to determine whether a case varies from the norm. Unfortunately, the Commission provides insufficient guidance to make this determination, in part because it fails to provide dissemination of a consistent punitive philosophy or one that takes

priority over others. Many circuits have held that simply being a single parent whose children will be placed in foster care is not an exceptional circumstance, in part, because many offenders are single parents. However, it might be qualify depending on the nature of the punitive philosophy the Commission seeks to use or prioritize. In fact, Berman (2001) has noted that the invisibility of the punitive rationale for the sentencing guidelines is at the heart of the confusion regarding the consideration of family circumstances and called for an immediate remedy to this problem.

In fact, several arguments have been offered by retributivists to discuss how family ties might be used under their philosophy of punishment. One argument maintains that family circumstances may be relevant to determining an offender's level of culpability because their family ties may be related to their motivation for committing an offense. However, this would create a sentencing environment in which family ties are only relevant to a departure when the motive of an offender can be classified as a mitigating factor. A second argument is that offenders face "double punishment", first through incarceration and second, through the loss of their children. Advocates of this argument assert that mitigation should be given to ensure sentences compatible with other offenders. However, each of these arguments fail to consider the primary factors judges consider when deciding whether to grant a family ties departure: the number of dependents an offender has, the nature and quality of the relationship, whether the offender serves as the sole caretaker, and whether the dependents require special care provided by the offender.

In contrast, utilitarian justifications of punishment with their focus on both the offense and the offender in an attempt to prevent future crime by convicted offenders and

potential criminals may provide a clearer framework for determining the circumstances that warrant a family ties departure because of the emphasis on individualized treatment. For instance, a drug offender might receive a sentence of probation rather than incarceration so that they may continue to play their caregiving role to their children and other dependents. In determining this sentence, judges would have to consider whether the benefits of granting such a downward departure would outweigh the costs (e.g. recidivism). The result of this determination would be clarification of the types of factors that courts deem significant in determining family ties departures see *U.S. v. Haversat*, 22 F.3d 790 1994; *U.S. v. Wright*, 218 F.3d 812 2000; *U.S. v. Sclamo*, 997 F.2d 970, 972 1993).

Unfortunately, the focus on third party harm advocated by utilitarian justifications faces some limitations. Specifically, the sentencing guidelines lack “any clear authorization for judges to decrease sentences based on third party family harms” (Berman 2001). Instead, Berman (2001) argues that the SRA limits punishment goals to those that pertain to the offender and their crime. For instance, the sentencing table that aids in determining the sentence imposed focuses on the seriousness of the offense and the offender’s prior record. However, utilitarian justifications of punishment weaken this argument because their focus is on crime prevention and in the case of rehabilitation, treating the factors that led to criminal offending. Therefore, given research findings that show that family and other conventional ties tends to decrease recidivism, consideration of third party harm might have relevance for determining an offender’s risk of recidivism.

My contention is that utilitarian justifications although not the only justification for punishment relevant to family ties departures, nevertheless provides a clearer method

of justifying the use of family circumstances as a mitigating factor in sentencing due to documentation of the typical family characteristics considered by judges and the focus on individualized treatment advocated by utilitarian justifications of punishment. However, I hesitate to extend the use of family ties departures based on utilitarian justifications to all offenses. Although I believe that these punishment philosophies are suited to some violent crimes, such as homicides committed by battered woman who kill their partners due to a perceived threat to themselves or their children, I caution extending these punishment rationales to all violent offenses.

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Appendix

Format of the Federal Sentencing Guidelines

The initial sentencing guidelines went into effect in November 1987. They were based on the combination of the seriousness of an offense and the extent of an offender's prior criminal record as listed in a 43-level sentencing grid (see grid in Appendix A). Each level consists of prescribed ranges that overlap with ranges in preceding and succeeding levels making sentences increase proportionately (USSC 1995).

