Birth and the magistrate: The influence of pregnancy on judicial decisions

Kristi Dawne Waits

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BIRTH AND THE MAGISTRATE:
THE INFLUENCE OF PREGNANCY ON JUDICIAL DECISIONS

A Thesis
Presented to the
Faculty of
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San Bernardino

In Partial Fulfillment
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Master of Arts
in
Criminal Justice

by
Kristi Dawne Waits
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ABSTRACT

As the number of pregnant defendants continues to grow, so too do the problems and concerns surrounding them. While literature can be found on related topics, the specific issue of pregnancy and judicial decisions has yet to be examined. The purpose of this particular research study is to heighten awareness of the issues surrounding the topic, and provide evidence indicating the influence, if any, pregnancy has on judicial decisions. Using personal interviews, nine judges from Los Angeles County and San Bernardino County were asked a series of five questions pertaining to pregnancy and sentencing. Overall, the results indicate that while a defendant's pregnancy influences general judicial decisions such as postponing custody dates, the same influence is not found in sentencing decisions. Yet the exploratory nature of this study diminishes the generalizability of these results. Therefore, additional research studies in the future are imperative to better understand the relationship between these two entities.
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I wish to thank Dr. Deborah A. Parsons for her continual support and guidance to which I am forever indebted.
To My Family
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INTRODUCTION

The number of women entering this country's criminal justice system has dramatically increased during the past few decades. With this increase has come a multitude of problems as well as concerns for researchers and practitioners alike. A large majority of these problems are directly related to women's unique biological characteristics. One issue in particular which has recently attracted attention is the growing number of pregnant women entering the system. In the past decade, the pregnant adult offender has become a topic of increasing interest and concern. Without proper attention, an adequate resolution to these problems appears quite bleak.

Overall, this topic has been greatly understudied. The few researchers (Bloom & Steinhart, 1993; Markovic, 1996; Ryan & Grassano, 1992; Wooldredge & Masters, 1993) who have examined this sub-population of offenders, all limited their studies to the incarceration phase of the process. Regardless of these limitations, there are several statistics which remain applicable to the study at hand. Specifically, data pertaining to the number of pregnant women in the system. A recent national survey of female offenders revealed that approximately 4% of women in jails and 6% of women in prisons were pregnant at intake (Bloom &
Steinhart, 1993). According to Vesna Markovic, almost 4,000 women nationwide will give birth while incarcerated (1996). Granted these numbers are relatively low in comparison to the entire inmate population, but they nevertheless create concerns for practitioners within the field.

One problem to arise from these particular offenders has been the lack of facilities to adequately accommodate their special needs. Among the inadequacies are the absence of special diets, lighter work assignments, and resources to deal with potential medical problems surrounding the birth process (Wooldredge & Masters, 1993). Since only a few of these women actively pursue their physical well being through exercise, a proper diet, and medical care, these deficiencies have subsequently burdened correctional facilities across the country. While programs addressing prison standards and pregnant inmates have been implemented (Lindbergh, 1996; Ryan & Grassano, 1992), none have yet to be universally accepted. Only a handful of states have taken a proactive approach to the growing problem, of which California is one.

In May 1994, the California Department of Corrections implemented the Pregnant and Parenting Women's Alternative Sentencing Program Act (Blakeley, 1995). Family Foundations, as the program is called, serves pregnant and
parenting women who have a documented history of substance abuse. Only four counties (Alameda, Los Angeles, Sacramento, and San Diego) thus far have been allocated government funds for facilities. These facilities provide a multitude of programs to help treat up to 30 women at a time during a 12-month period. Among the services provided are medical and health care; individual, group, and family counseling; psychiatric evaluations; as well as education and parenting classes (Blakely, 1995). Programs such as these have steadily gained the attention of those within the criminal justice system, who appear to be concerned about the unique problems posed by pregnant defendants.

An additional issue surrounding pregnant offenders is found in the judicial realm of the criminal justice system. One problem in particular posed by female defendants deals with the influence of their pregnancy on sentencing decisions. As Ilene Nagel and Barry Johnson (1994) point out, federal sentencing guidelines do not specifically address pregnancy. This exclusion has propelled many legal debates regarding pregnant defendants and sentencing. The leading appellate court case to address this debate is United States v. Pozzy (902 F.2d 133). In this 1990 case, the First Circuit held that pregnancy is not an appropriate basis for downward departure from the applicable guidelines.
range. In rejecting pregnancy as an independent basis for departure, the court noted that pregnancy "is neither atypical nor unusual." Additionally, the court noted that female offenders might actually be encouraged to become pregnant in order to influence sentencing outcomes. If these occurrences were found to exist, the general deterrence effect of punishment would be greatly reduced.

These sentiments were also expressed in United States v. Arize (792 F. Supp. 920). Although in this case the defendant was granted a downward departure to accommodate her pregnancy. The court departed from the prescribed guidelines for two reasons. First, the defendant was unaware of her pregnant condition at the time of the incident. Second, due to the length of the minimum sentence for drug importation, it was quite possible that she would have lost custody of her newborn child. Taking both of these into account, the court felt that this was a unique situation which necessitated individual consideration. While federal guidelines explicitly addressing this issue have yet to be created, most federal courts have steadily denied issuing special consideration for pregnant defendants.

As of yet, fetal abuse cases remain the only instances where the courts have specifically addressed pregnancy. Due
to the rise in drug and alcohol addicted newborns in the mid-1980's, the criminal justice system began to prosecute pregnant women who caused harm to their fetuses (Annas, 1990). It was the first time in this country's history that society legally pursued this particular group of offenders. Today, women are being faced with both civil and criminal charges for their actions during pregnancy. Since the late 1980's, at least 200 women in more than 30 state have been prosecuted for behavior during gestation that posed danger to their fetuses (Terry, 1996). While this still remains a relatively small number, the topic itself highlights the current debate between judicial decisions and pregnancy.

In general, research conducted on judicial decisions and pregnancy is virtually nonexistent. While many studies have looked at sentencing decisions and female defendants (Armstrong, 1977; Bickle & Peterson, 1991; Boritch, 1992; Clements, 1972; Daly, 1987a, 1987b, 1989; Daly & Bordt, 1995; Ekstrand & Eckert, 1978; Johnston, Kennedy, & Shuman, 1987; Kruttschnitt, 1981; Raeder, 1993; Songer, Davis, & Haire, 1994; Steffensmeier & Kramer, 1983), none have specifically addressed this issue of pregnancy and its potential affect on the outcome of a case. Rather, the above studies have concentrated on more prominent characteristics such as sex, race, and family status.
The courts' response to this growing population is highlighted in the recent high profile cases of Autumn Jackson and Mary Kay Letourneau. In January of this year, a federal judge postponed Autumn Jackson's custody date after learning the convicted felon was pregnant. Jackson, convicted of attempting to extort $40 million dollars from entertainer, Bill Cosby, was allowed to remain out of custody during the first few months (arguably, the most critical) of her pregnancy. She has since entered a federal prison in Northern California, but will be transferred to a prison maternity program in San Francisco where there she will be allowed three months to bond with her twin babies before returning back to complete her 26 month sentence (Craig, 1998). Although the pregnancy did not influence the final sentencing decision, it nevertheless was given special consideration by the judge with regards to Jackson's custody date.