The Commission determined that categories of offense severity and criminal history through empirical research relying on data collected from criminal justice records in the pre-guideline period. Among these records, the Commission focused on 10,000 Presentence Investigation Reports and the U.S. Parole Commission's guidelines and statistics. The Commission also departed from this data when faced with Congressional statutes, such as the 1986 Anti-Drug Abuse Act that increased sentences and led to mandatory minimums (Spohn 2002). The goal was to determine those factors that judges appeared to use in making distinctions among similarly situated offenders prior to the implementation of the guidelines.

Critics, however, charge that the guidelines are "rigid and mechanical," which prevents judges from exercising their traditional role in favor of actuarial methods. Critics charge that these methods are directed towards giving the appearance of objectivity and precision, but fail to do anything other than create "hydraulic displacement" (Miethe 1987; Miethe and Moore 1985; Engen and Steen 2000; Nagel and

Schulhofer 1992).⁴⁸ Supporters of the guidelines argue that judges retain plenty of discretion to consider an offender's circumstances. These considerations are simply restricted to legal factors (e.g. offense seriousness, prior record, role in the offense).

In response to the debate, the Commission argued that it also relied upon empirical research to establish the width of the prescribed ranges, so that judges would continue to retain some discretion, but could not impose sentences that were widely unequal for similarly situated offenders. The most important provision addressing this issue was the 25% rule that established that for each combination of offense seriousness and prior record, any sentence requiring imprisonment could not exceed the minimum range by more than 25% or 6 months.⁴⁹ An exception existed only for cases in which the maximum sentence was 30 years or more. In these cases, the maximum term of imprisonment could be life (USSC 1995). The 25% rule underwent refinement with the passing of an amendment in November 1989 that substituted a range of 0-6 months for each range in which the maximum sentence was less than 6 months. Nevertheless, the guidelines still faced criticisms based on several other provisions: (1) relevant conduct, (2) departures and the role of offender characteristics⁵⁰ in determining an offender's sentence, and (3) mandatory minimums.

⁴⁸ Hydraulic displacement occurs when discretion shifts from judges to prosecutors.

⁴⁹ 28 U.S.C. § 994(b)(2)

⁵⁰ e.g. race, gender, age, family circumstances

Relevant Conduct

The relevant conduct provision is one of the most criticized provisions of the federal sentencing guidelines.⁵¹ Relevant conduct refers to any conduct that the defendant engaged in at time of the offense. This permits judges to consider charges never filed, charges that were dismissed, and charges that resulted in acquittals because judges' focus is on a defendant's actual conduct. In addition, the provision states that a judge's determination of a defendant's relevant conduct "need not be the same as that attributed to any of a defendant's co-conspirators because the level of their criminal activity may not be on the same scale as that of other members in the conspiracy".⁵² The provision also does not consider the conduct of other members of the conspiracy regardless of the defendant's level of knowledge of the plan. Another criticism, however, is that a judge may impose an upward departure if he or she perceives a defendant's conduct at the time of the offense to be inadequately considered by the guidelines.

An example of the concerns with the "relevant conduct" provision might be found for drug offenders. Assume that a drug offender is convicted of possessing less than the 5 grams of crack cocaine that triggers an automatic mandatory minimum sentence. However, the original charges are for possession of 5 grams of crack cocaine and possession of a firearm. The prosecutor offered a plea bargain that dropped the weapons charge and reduced the amount of crack the defendant would be charged with in court. However, using the preponderance of evidence standard of proof, the sentencing judge is

⁵¹ § 1B1.3

⁵² § 1B1.3

required to consider the actual conduct (i.e. the original charges) in determining the offense severity score. The goal of this principle is to prevent “hydraulic displacement” of discretion to prosecutors since they decide charging and plea-bargaining decisions (Miethe and Moore 1985; Nagel and Schulhofer 1992).