Additionally, Mary Kay Letourneau, after being sent to prison for a parole violation, revealed to the court that she was pregnant. Convicted of second-degree rape, Letourneau was placed on parole under the condition that she attend a treatment program for sex offenders and cease contact with the 14-year-old boy whom she was having a sexual relationship ("Letourneau," 1998). When it was
discovered that she maintained contact with the victim. Judge Linda Lau revoked Letourneau's parole and sentenced her to seven and a half years in prison. Once again, the pregnancy was not a factor in the sentencing decision, but addressed nonetheless.

These selective court cases display the future dilemma caused by many pregnant defendants. Pregnancy, while undeniably a variable lacking legal incorporation with regards to sentencing, is frequently factored into judicial decisions. Previous studies have examined other extra-legal elements such as race (Hagan, 1974; Hagan and Bumiller, 1983; Kleck, 1981; Spohn, Gruhl, and Welch, 1981-1982), sex (Armstrong, 1977; Boritch, 1992; Clements, 1972; Ekstrand and Eckert, 1978; Johnston, Kennedy, and Shuman, 1987; Steffensmeier and Kramer, 1983), and family (Bickle and Peterson, 1991; Daly, 1987a, 1987b, 1989). Yet none of these studies included pregnancy among the factors which potentially influence the sentencing decisions of judges. In an attempt to address this understudied topic, the current research project will test the hypothesis that a defendant's pregnancy does indeed factor into judicial decisions. Whether it be a primary determinant or a minor concern, judges give consideration to pregnancy in their decisions.
Like most research studies, several boundaries have been placed on the examination of this topic. First, with regards to the literature review, only the effects of a defendant's pregnancy will be analyzed. It is estimated that nearly 80% of women incarcerated in the United States have children (Bureau of Justice Statistics, 1991). Obviously, researching and understanding the unique conditions associated with this population (of which pregnant defendants will soon be included, if they are not already) is indeed important. Yet this study is simply too small to accommodate such a large topic. In addition, this particular project will only research the judicial realm of the criminal justice system. Specifically, the data collected will be responses made by judges. Undoubtedly, pregnancy affects all areas of the system. But the format of this particular paper necessitates a narrow focus on the issue. Finally, only those with judicial experience in the California Superior Court system were asked to participate in the study. The purpose being to limit the type of offenses to felonies.

As incidences of pregnant defendants continue to grow throughout the criminal justice system, so too does their importance. Until now, there has been very little research conducted on the issue of pregnancy and its effects on
judicial decisions. While this research project is relatively small in size, its policy implication must not be overlooked. The results of this study may indicate that state-wide sentencing guidelines pertaining to pregnancy should be created and implemented to further minimize disparities in the court system. Additionally, the findings may suggest that more correctional facilities and services be provided for these particular inmates. There are several programs across the nation specifically designed to accommodate pregnant offenders, but the number is still extremely small.

In order to better understand the true importance of this topic, it is necessary to present a historical discussion on the issues and areas which have influenced the current dilemma. Therefore, in an attempt to gain clarity on the current issue, the following sections will review pre-existing literature surrounding both female criminality and judicial decision making.
Feminist criminological theory has historically received far less attention than traditional schools of thought. In the early part of this century, a small number of theories could be found with references to women (Freud, 1933; Lombroso and Ferrero, 1920; Pollak, 1950; Thomas, 1907, 1923), none were specifically devoted to the dynamics surrounding women and crime. Rather, female criminality was examined and understood according to the constructs of their male counterparts. As Eileen Leonard (1995) discussed, among the traditional criminological theories used to explain this particular group of criminals were anomie (Merton, 1938), labeling (Becker, 1963), differential association (Sutherland, 1960), subcultures (Cloward & Ohlin, 1960; Cohen, 1955; Miller, 1958), and Marxism or radical criminology (Balkan, Berger, and Schmidt, 1980; Messerschmidt, 1986; Rafter and Natalizia, 1982; Schwendinger and Schwendinger, 1983). Through these theories a preliminary framework regarding female criminality was developed. Although, an in-depth explanation for the true dynamics between women and crime had yet to be discussed.
It was not until the latter part of this century that researchers began to develop theories which focused primarily on women (Adler, 1975; Feinman, 1986; Naffine, 1987; Simon, 1975; Smart, 1976). Commonalties could be found among the various theories, but most were quite distinct and separate. Overall, this particular school of thought arose during a period of change. The laws and politics which governed the country were being brought into questions by a number of different groups in society. Essentially, these arguments were all based on the issue of equality; both blacks and women were fighting for the right to be equal under the law. Prior to this time, the country was largely ruled by a male-dominated, patriarchal social structure. The inequalities which manifested as a result of this structure were not officially addressed by the government until the Civil Rights Act of 1964 and several Supreme Court decisions. These momentous events paved the way for the most recent women's liberation movement in the late 1960's and, subsequently, criminological theories regarding women and crime.

In addition to legal changes, social changes occurred as well. First, academic Women's Studies programs began to emerge in colleges and universities throughout the country. These programs provided a forum for large numbers of people
to collectively discuss the myths and realities surrounding women. And since the methodologies used to study crime were changing to include more viable statistics through self-reports and victimization studies, female criminality was frequently a topic discussed within the curriculum.

Second, an emergence of feminist literature began to pervade mainstream society. These books primarily focused on the historical oppression of women and the changes necessary to combat their subordinate position within the social structure. Among the most influential books were Kate Millet's "Sexual Politics" and Robin Morgan's "Sisterhood is Powerful." These, along with several other books, heightened society's willingness to challenge traditional patriarchal ideology and theoretical constructs.

Female Criminality

During the 1970's and 1980's, the research conducted on female criminality reflected some significant changes from years past. Unlike the biological and psychological assumptions expressed by earlier researchers, contemporary theorists looked at a wide variety of social conditions. Economic factors were among the primary variables examined. Some research has suggested that the motivating force behind most crimes committed by women is economics (Flowers, 1987). It has often been argued that women's criminal activities
are an attempt to compensate for their deficiencies in this area. Subsequently, crime is seen as a result of the economic pressures placed on them to survive. Additionally, some theorists have extended this postulate to include greater opportunities to commit crimes than in years past. Since the women's liberation movement of the 1960's, the number of women working outside of the home has increased dramatically. Accordingly, this integration into the public sphere of society has provided them with more opportunities of becoming involved in criminal activities.

One major distinction between these theories and ones from years past is that race, class, and sex are all addressed and accounted for. Contemporary theories examine crime according to the position in society; race, class, and sex often dictate these positions. While the theories surrounding women and crime are primarily separate and distinct, two general categories have arisen: feminist and gender-based. Feminist criminological theories attempt to explain crime through roles and positions in society. The focus of these is often broad and complex. On the other hand, gender-based theories explain crime through familial roles and positions. Looking at personal and professional relationships, these theories attribute crime rates (including disparities) to dynamics within the family.
Unlike the limitations found in previous theories, these two categories examine a broad scope of contributing factors which goes beyond mere biological and psychological explanations.

**Feminist Theories**

Rita James Simon and Jean Landis (1991) have identified four basic themes disseminated throughout theories and discussions related to female criminality. They have classified these themes into: 1) the masculinity thesis, 2) the opportunity thesis, 3) the economic marginalization thesis, and 4) the chivalry thesis. Theories falling into the first two categories often correlate female criminality with the women's liberation movement which, arguably, provided women with more opportunities and freedoms than in years past. The third category accounts for the "absence of opportunities, rather than the availability" (Simon & Landis, 1991). Finally, theories falling into the fourth category typically attribute chivalry and/or paternalism to the "hidden" figures traditionally found in female crime statistics.

**Masculinity.** The first contemporary theory to address this thesis was Freda Adler's, *Sisters in Crime* (1975). In her book, Adler associated female criminality with the Women's Liberation Movement. It was her belief that as
women became more liberated, the gap between them and men would subsequently decrease. In exchange for rejecting traditional feminine sex roles, women began to accept masculine ones. Therefore, the crimes committed by women were best understood as a reflection of their newly acquired "masculine" behaviors. Adler extended this hypothesis to account for women's increased aggressiveness and violence as well. She believed liberated women committed crimes for the same reasons as men; as a shortcut to success and financial well-being. Similar to past theories, this one attempted to define crime according to men and men's experiences.

**Opportunity.** In general, the opportunity thesis asserts that as women acquire more education and gain access to full-time professions with greater degrees of prestige and authority, the amount of white-collar crimes by these women will be in proportion to the amount committed by their male counterparts (Simon & Landis, 1991). Rita Simon highlighted this point in her book, *Women and Crime* (1975). In addition, Simon expressed the belief that as women's socioeconomic status improves so too does their likelihood of not becoming a victim. Similar to the masculinity thesis, this one predicts that changes in the social status of women will bring about changes in offending patterns as well. The opportunity thesis deviates from the masculinity
one though with regards to violent crimes. According to proponents of opportunity, violent crimes committed by women will actually decrease because of their increase in employment and legitimate opportunities.

Economic Marginalization. In opposition to the previous two theories, this one attributes female criminality to the lack of opportunities rather than their abundance. This theme is supported by a number of different theorists (Chesney-Lind, 1986; Datesman and Scarpitti, 1980; Feinman, 1986; Messerschmidt, 1986; Naffine, 1987; Smart, 1976). Proponents of this theory suggest that feminization of poverty, not women's liberation, is the social factor most significant to female criminality (Simon & Landis, 1991). These theorist do not deny women's increased participation in the labor force, but rather argue that these opportunities remain greatly restricted to them. Overall, they believed women still maintained work position subordinate to men; women continue to work in lower paying jobs, with little to no room for promotion. In addition, the hardships placed on women who had taken upon the dual role of full-time employee and full-time mother were addressed as well. Within the constructs of this particular thesis, crime is best understood as a response to the lack
of opportunities and resources rather than their proliferation.

**Chivalry and Paternalism.** For nearly two decades, researchers attributed the increase in female crime rates to the notions of chivalry and paternalism. Chivalry refers to the courteous behavior often expressed by men towards women. Paternalism elaborates on this to suggest that women are in need of protection. While differences may exist between the two concepts, both have nevertheless placed women in positions of subordination and inferiority. As such, it is argued that these distinct yet related attitudes may have accounted for the differential processing of female offenders in the criminal justice system (Williams & McShane, 1994). Many believe that incidences of crimes committed by women are much higher than reported. Due to these notions, they believe women are given preferential treatment by the criminal justice system; they receive warnings rather than convictions (Simon & Landis, 1991). Although this hypothesis provides an explanation for the overall lack of statistics on female criminality, it provides very little insight into the reasons behind it.

**Gender-Based Theories**

Patriarchy is a major theme within the construct of gender-based criminological theories. The concepts guiding
patriarchal ideology (i.e. male domination and superiority) have had an enormous influence on women's position in society. Gender-based theories attempt to address the dynamics associated with women's subordinate position and the sexual division of labor which has ultimately resulted (Messerschmidt, 1986). At the core of all gender-based theories the concept of family. As such, crime is contingent upon both work and familial roles, and how they affect the family structure. These structures are highly dependent on the position on holds in the labor force. Gender-based theories attempt to narrow the focus of female criminality to social positions, while reducing racist, classist, and sexist attitudes traditionally found in criminological theory.

**Power Control.** John Hagan is among the most noted theorist to examine this particular area of study (Grasmick, Hagan, Sims-Blackwell, and Arnekelev, 1996; Hagan, 1988; Hagan, Gillis, and Simpson, 1985; Hagan, Simpson, and Gillis, 1987). Essentially, power-control theory is based on the premise of social control. Rates of crime and delinquency are dependent upon class relations and their impact on the family structure. The distribution of power within this structure derives from the positions of the husband and wife within the workforce (Hagan et al., 1987).
When these positions are conservative, the family structure is primarily patriarchal; when these positions are liberal, the structure, in turn, in more egalitarian. Accordingly, the socialization skills one acquires is greatly dependent on the structure of the family. Depending on the gender of the child, children in patriarchal families would have a greater tendency of being taught traditional sex roles, while the roles in egalitarian families would exhibit more equality. The essence of this theory is found in the various rates of risk taking (Hagan et al., 1987; Grasmick et al., 1996). Regardless of gender, the more risks one is willing to take, the greater the chances of getting caught. Ultimately, the risk-taking behavior of the individual is dependent upon the structure of the family.

**Current Trends in Female Crime**

Crime has historically been regarded as a male phenomenon. Yet in the 1960's as the women's movement progressed and women became more emancipated, a seemingly large upsurge of female criminal activities began to emerge. Between the years of 1960 and 1975, the Federal Bureau of Investigations reported a 200 percent increase in arrests for women (1975). Criminologists have been addressing the issue of women's emancipation on crime rates since the 1800's (Pollak, 1961; Smart, 1976). The theories discussed
above suggest that changing gender roles may be attributed to the increase. A common belief held by many is that as women's roles in society become more like men's, so too will their criminal activities. While the statistics may implicate this notion, many researchers remain skeptical. Looking at arrest data, some researchers argue that the increase remains fairly comparable to that of men's. They suggest that the data may be more indicative of the changes in social control agencies (i.e. police, courts, and corrections) than the criminals themselves (Chesney-Lind, 1986). Regardless of the reasons, all can agree that women's criminal activities have indeed increased over the past three decades.

The most extensive research study to date which examined female crime rates was conducted by Darrell Steffensmeier (1995). Using information collected from the Federal Uniform Crime Reports (UCR), he analyzed national arrest data for a 30-year period, 1960 to 1990. Included in this study were arrests for all offense categories except forcible rape (a male crime) and runaways/curfew (juvenile offenses). After comparing arrest rates for both genders, Steffensmeier ultimately concluded that female and male crime patterns are not becoming similar in either amount or type. Relatives to men's, women's arrest profiles have not
been dramatically altered over the past 30 years; they continue to maintain at a relatively high level of involvement in minor property offenses, while maintaining a relatively low level in "masculine" or major violent offenses (Price and Sokoloff, 1995). Overall, he found the patterns of change for both males and females to be quite similar. While some increases in female crime were observed, such increases have occurred over time for both genders. Steffensmeier concurs with other researchers' belief that arrest rates are influenced more by social and legal forces than by the gender of the offender.

Arrest is not the only area of the criminal justice system which has been extensively analyzed by researchers. Incarceration rates have also been looked at with regards to the topic of women and crime. As the Bureau of Justice Statistics reported in 1991, the number of women imprisoned in the United States has tripled since 1980. This increased has surpassed that of men's every year in the last decade (1991). Several explanations have been given for this influx. Meda Chesney-Lind identified several potential factors: an increase in female criminal activities, more aggressive women offenders, as well as a change in the system's response to these women (1995). Regardless of the justification, most would agree that the court system plays
a pivotal role in these incarceration rates. It is quite possible that these rates are largely the result of judicial sentencing practices which will be examined in the next section.
CHAPTER TWO
Judicial Decisions

The second topic examined in this discussion of pregnant defendants and judicial decisions involves the sentencing realm of the criminal justice system. Criminal sentences are as complex and inconsistent as the system itself. During this particular phase of the decision making process, judges are forced to simultaneously maintain equality, individuality, and efficiency with each case. As one might expect, the above task is nearly impossible to accomplish given the uniqueness of crimes and those who commit them. Subsequently, this creates conflicts between the competing factors. It is here that defendants lose their equal status, and are forced to have their cases decided upon according to each judge's discretion. The result, a court system riddled with injustices.