Departures

Critics of the federal sentencing guidelines also challenge the use of departures and claim they permit the continuation of “unwarranted” disparity. Departure provisions specify that judges are only permitted to depart from the guidelines in the presence of aggravating and mitigating circumstances that are of a “kind or to a degree, not taken into consideration by the U.S. Sentencing Commission in formulating the guidelines” and should result in a sentence different from that described in 18 U.S.C. § 3553(b). A related concept is the “heartland” that judges are supposed to rely on in their decisions. The “heartland” refers to a set of typical cases embodying the conduct that each guideline describes.

Advocates of the use of departures in the guidelines argue that the guidelines cannot address every type of conduct that is potentially relevant in sentencing decisions. Furthermore, they recognize that the guidelines are designed to be fluid and mutable because of research and experience. Supporters also argue that departures will be rare regardless of judges’ ability to use them. They based their expectations on judges’ behavior in the pre-guidelines era. In contrast, critics charge that even if departures are rare, they will work to the advantage of some defendants over others, furthering the unwarranted disparity that the guidelines were designed to curtail (Spohn 2002).

However, it is important to note that there are two types of departures. One type occurs for those offenders who accept responsibility for their actions, such that judges may depart below the prescribed guideline range.⁵³ A second type that is more highly criticized for perpetuating unwarranted disparity is the departure for substantial assistance.⁵⁴ Both types of departures involve a motion filed by the prosecution, but the second type relies on the prosecution stating that the defendant provided substantial assistance in the investigation or prosecution of another person who has committed an offense. Critics charge that the prosecution can manipulate the guidelines by being selective about those chosen to receive a substantial assistance departure. For instance, this type of departure is used primarily with drug offenses, many of which carry mandatory minimum sentences. If a defendant can provide “sufficient” information facilitating the investigation or prosecution of another offender, then the prosecutor might decide to push for a departure based on their assistance. However, this appears to be detrimental to women involved with drug offenders. Females arrested for involvement in drug crimes generally play a peripheral role and have limited information to offer to the prosecution. This lessens their odds of receiving substantial assistance departures relative to males (Steffensmeier et al. 1993; Daly 1994).

Opponents also complain that prosecutors’ consideration of the quality of the assistance is too subjective. First, they note that the prosecutor evaluates the significance and usefulness of assistance, which may be colored by their own agendas regarding certain individuals that they wish to prosecute. Therefore, a defendant may be able to

⁵³ § 3E1.1

⁵⁴ § 5K1.1

offer good information on another offender, but if their information ignores a central target of the prosecutor, they may not receive this benefit. Second, they note that the prosecutor determines the truthfulness, completeness, and reliability of any information or testimony provided by the defendant. Who is to say that the information the defendant provides fails to meet all the criteria and when and how is this determination made? Third, the prosecution determines whether any injury is likely to be or has been suffered by the defendant and whether any danger is likely for their family based on their assistance. Fourth, the prosecution determines how timely the defendant has been in providing their assistance.

Advocates of the guidelines argue that judges make the final determination on the appropriate amount of the reduction, so the odds of hydraulic displacement are greatly reduced (Spohn 2002). They often refer to the safety valve provision co-sponsored by Senators Strom Thurmond and Alan Simpson and included in the final version of the Omnibus Crime Control Act of 1994. This provision targeted first-time, nonviolent, drug offenders in the face of studies conducted by the Department of Justice that indicated that more than 1/3 of offenders incarcerated for drug offenses in the federal system were low-level drug offenders (Mauer 1999).

Information Relevant to Departures and Other Sentencing Practices

Although the Commission permits the court to make departures based on certain offender characteristics, others are forbidden or considered “not ordinarily relevant” to a judges’ sentencing decision. For instance, race, sex, national origin, creed, religion, and

socioeconomic status are not relevant in a judges' sentencing decision.⁵⁵ These factors are irrelevant in determining the seriousness of the offense, or the offender's prior criminal record. They also represent the major sources of disparity in the pre-guidelines era. Age, educational or vocational skills, employment record, community ties, and family responsibilities are considered "not ordinarily relevant" in determining a defendant's sentencing outcome.⁵⁶ Nevertheless, some of these factors may be relevant in other circumstances.

Age may be a valid consideration when faced with "an elderly or infirm defendant and where a form of punishment equal to incarceration, such as home confinement may be effective and less expensive than incarceration".⁵⁷ Educational and vocational skills may be relevant in determining the conditions of probation or supervised release for rehabilitative purposes and for public protection. Employment records have importance in determining the conditions of probation or parole (e.g. hours of home detention). Community ties and family ties or responsibilities may influence consideration of the amount of restitution or fine an offender is required to pay.⁵⁸

A defendant's role in the offense and their criminal history are always relevant in determining the appropriate sentence. In fact, they are built into the guidelines as measures of offense seriousness and prior record. Of relevance to my own study however, is the role that family ties and responsibilities play in explaining persistent

⁵⁵ § 5H1.10

⁵⁶ § 5H1.1, § 5H1.2, § 5H1.5, and § 5H1.6

⁵⁷ § 5H1.1

⁵⁸ § 5H1.6

gender disparities among offenders sentenced within the context of the federal sentencing guidelines. My study also addresses how the influence of family circumstances influences sentences for males and females of different races when judges determine the length of their incarceration. Among the many criticisms, opponents of the guidelines charge that family circumstances and other factors considered as “not ordinarily relevant” in judges’ decisions are exactly the factors that distinguish among similarly situated offenders (Raeder 1993).

Criticisms

Related to the lack of consideration allowed for offender characteristics relevant under the pre-guidelines era is the question of severity. Critics complain that the Commission made sentences more severe than in the past because of their erroneous conclusion regarding the Sentencing Reform Act of 1984 and its provision that “federal sentences failed to accurately reflect the seriousness of offenses” (Spohn 2002). They noted that the rate of probation sentences decreased ensuring that most federal offenders (i.e. ~ 80%) receive some form of confinement sentence, primarily incarceration. Second, they noted an increase in sentences for career offenders, which unfortunately have not affected those offenders that the provision was targeted to address when the statute was formulated.⁵⁹ Third, they note that crimes involving mandatory minimums are set substantially above the statutory minimums.

Mandatory Minimums

⁵⁹ e.g. repeat felons, violent offenders, and drug offenders

The origin of mandatory minimums lies in the “get tough on crime” movement, particularly those features related to the “war on drugs” that reached its height during the late 1980s-mid 1990s. Both political parties criticized lenient sentences and sought “truth in sentencing” legislation. However, unlike “truth in sentencing” policies, mandatory minimum laws permit parole release after an offender serves the minimum number of years required by his or her sentence (Donziger 1996). Currently, the federal system has “more than 100 provisions for mandatory minimums” (Donziger 1996:25). One mandatory minimum provision required a 5-year sentence enhancement for using or carrying a firearm during a crime of violence or a drug crime. The statute also mandated a 15-year sentence for an offender convicted of possession of a firearm who had three state or federal convictions for burglary or robbery.⁶⁰ Another important piece of legislation was the 1986 Anti-Drug Abuse Act that established a 5- and 10-year mandatory sentence for a variety of drug offenses. By the mid-1990s, over 60 such laws passed covering more than 100 federal offenses (Spohn 2002; Donziger 1996).

Criticisms of Mandatory Minimums

Critics of mandatory minimums argue that sentencing has increased in severity and become more inflexible. Recent trends show that a majority of federal judges disagree with these policies and view them as too limiting (Donziger 1996). For instance, when faced with a drug offender, a judge can only consider the type and amount of drug involved. They are precluded from considering factors such as age and prior victimization that may have led to drug use or vulnerability to someone who used them as

⁶⁰ § 4B1.4

a courier. This is likely to be particularly important when considering cases of females involved in drug offenses.