In an attempt to gain a better understanding of pregnancy as it relates to sentencing, the following section will address several issues concerning judicial decisions. First, this paper will examine sentencing guidelines and their relevance to the topic at hand. Next, a variety of legal as well as extra-legal attributes factored into sentences will be looked at. Third, this paper will discuss discretion and its effects on judicial decisions. Finally,
the disparities which arise from these discretion will be examined.

Factors in Sentencing

Over the past several decades it has become well established through social science research that legal factors such as offense severity, prior arrests, and prior convictions play major roles with regards to criminal courts dispositions (Frazier and Bock, 1982). It is not surprising that these variables are taken into account during court sentencing; they maintain the relevancy of laws and legal codes. Yet many researchers were not satisfied with these results. Subsequently, some began to change the focus their studies from legal factors to quasi-legal such as jail-time, charge reduction, and defense counsel (Bernstein, Kick, Leung, and Schultz, 1977; Frazier, Bock, and Henretta, 1980; Swigert and Farrell, 1977) and extra-legal factors such as sex (Green, 1961; Griswold, 1987; Lotz, 1977; Nagel, 1969;), age (Green, 1961; Martin, 1934; Nagel, 1969; Wolf, 1965), and race (Burke and Turk, 1974; Green, 1961; Hagen, 1974; Hagan and Bumiller, 1983; Kleck, 1981, 1985; Lotz, 1977;). Since legal punishment cannot be attached to any of these variables, they have been deemed "legally irrelevant" in court proceedings (Lotz, 1977). They are simply additional tools utilized by judges to make sentencing decisions on a
case-by-case basis. To date, a multitude of these such variables have been researched with regards to their influences on judicial decisions, yet pregnancy has yet to be among them.

Many of these studies have had mixed results. Almost all of the research conducted on race has ultimately concluded that the variable has little effect on the sentencing phase of a criminal case. Sex, on the other hand, has proven to be an important variable with regards to sentencing. Regardless of the rationale, many researchers have found that a defendant's sex plays a major role in the sentences they receive (Armstrong, 1977; Boritch, 1992; Clements, 1972; Ekstrand and Eckert, 1978; Steffensmeier and Kramer, 1983). The explanations for this phenomenon are as numerous as the studies themselves. Yet, all have ultimately concluded that men and women do receive different sentences for certain crimes. Accordingly, the extra-legal variable, sex, appears to play an important in sentencing decisions.

While courts are supposed to base their decisions on legal factors, all too often, other variables are accounted for as well. In doing so, the discretion afforded to judges is often abused resulting in disparities. In response to the disparities caused by judicial discretion, the federal
government proposed guidelines. These guidelines were an attempt by the government to limit judges' discretionary powers during the sentencing phase of a case.

Sentencing Guidelines

In the 1980's, nationwide efforts were made to reform sentencing systems at both the state and federal levels. These guidelines were created to reduce judicial sentencing discretion, unwarranted sentencing disparities, as well as race, gender, and class discrimination (Nagel and Johnson, 1994). Though these various guideline systems may differ, all attempt to limit unwarranted disparity by directly binding sentence recommendations to seriousness of the offense and the prior record of the offender (Ulmer and Kramer, 1996). This shift of focus from the offender to the offense should, theoretically, reduce the relevancy associated with factors such as family, employment status, and education in the sentencing decisions of judges. Yet, the few research studies to examine the topic have revealed minimal reductions at best.

Surprisingly, little research has been conducted on sentencing guidelines and their impact on the system. There are only a few studies which have examine the topic, and they are primarily limited to the Minnesota (Miethe, 1987; Miethe and Moore, 1985, 1986; Moore and Miethe, 1986;
Stolzenberg and D'Alessio, 1994) and federal systems (Nagel and Johnson, 1994). Miethe and Moore report that extralegal disparities were reduced in the early years of the guideline implementation but have since increased. After a decade of adhering to sentencing guidelines, practitioners in the field of criminal justice discovered ways to increase their discretion while still remaining within the confines of the restrictions. Some researchers have discovered that extralegal factors such as race, age, and gender are inherently intertwined with a judge's perceptions of legally relevant ones, thereby affecting the amount of judicial discretion (Kramer and Steffensmeier, 1993; Kramer and Ulmer, 1996). Judges often find difficulty in distinguishing between legal and extra-legal variables. While guidelines appear to have reduced discretionary tactics, their effects were quite limited. Rather than concentrate on the theoretical effects of guidelines, more emphasis should be placed on actual sentencing practices of judges. As the next section will discuss, judicial discretion is a highly important topic surrounding pregnancy and sentencing. Without clear guidelines, it is up to each individual judge to decide whether or not to include it in his or her decision.
Judicial Discretion

Discretion pervades the decision making process of virtually every social institution. It occurs whenever the effective limits on the power of a decision maker is allowed freedom to choose between possible courses of action or inaction (Davis, 1969). Under this definition, discretion can be found in almost any bureaucracy; from the highest level of decision makers to the lowest level. The individual interpretation and enforcement of law and policies necessitates discretion. The amount of discretion used by a person may differ, but it nevertheless allows individual beliefs into the decision making process. The essential element of discretion is choice. Anytime a choice is to be made, discretion is used. The common concern surrounding this particular topic is that often during the decision making process biases occur which cause disparities among similarly situated circumstances. The accuracy, reliability, and relevance of information accounted for by decision makers varies from topic to topic (Hawkins, 1992). Accordingly, misinformation often corrupts the process and thus leads to disparities and biases in decisions. Few would deny the inevitability of discretion, but the choices made by some decision makers often bring the integrity of the process into question.
Legal systems in particular have come to rely on official grants of discretion. This is especially important when it comes to pregnant defendants. Whether they are formal decision options explicitly written into rules, or informal ones implicit in the language, discretion ultimately affects the outcome of court decisions. Ideally, discretion is used to highlight the individuality and uniqueness of each distinct case. Yet such idealistic outcomes are often lost in the personal beliefs and biases of judges which, subsequently, create disparities.

There are two key actors within the courtroom setting who exercise discretion; the prosecutor and the judge (Miller and Sloan, 1994). Both play a major role in the handling of pregnant defendants. The discretion afforded to a prosecutor, while perhaps less apparent than that given to judges, carries a tremendous amount of weight. They have to power to decide whether or not to bring charges against an offender. If they choose not to bring charges then the case is terminated and no further actions can be taken. Research has shown that legal as well as extra-legal variables factor into a prosecutor's decision (Ghali and Chesney-Lind, 1986). In the case of a pregnant defendant, the prosecutor is one of several key players in deciding whether or not to factor her pregnancy into his or her decision. While a
prosecutor's role is indeed pivotal in the criminal justice system, this particular study is more concerned with the judge's role.

Trial court judges' discretion is perhaps the most visible form of discretion in the criminal justice system. A great deal of research has been conducted on the topic (Allen, 1987; Gelsthorpe, 1989; McDavid and Stipak, 1981-1982; Nagel and Geraci, 1983; Sabol, 1990; Satter, 1990; Schulhofer, 1988; Simon and Landis, 1991; Wright, 1987). The primary objective of these studies has been to identify, differentiate, and explain the effects of different characteristics of cases and variations in judicial sentencing decisions. Overall, the literature concludes that discretion is influenced and affected by a multitude of characteristics: case, offender, social, and criminal justice process (Miller and Sloan, 1994). Although pregnancy has yet to be examined as a potential characteristic, this research provides an excellent foundation for the current study at hand.