As with the relevant conduct principle, hydraulic displacement is also feared because prosecutors, not judges, determine what charges to bring before the court. Proponents respond that the “relevant conduct” provision prevents this possibility. Due to the concerns surrounding this issue, research has been conducted to determine how realistic this is fear is regarding the perpetuation of unwarranted disparity (Miethe and Moore 1985; Nagel and Schulhofer 1992). Donziger (1996) noted other influential critics such as Chief Justice Rehnquist and Justice Kennedy, the U.S. Sentencing Commission, and the American Bar Association.

They cited several potential problems. First, they argued that mandatory minimum policies contradicted the “just deserts” philosophy of punishment because they failed to consider differences among offenders, such as their roles in an offense. Therefore, the provisions would apply to everyone even if some offenders were more culpable than others (see Steffensmeier et al.’s 1998 focal concerns perspective; U.S. Sentencing Commission 1991; Schulhofer 1993). Second, “sentencing cliffs” may occur for drug offenses (Donziger 1996:26). This occurs when large penalty differences in sentencing outcomes occur. For instance, Donziger (1996:26) notes “5 grams of crack leads to no more than 1 year in prison, while 5.01 grams of crack requires a mandatory minimum sentence of 5 years.” A final issue pertains to sentence disparities because some offenders have higher odds of avoiding mandatory minimum sentences than others due to departures or plea bargains granted due to substantial assistance to prosecutors.

These benefits are more likely for high-level offenders because they have the greatest information to offer to law enforcement (Donziger 1996).

Legal Challenges to the Federal Sentencing Guidelines

Even with the criticisms of disparity and discrimination in the pre-guidelines period, and the Sentencing Reform Act's attempts to limit, but not fully remove judicial discretion, the guidelines faced several challenges in the U.S. Supreme Court. The first challenge addressed their constitutionality in the case of *Mistretta v. U.S.* (1989).⁶¹ *Mistretta* charged that the Sentencing Reform Act, the U.S. Sentencing Commission, and the guidelines were unconstitutional because they "violated the doctrine of separation of powers and excessively delegated Congress' legislative authority" (see Report on Supreme Court Cases on Sentencing Issues, June 16, 1998). Justice Blackmun wrote the opinion in the 8-1 decision. The Court upheld the creation of the Commission as an independent agency within the judicial branch of government and that three federal judges should serve on the Commission with non-judges. The Court also found that the President did not exceed his powers by appointing members of the Commission and removing them for cause because neither act significantly threatened judicial independence.

Other cases followed, but none has succeeded in dismantling the Commission or repealing the Sentencing Reform Act (1984). *U.S. v. Watts* (1997) assessed whether the sentencing court could consider the underlying charges of conduct for which a defendant had been acquitted. At issue was whether doing so would alter the sentencing court's

⁶¹ 488 U.S. 361

discretion as granted under statute 18 U.S.C. § 3661. It states that “no limitation shall be placed on the information concerning the background, character, and conduct of a person, convicted of an offense for which a court of the U.S. may receive and consider for the purpose of imposing an appropriate sentence” (522 U.S. 1034; 118 S. Ct. 640; 139 L. Ed. 2d 618). All but one of the Courts of Appeals stated that this practice was permissible if the conduct could be “proven” by a preponderance of the evidence. However, the Ninth Circuit Court of Appeals disagreed and felt that it raised issues of double jeopardy (522 U.S. 1034; 118 S. Ct. 640; 139 L. Ed. 2d 618).