Socio-demographic factors

A crucial element in judicial discretion is the background characteristics of each individual judge. Research has suggested that differences in judicial decisions stem from differences in personal characteristics.
of the decision-maker (van Koppen and Kate, 1984). During the last two decades judicial decision-making has been the subject of extensive research. The leading research study to examine the development of theory surrounding judicial behavior was conducted by James L. Gibson (1983). In general terms, Gibson believes that research claiming a judge's background characteristics influence his or her decisions are based more on assumptions than facts. Since that time, research conducted on the topic have similar results. Among the personal characteristics identified as potential influences are: judicial attitudes (Atkins, 1974; Goldman, 1975; Howard, 1981; Rohde and Spaeth, 1976; Shubert, 1965, 1974), role orientation (Gibson, 1981b; Ungs and Bass, 1972; Vines, 1969), social background (Goldman, 1979; Schmidhauser, 1979), and personalities (Atkins et al., 1980; Gibson, 1981a). Overall, the results have been quite disappointing. Most studies have found it extremely difficult to accurately measure the differences between judicial background and sentencing behavior. Even when a study can conclude that judicial decisions are at least partially attributable to the personal values and experiences of the judge, they lack the power to predict.

Gender. For this study's examination of pregnant defendants and judicial decisions, perhaps the most
An important variable is gender. Several researchers have suggested that the differences in sex role socialization between men and women carries over into the sentencing realm of the system (Parsons and Bales, 1955). Although some recent research studies on the topic have overwhelmingly concluded that male and female judges do not drastically differ in their sentencing behavior (Kritzer and Uhlman, 1977; Songer, Davis, and Haire, 1994; Walker and Barrow, 1985). Arguably the most comprehensive study to date, Walker and Barrow compared the decisions of male and female judges on the federal district courts (1985). Overall, the study found no significant differences between the two categories of judges. Yet upon closer examination, they did report a statistically significant difference in the area of personal liberties and minority policy issues. In such cases, male judges were more likely than their female counterparts to support the liberal position.

Two other studies came up with comparable results. In examining federal court cases involving obscenity, search and seizure, and employment discrimination, Songer, Davis, and Haire also obtained mixed findings (1994). While no difference were found in the voting behavior of male and female judges with regards to obscenity and search and seizure cases, the same cannot be said of those involving
employment discrimination. Female judges appeared to support victims of alleged discrimination more frequently than their male colleagues. Unlike the above studies, Kritzer and Uhlman, failed to find any statistically significant differences. Looking at the sex of both the judge and the defendant, these researchers ultimately concluded that the sentencing decisions of judges were not differentially influenced by sex.

While the overwhelming majority of studies to examine sex and sentencing decisions have found little to no difference between men and women, none have specifically looked at the innately female biological condition of pregnancy. It is quite possible that the opinions of male and female judges differ on the topic of pregnant criminal defendants. In addition, other variables aside from background characteristics may factor into the decision making process. The following section will discuss courtroom recommendations and their potential influence on judicial decisions.

**Recommendations**

As discussed above, there are many different factors which contribute to individual sentences. In addition to the different background characteristics of judges, sentences also depend on those of defendants as well. While
legal factors such as seriousness of the current offense and past criminal histories are given the most weight, judges often refer to a defendant's background characteristics. Yet judges often lack this necessary information, and are, therefore, forced to rely on other courtroom members' knowledge of the defendant to assist them. Some information can be obtained from either the district attorney or the public defendant. But many would argue that the most crucial sources of information is found in a probation report.

The presentence investigation report is primarily designed to aid the court in determining the appropriate sentence to be imposed upon each offender. It includes a statement of material gathered in pretrial investigation as well as a sentencing recommendation to the judge (Campbell, McCoy, and Osigweh, 1990). Among the background information collected by a probation department is: prior criminal history, family and marital status, employment status, financial status, preexisting medical conditions, time in detention, harm to victim, and community ties. After analyzing and interpreting each of these socio-demographic characteristics, probation officers then prepare their recommendation for the appropriate sentence. This is
arguably the most important piece of information to influence a judge's sentencing decision.

Probation reports have been given a great deal of attention in the past few decades. A number of different researchers have studied these reports and their effects on judicial sentencing (Bartoo, 1973; Campbell et al., 1990; Carter, 1966; Frazier, Bock, and Henretta, 1983; Goodwin, 1996; Lohman, Wahl, and Cater, 1966; Rush and Robertson, 1987). Ultimately, all of these studies have concluded that information contained in probation reports is used by judges in their decision making process of sentencing offenders. What and how much is used of these reports has yet to be agreed upon. Comparisons of probation officers' recommendations with actual sentences imposed have shown a strong connection between the two. Robert Carter conducted two of the most cited studies on probation recommendations. In his first study, Carter examined 500 cases in San Francisco known as the Federal Probation San Francisco Project (1966). The second study gathered data on 455 presentence investigation reports and recommendations made by probation officers in the state of Washington (1966). Overall, Carter reported a high percentage of agreement between the recommendations and the actual sentences. He found that between 72 and 95 percent of the time these
recommendations mimicked sentences of probation (1966). These percentages were considerably less (67%) for sentences of incarceration, but noticeable nonetheless. While these results show a high percentage of agreement, they fail to address the issue of whether or not judges take into consideration the recommendations or merely that their own judgment agrees with that of the probation officer's. Regardless, it appears as though presentence reports do have an affect on the outcome of sentencing decisions.

Women And The Court System

Gender bias in the courts has been a topic of research for over two decades. What began as an elementary inquiry into the broad discussion of women and courts, has since turned into a vast body of research topics. Beginning in the early 1980's, a number of different task forces were created to examine and identify issues surrounding bias in the courts. They became the primary method for gathering information regarding women and their disparate treatment within the justice system (Resnik, 1996). In examining women litigants, witnesses, lawyers, and court personnel, many of these task forces found a plethora of sexist beliefs and attitudes displayed in actions of the court (Shafran, 1987). While bias based on sex exists throughout the
criminal justice system, its presence is most identifiable in the courtroom.

William Eich has defined gender bias as "a predisposition or tendency to think about and behave toward others primarily on the basis of their sex" (1986). In the courtroom setting, it is reflected in attitudes and behaviors which are based on stereotypical beliefs rather than individual characteristics. Since the judicial profession has traditionally been dominated by the experiences and ideals of men, this stereotypical thinking of women often enters into the decision making process and thus affects the development of law as well as the outcomes of individual litigants (342). Although most would assume these biases to dissipate through time, they still remain an ever-present force in the current court system. While studies have identified the biases, researchers have yet to agree upon the rationale behind such behavior. The following section will discuss some of the original explanations for gender disparities in court.

**Preferential vs. Prejudicial**

Gender bias within the courtroom has generally placed female offenders at one of two extreme positions. At one end of the spectrum, women are treated more leniently than men; on the other end, women are treated more severely.
Some have argued these findings to be indicative of the criminal justice system's perpetuation of traditional sex-role stereotypes (Saulters-Tubbs, 1993). While most women are thought of as weak and defenseless creatures (in need of protection), others are chastised for their violent and aggressive behavior. Clarice Feinman explains this phenomenon as the madonna/whore duality (1980). Women who maintain their femininity and womanhood are placed within the constructs of the "madonna" and are often afforded preferential treatment within the system. Yet women who betray these traits (i.e. the "whores") are, consequently, denied such treatment. Instead, these "fallen women", as they are referred to, are punished more severely than their male counterpart. Once a woman is cast in the role of "whore" she is never again the beneficiary of preferential treatment. Since such a woman no longer maintains the natural qualities embodied in women (that of virtue and innocence), she is deemed morally corrupt and thus her punishment is more severe than that of a male offender. Both society and with the criminal justice system find it necessary to disproportionately punish women who defy their natural roles.

Many researchers studying gender bias within the courtroom have generally found that women receive more
preferential treatment than men. Male chivalry and paternalism are the most frequently cited explanations for the disparities found between women and men in the criminal justice system (Moulds, 1977). In a 1967 study conducted by Reckless and Kay for the President's Commission on Law Enforcement and Administration of Justice, they asserted that chivalry was the most prominent source behind the vast amount of disparate treatment within the system. They wrote:

Perhaps the most important factor in determining reported and acted-upon violational behavior of women is the chivalry factor. Victims or observers of female violators are unwilling to take action against the offender, because she is a woman. Police are much less willing to make on-the-spot arrests of or to "book" and hold women for court action than men. Courts are also easy on women, because they are women.

Essentially, Reckless and Kay concluded that women were treated more moderately by officials because of the stereotypical beliefs held throughout time regarding women's roles in society. As this passage suggests, notions of chivalry pervaded all areas of the criminal justice system; researchers have used this explanation to explain the preferential treatment women received in every area of the system. Chivalry provided researchers with a simple explanation to the topic. Yet, many argued that it only scratched the surfaced.
More recently, researchers expanded on the chivalry thesis and concluded that women were the victims of paternalism. In addition to the gentle and beneficial treatment expressed in chivalrous behavior, many officials often exhibit protective or paternalistic ones as well. These attitudes are much more debilitating to women than those found in chivalry. Paternalism asserts that women are too weak and vulnerable to defend themselves, and, therefore, in need of guidance (Moulds, 1977). Although women usually benefit from such preferential treatment, some researchers argue that the special protection curtails women's freedoms and rights (Datesman and Scarpitti, 1980; Price and Sokoloff, 1982). What both of these belief systems fail to address though is the exceptionally harsher treatment some women received.

The other side of the chivalry/paternalism thesis has been described by some as the "evil woman" thesis. In contrast to those who maintain that women offenders receive more lenient treatment than men, another group of researchers have found that in certain instances women actually receive harsher punishments for similar offenses than their male counterparts (Chesney-Lind, 1978; Johnston, Kennedy, and Jhuman, 1987). Theorists have explained this phenomenon as women's "double deviance"; when women commit
certain crimes (i.e., homicide, assault, and robbery) they violate both the law as well as their socially prescribed gender roles (Saulters-Tubbs, 1993). Since women are traditionally seen as passive and weak, when they commit violent offenses they are often considered excessively deviant. Unlike male offenders, females who fail to conform to social norms are even more deviant.

Studies on Gender Bias in the Courtroom

In the past two decades, an increased amount of attention has been paid to gender bias in the courtroom. As an attempt to reveal disparities, researchers have examined the relationship between gender and criminal justice dispositions at various stages in the process, including arrest, pretrial release, charging and plea-bargaining, convictions, and sentencing (Curran, 1983; Nagel and Hagan, 1983; Nagel and Wietzman, 1971; Norland and Mann, 1984; Parisi, 1982; Visher, 1983). In response to earlier criticisms, most of these studies controlled for the variables of seriousness of the offense and prior criminal record (Steury and Frank, 1990). Yet even after controlling for such variables, some researchers still managed to show disparities between the treatment of male and female offenders within the system (Spohn, Gruhl, and Welch, 1987). Although most studies have found evidence of differential
treatment in the courtroom, it does not appear to be constant across all stages of decision making, for all type of offenses, nor for all categories of female offenders (Boritch, 1992). Leniency toward women is more often found in sentencing and pretrial release decisions rather than in those for case dismissal or conviction; for women charged with less serious offenses; and for women who are economically dependent, married, or have children (Daly, 1987; A. Edwards, 1989; S. Edwards, 1984; Kruttschnitt, 1981; Kruttschnitt and Green, 1984; Nagel and Hagan, 1983). The one consistent finding in virtually all of these studies is that women maintain a much greater chance than similarly situated men of receiving probation (Ghali and Chesney-Lind, 1986). The rationale for such findings have often been attributed to the less seriousness of women's crimes as well as their criminal records. While this may provide a insight into the phenomenon, some researchers have attempted to elaborate on this general explanation with regards to sentencing practices. The following section will discuss the current philosophies employed in this realm of the criminal justice system.

Women and Sentencing

The sentencing stage of the criminal justice system is one of the most crucial steps in the process. Whether a
judge is given discretion to choose the sentence or the sentence is dictated by legislative mandates, discrimination can be found on the basis of sex (Clements, 1972). Overall, the majority of studies on judicial decision making support the preferential treatment hypothesis (Baab and Furgeson, 1967; Curran, 1983; Gibbens and Prince, 1962; Moulds, 1978; Nagel and Weitzman, 1971; Pollak, 1950; Simon, 1975).

Perhaps the best known study was Nagel and Weitzman's analysis of indigent defendants charged with either grand larceny or felonious assault (1971). The results of their study showed that when compared to men women were less likely to be sentenced to jail and more likely to receive suspended sentences or probation. Based on these results, the researchers ultimately concluded that the supposed punitive treatment women receive within the court system is in fact more paternalistic.

Additional studies have also found a general pattern of preferential treatment during the sentencing phase of a criminal case. Using a multiple regression model to examine sentences received for 13 felony offenses in Texas courts, Baab and Furgeson (1967) unveiled a pattern of sentencing where women maintained a substantially higher percentage than their male counterparts of receiving nonimprisonment sentences. Two other studies (Frazier, Bock, and Henretta,
reported virtually identical findings to the one above. While the results of these studies are indeed important to the subject of gender and sentencing disparities, one in particular has been touted as the most comprehensive.

An examination of felony case processing in Dade County, Florida has proven to be one of the most thorough studies to find evidence of preferential treatment in the courtroom (Curran, 1983). Using multiple regression, Curran examined judicial processing at four levels: negotiating, prosecution, conviction, and sentencing. At each level, she studied the effects of legal variables (number of prior arrests, seriousness of the offense, and total number of counts) as well as non-legal variables (race, age, and employment status) on the judicial decisions (Ghali and Chesney-Lind, 1986). In general, Curran's results did not support the contention that these variables help predict the outcome of a case. Yet, she goes on to explain that while gender was not found to be important at the negotiation, prosecution, and conviction level, it did play a role in the sentencing phase. The results of her study showed that gender was indeed an important variable with regards to the lenient sentences frequently given to women.
While not the most thorough, but perhaps the most applicable to the current study is one conducted by Pope (1975) on felony offenders in California. He found mixed results in his examination of sentence severity. The data collected in Pope's study indicated that women were likely to fare slightly better than men in lower courts, but were treated equally in superior courts (Ghali and Chesney-Lind, 1986). This may be due in part to the fact that the lower courts typically handle lesser offenses and thus judges have more discretion to allow non-legal variables into their sentencing decisions.