In a concurring opinion written by Justices Breyer and Scalia, the Court decided that the policy set forth in statute 18 U.S.C. § 3661 and its commentary § 1B1.3 permitted the consideration of conduct underlying an acquitted charge.⁶² The Court also found that the Ninth Circuit based its opinions on incorrect views of “double jeopardy jurisprudence,” in asserting “a jury verdict of acquittal rejects facts” (522 U.S. 1034; 118 S. Ct. 640; 139 L. Ed. 2d 618). In fact, the Court cited another case *Dowling v. U.S.* (1990) in which it was determined that “an acquittal in a criminal case does not preclude the Government from relitigating an issue when it is presented in a subsequent action governed by a lower standard of proof” (493 U.S. 342; 110 S. Ct. 668; 107 L. Ed. 2d 708). Justices Stevens and Kennedy offered dissenting opinions in which they argued that for additional offenses or conduct related to an acquitted charge, the standard of proof should be beyond a reasonable doubt.

⁶² “Conduct that is not formally charged or is not an element of the offense of conviction may enter into the determination of the applicable guideline sentencing range, and that all acts and omissions that were part of the same course of conduct or common scheme or plan as the offense of conviction (relevant conduct) must be considered whether or not the defendant had been convicted of multiple counts” (§ 1B1.3).

A second case, *U.S. v. Gonzalez* (1997) dealt with three defendants convicted in a state court on drug and weapons charges resulting from a drug sting operation. The defendants were convicted in state court, but later became convicted in Federal District Court as well on a number of drug and weapons related charges in violation of 18 U.S.C. § 942(c). This statute imposed a mandatory 5-year sentence enhancement because of the firearms charge and their participation in drug trafficking. It also stated that the sentence is not to run concurrently with any other term of imprisonment. However, the District Court did exactly that with regard to the defendant's state sentences. In addition, they decided that the remaining 60 months due to the firearms offenses should run consecutively to both the state and federal sentences.

The Supreme Court vacated and remanded this sentence in a 7-2 opinion written by Justice O'Connor. The Court decided that statute 18 U.S.C. § 942(c) referred to all types of sentences, not just federal as argued by the Court of Appeals for the Tenth Circuit. Justices Stevens and Breyer offered dissenting opinions in which they expressed the views that given the Sentencing Reform Act's (1984) focus on revising sentencing at the federal level, Congress is likely to have intended the phrase "any other term of imprisonment" to refer only to federal sentences (520 U.S. 1; 117 S. Ct. 1032; 137 L. Ed. 2d 132).

In 1997, the Court addressed *U.S. v. LaBonte*, which addressed the "career offender provision" in § 4B1.1. This provision resulted in a table indicating enhanced total offense levels applicable in the calculation of the sentence of an offender who met certain criteria. These criteria included having at least two prior felony convictions of either a crime of violence or a controlled substance offense and a current offense that is a

felony in either a crime of violence or a controlled substance offense and a current offense that is a felony in either of the two aforementioned categories. If these criteria are met, the criminal history category applied is to be the highest available (i.e. six). The Sentencing Commission amended the commentary of § 4B1.1 to “define the phrase ‘offense statutory maximum’ so as not to include any increase in the maximum term of imprisonment under a sentencing enhancement provision that applied because of the defendant’s prior criminal record (see Amendment 506). The Commission decided that this amendment should be retroactive, which provided courts with the discretion to reduce sentences imposed prior to the Amendment’s effective date.

In a 6-3 decision, Justice Thomas wrote the opinion for the Court that the Amendment was at “odds with the plain language of 28 U.S.C. § 994(h) and thus must “give way” to the provisions in the guidelines commentary barring unconstitutionality or a federal statute. Justice Breyer wrote the dissenting opinion. Justices Stevens and Ginsburg joined him in his dissent. They contended that the term “maximum term authorized” was “ambiguous” and that the Court should have deferred to the Sentencing Commission’s views regarding the interpretation of § 4B1.1 as “based on a permissible construction of 28 U.S.C. § 994(h)”.

The Court ruled on two other cases in 1998. First, it heard the case of *Almendarez-Torres v. U.S.* (1998). *Almendarez-Torres* was a deported alien who returned to the U.S. and committed a crime punishable by up to two years.⁶³ He also faced a penalty enhancement that could make his sentence increase to up to 20 years. He

⁶³ 8 U.S.C. § 1326(a)

faced a violation of 8 U.S.C. § 1326(b) (2) because his initial deportation was “subsequent to an aggravated felony”.