Other studies have failed to find the same results. Chiricos, Jackson, and Waldo (1972) found that in 2,419 felony probation cases in Florida, women were no more likely than men to be offered probation or other options which would allow them to avoid incarceration. Similarly, in a 1970's study of Georgia murder cases, Ekstrand and Eckert found no difference between the sentences given to male and female offenders. Also, while Hagan and O'Donnel (1978) did find differences between the sentence severity of male and female offender, the differences were not statistically significant. Due to the lack of consistent findings and adequate explanations, some researchers have attempted to expand on the topic of disparate sentencing practices. The
following section will highlight the current direction of judicial sentencing.

Current Trends

Current studies on gender and judicial sentencing attempt to identify other factors besides sex which may contribute to the disparities. Due to the conflicted results of the past, sex alone did not properly explain the preferential treatment for these researchers. Instead, they attempted to find commonalties aside from gender which may present an advantage or disadvantage in court. The leading researchers to examine this area are Candace Kruttschnitt and Kathleen Daly.

Social Status. Expanding on the characteristic of sex, Candace Kruttschnitt theorizes that differences in social characteristics as opposed to biological ones better explain disparities in courtroom practices. She identifies economic dependency as one specific gender-related social characteristic (1980-81, 1982). Economic dependency, she claims, is an one of many forms of social control which society places on women and their activities. The level of one's dependency has been inversely linked to the degree of control (Black, 1976). Law and legal codes are primary forms of social control in our society. As such, the greater degree of economic dependency, the lower level of
social control, and vice versa. Since women are typically more economically dependent than men, they require less social control (i.e. legal sanctions). Accordingly, Kruttschnitt believes preferential treatment within the courtroom is dictated by economic dependency rather than sex.

Familial Circumstances. Perhaps the theory most applicable to the current study at hand is that proposed by Kathleen Daly. In her research on the sentences given to "familiated" versus "non-familiated" defendants, Daly focuses on parenthood rather than the traditional theories of paternalism and chivalry (1987a, 1987b, 1989). While the issue of pregnancy is not directly addressed in her studies, indirectly, it is accounted for through research on children. According to Daly, judicial outcomes and variation in sanctioning among females are linked to family as opposed to gender differences. It is believed that in a response to protect children, preserve intact families, reinforce traditional family-based gender roles, and preserve the economic interests of the state by avoiding the removal of female caretakers from the home, judicial officials give preferential treatment to some defendants (Bickle and Peterson, 1991). Based on court observations and interviews with 35 judges, defense attorneys,
prosecutors, and probation officers in Massachusetts, Daly argues a familial paternalism perspective on sex and sanctioning. Her data suggested that courts first distinguish between familied and non-familied defendants when granting leniency (1987b). The differential treatment is a product of social control and social costs. The sex differentials are a result of the perceived responsibilities of male and female defendants. Officials often believe it's more costly to jail women with families than men with families because the care-taking labor is not as easy to replace as the "breadwinner" labor.

In addition, Daly conducted two other research studies to test the paternalism thesis. First, she examined the impact of having a family on pretrial detention time, dismissal/indictment decisions, acquittal/guilty findings, severity of non-jail sentences, and the likelihood of a jail sentence for a sample of male and female defendants (1987a). Her results showed that women received more lenient treatment than men in pretrial release and the severity of non-jail sentences; the sex effect diminished when the family status variable was included; having dependents, rather than being married, was the key family status factor leading to preferential treatment (Bickle and Peterson, 1991). Another research study Daly conducted on gender
division of labor on judicial sentencing in Seattle, Washington also supported the familied paternalism thesis (1989).

Overall, Daly concludes that disparities commonly found between men and women during the sentencing phase have more to do with their familial responsibilities, or lack thereof, than their gender. The more other's are dependent on the physical care of economic support of the defendant, the less likely the defendant will be sanctioned formally by the court. The opposite holds true for non-familied defendants. Her data suggests that the more ties on has to the community (i.e. family, church, work, etc.), the less severe the sentence.

While the social control thesis may apply in general terms, Daly herself admits that these sentences also depend on the offense committed. Anytime women deviate from their prescribed roles as mother and nurturer, society feels compelled to punish them. This is especially true when it comes to criminal offenses involving a child. Courts exhibit little apathy towards women who put their own needs before their child's. While fetal abuse cases remain the only legal response to pregnancy and crime, it is naïve to think that pregnancy is not accounted for in other judicial decisions. As an agency designed to maintain social
control, the criminal justice system must persevere traditional beliefs and attitudes regarding women. The current research study attempts to identify the importance of pregnancy and its effects on judicial decisions.
CHAPTER THREE

Methods

Design

Researchers within the field of criminal justice have yet to address the affects of pregnancy on judicial sentencing decisions. Fetal abuse remains the only related topic to be examined, but the findings are limited in their applicability to the study at hand. This overall lack of research has, subsequently, provoked a rudimentary examination of the issue. As such, the information collected and analyzed for this particular project remains exploratory in nature. The exploration of this understudied topic is an elementary attempt to decipher the relevance of pregnancy within the criminal justice system, and whether further research is warranted. Although the results may be greatly limit in their generalizability, they nonetheless address an issue which might have otherwise remained hidden.

This particular exploratory research study necessitated a qualitative design. Each case brought before the court is undeniably unique and complex. To adequately address the individuality of each judge and his or her decision, in-depth, face-to-face interviews were conducted. Each participant was asked a series of five open-ended questions. As a whole, the questions were designed to elicit detailed
information regarding the dynamics of pregnancy as they relate to judicial decisions. The interviews were between twenty to thirty minutes in length, depending on the thoroughness of each response. For greater accuracy, the contents of all interviews were written as well as recorded on tape.

Locating Participants

Several techniques were employed to identify the participants in the study. First, the internet was used to find a listing of all the judges in Los Angeles county, including their location, department, and telephone number. While it provided some of the most current and up-to-date information, only a few counties maintained such a comprehensive and detailed list of judges. Among those counties not found on the internet were San Bernardino, Riverside, and San Diego.

Unable to locate judges in these counties, additional information was ascertained through a California source book. Listings of each judge, including his or her location, department, and telephone number were found here as well. Yet due to the large portion of incorrect and outdated information, more reliance was placed on the data extracted from the internet.
An additional technique used in this study to locate potential participants is commonly referred to in literature and research projects as the "snowball" effect. After locating and contacting participants, an inquiry would be made regarding references to others who might have experience with pregnant defendants and who would be willing to participate in the study. This technique proved extremely beneficial for two important reasons. First, it substantially decreased the amount of time and energy necessary to locate the participants. Second, and most importantly, it provided the credibility necessary to comfort the referred participants; judges were much more willing to set up interviews when they knew they had been referred by a colleague.

Contacting Participants

Once participants were located, the next step was contacting their offices in hopes of setting up an interview. It was during this stage of the process that the most difficulty was encountered. After calling judges in both Los Angeles County and Orange County, a realization of the overall lack of cases involving pregnant defendants was erected. Every single one of the dozen or so judges contacted in Orange County claimed not to have had any experience with pregnant defendants. The same responses
were found in Los Angeles Country as well, but not quite as prevalent.

Although the large and diverse population in Los Angeles County should produce a wide variety of cases (including those with pregnant defendants), such was not the case in this study. After contacting nearly thirty different departments, only four judges reported having encounters with pregnant defendants; most judges claimed to have little or no experience. Fortunately, the four were willing to participate in the study. In addition, an attempt to locate others with experience in case involving pregnant defendants proved futile. Each participant was asked if they could refer any additional judges, all failed to provide names of judges whom had not already been contacted.