The District Court rejected the defendant’s argument that the “failure of the indictment to mention the aggravated felony convictions limited the maximum sentence to 2 years, and imposed an 85-month sentence. The Court of Appeals of the Fifth Circuit joined with numerous other Circuit Courts in affirming this decision. Only the Ninth Circuit argued that the defendant’s behavior constituted a separate crime. In a 5-4 opinion written by Justice Breyer, the Supreme Court affirmed the Fifth Circuit’s decision and stated that the Government need not charge the earlier aggravated felony convictions in the indictment. Justice Scalia wrote the dissenting opinion. He stated that the violations regarding illegal reentry listed in statutes 8 U.S.C. § 1326(a) and 8 U.S.C. § 1326(b) (2) are separate offenses and any prior convictions for aggravated felony had to be charged in the indictment.

The Court also heard *Edwards v. U.S.* (1998) and held in a unanimous opinion written by Justice Breyer that the sentencing judge, not the jury, was required to determine the amount and type of drugs at issue in a drug conspiracy. The trial court convicted the petitioners by a general verdict that did not specify the type of drug involved in the conspiracy (i.e. powder cocaine or crack cocaine), so the judge should sentence assuming that the jury meant to specify powder cocaine. The Court maintained that regardless of the type of drug, the relevant conduct provision of the guidelines (see § 1B1.3) required the judge to sentence based on the defendants’ actual conduct at the time of the offense.

The guidelines remain controversial and disliked by many court actors, civil rights activists, academics and legal scholars. Continual legal challenges to the federal sentencing guidelines reinforce the complexity of the guidelines and exacerbate the continuing debate over its effectiveness, fairness, and legality. The current study contributes to the sentencing literature by focusing on the impact of specific types of family ties on the length of an offender's incarceration. First, I examine the mitigating effects of family ties on gender differences in sentencing. Second, I examine the mitigating effects of family ties for males and females of different race and ethnic groups in an attempt to examine whether patterns are similar across groups. In conducting these analyses, I examine whether the influence of specific family ties differs by offense type. In the next chapter, I discuss the familial paternalism perspective developed by Daly (1987) and the relevant literature regarding its influence on sentencing outcomes. I also provide several hypotheses for analysis.

Curriculum Vitae
Melissa A Logue, Ph.D.
Education

Ph.D. Crime, Law, and Justice
Pennsylvania State University, State College, PA Expected: May 2003

Graduate Minor: Women's Studies

M.A. Crime Law and Justice
Pennsylvania State University, State College, PA 2000

Thesis: "Race, Gender and Prison Violence: A Test of the Importation and Deprivation Models."

B.A. Double Major: Sociology and French
Villanova University, Villanova, PA 1998

Publications

Ruback, R. Barry, Shaffer, Jennifer N., and Logue, Melissa A. 2002. "The Imposition and Effects of Restitution in Four Pennsylvania Counties: Effects of Size of County and Specialized Collection Units." (forthcoming in Crime and Delinquency).

Presentations

Logue, Melissa A. 2002. "Familial-Based Justice: Examining Race Differences in Sentencing Among Female Offenders." Paper to be presented at the 2002 Annual Meetings of the American Society of Criminology. Chicago, Illinois.

Logue, Melissa A., Jennifer N. Shaffer, Mindy Wilson, Kim Menard, and R. Barry Ruback. 2001. "The Imposition and Payment of Restitution in Four Pennsylvania Counties." Paper presented at the 2001 Annual Meetings of the American Society of Criminology. Atlanta, Georgia.

Logue, Melissa A. 2000. "Race, Gender, and Prison Violence: A Test of the Importation and Deprivation Models." Paper to be presented at the 2000 Annual Meetings of the American Society of Criminology. San Francisco, California.