Surprisingly, the county most instrumental in the current research project was San Bernardino. There, unlike the previous two counties, not only did a greater proportion of judges have experience with pregnant defendants in their courtrooms, but the experiences were much more frequent as well. Also, due to the relatively small size of the county and its court system, most participants could refer others who dealt with similar cases. It was here that the "snowball" effect was best utilized. Most participants were
able to give the names and numbers of other judges, which, subsequently, led to additional interviews. In one case, a participant actually walked me over to another judge's chambers and introduced to his colleague. Overall, the participants in San Bernardino County were more easily accessible, offered more insight, and more helpful than those in other counties.

Subjects

In all, nine judges participated in this study. Although the task of finding participants willing and able to discuss the issue of pregnancy as it pertains to judicial decisions was quite difficult, those who chose to participate were very open and candid with their responses. This may be due in part to the fact that the questions were neither highly personal nor extremely sensitive. Some participants were more hesitant than others to elaborate on their responses, but all managed to answer each question with thoroughness and sincerity. As with any interview though, caution must be used when interpreting the responses. While socially acceptable responses did not appear to be the norm in this particular study, their existence must nevertheless be overlooked.
Of the nine participants, six were male and three were female (a representation not unlike the overall proportions of male to female judges). While an attempt was made to limit the study to include only superior court judges, one participant in San Bernardino County came from the juvenile court system. In addition, four participants were from Los Angeles County (2 males, 2 females) and five from San Bernardino County (4 males, 1 female). Each participant in this particular study was white, with an equal number between the ages of 40-50 (4) and 51-60 (4). The only other participant in the study was between the age 61-70. Also, eight of the nine participants reported having children (each having two).

A wide variety of responses were recorded with regards to experience. First, participants reported an average of 19 years experience in the criminal court system. This includes time spent as a prosecutor or defense attorney, as well as judge. This average is a bit misleading though because the range between the years was quite large (33). Therefore, one judge had as little as two years experience while another had as many as thirty-five.

Similar, yet less dramatic, results could also be found in the participants' experience as a judge. On average,
each participant had ten years experience on the bench with a little less time than that as a superior court judge (seven years). But, once again, these numbers are misleading. There was a twenty point range in both categories which a crude average often neglects to identify. Here too, some judges had less than five years experience while others had more than twenty. Due to the lack of sophistication in this particular research design though, averages were chosen to simplify the study.

Settings

As was often the case, most participants had to skillfully fit the interviews into their busy schedules. In doing so, they often found the most convenient time to be before or after court was in session. While most preferred interview times after court ended for the day, a few chose times before. Regardless, all but one interview took place in the judges' chambers. Most frequently, participants would lead me into their chambers, leave the door open, and answer the interview questions as well as any others that may arise from courtroom members. It was quite rare that an interview could be conducted in its entirety without at least one interruption.

The only interview completely devoid any interruption was coincidentally the only interview not conducted in a
judge's chamber. Instead, one participant asked that the interview take place during his lunch hour at a local restaurant. Although this location did not initially appear extremely conducive to the nature of the interview, in retrospect it was perhaps the most advantageous because of the heightened attention allowed for both questions and answers.

Instrument

The interview schedule used in this particular research project was designed to ascertain the extent to which extra-legal factors, specifically pregnancy, influence judicial decisions. In asking each participant a series of five open-ended questions, an attempt was made to identify similarities as well as differences among responses. For the full and complete schedule please see appendix.

Limitations

Limitations are an ever-present component found in most research studies. This study is no exception. Perhaps the most significant limitation to this project is the exploratory nature of the research design. Since other studies on the topic are virtually non-existent, little evidence is available which could potentially support or dismiss the findings. Lacking the guidance and consistency
necessary to conduct a thorough investigation, the results obtained from this study are speculations at best.

Additionally, the small sample size greatly limits the findings as well. Very few conclusive results can be achieved through an examination of nine participants. Although the confining nature of subject matter necessitated the small number of participants, it nonetheless limited the generalizability of the overall findings. Accordingly, the results must remain applicable only to this particular study.

Other limitations include the proportionality of the judges, as well as the court systems they preside over. Ideally, it would have been most advantageous to interview an equal number of male and female judges. Yet actual numbers indicate that male judges are far more prevalent in this country's court systems than female judges. As such, only one-third of the sample contained females.

Also, not all of the participants interviewed were current superior court judges. Although the goal of this study was to limit the interviews to judges currently holding a positions within the California superior court system, this task proved quite difficult after attempts to locate judges with experience in handling pregnant defendants proved futile. All but one participant currently
held positions within the superior court system. And the
juvenile court judge who was not within the system had
several years of prior experience as a superior court judge.
While all judges had encounters with pregnant defendants,
their various positions within the system could have
potentially affected their actions with regards to the
pregnancy.
CHAPTER FOUR

Analysis

Pregnancy as it pertains to the court system is certainly an important issue to discuss within the realm of criminal justice research. While this particular examination was relatively simplistic, it nonetheless highlighted a topic previously overlooked by researchers. Ultimately, the purpose of this project was to identify the influence, if any, a defendant's pregnancy had on judicial decisions. As the following findings suggest, pregnancy was indeed accounted for by all of the participants in this study. Whether it became an aggravating, mitigating, or nullifying factor in each separate case depended on the individuality of the judge.

Overall, the interviews contained several noteworthy inferences. While the primary topic of discussion for the present study surrounded the issue of pregnancy, other subjects were indirectly examined as well. Several findings that will be discussed here include: a differentiation between judicial decisions and sentencing decisions; lack of consistent communication and accurate information passed between jurisdictions; the impact of legal and extra-legal factors on such decisions; discrepancies between a judge’s experience and his or her responses; as well as others of
less noteworthy. Each will be thoroughly examined in the sections to follow.

Judicial Decisions vs. Sentencing Decisions

Discovering the difference between judicial decisions and sentencing decisions as they relate to pregnancy is perhaps this study’s most important attribute. All too often, these separate and distinct entities are viewed as one of the same. Yet, the responses given in these nine interviews clearly distinguish between the two. The fact that judges have powers and privileges beyond the imposition of sentences is often overlooked in criminal justice research. Among other notable powers afforded to judges include the authority to postpone dates (i.e. hearing, sentencing, and, most importantly, custody); to order a defendant back into his or her courtroom; and to require that a defendant attended certain programs depending on the circumstances. In this study it became clear that pregnancy influenced judges' decisions with regard to these factors than those surrounding sentencing.

When asked if a defendant’s pregnancy influenced their sentencing decision, the judges responses differed. Two judges expressed the belief that pregnancy should be factored into sentencing decisions. One responded, “I think pregnancy is something that you have to take into account.
If you have a pregnant defendant in front of you, you certainly cannot ignore that." Similarly, another participant replied, "...and to the extent one can, one tries to fashion a sentence that takes into account the fact that the defendant is pregnant."

Responses such as these, however, were few and far between. Rather, a majority of the participants emphatically denied a relationship between the two. As one judge explained, "No! I don't think if somebody hurt someone and they happened to be pregnant that their pregnancy should allow them special privileges." This response and others similar to it would indicate that aside from an obligatory acknowledgment by the court, a pregnancy was not given any further attention or consideration.

Yet upon closer examination, it became quite apparent that while the pregnancy was not greatly accounted for at the sentencing phase, it was indeed a variable factored into other decisions. As one judge explained,

For me it [the pregnancy] doesn't [influence the sentence]. I try to treat everybody the same: man/woman, pregnant/not pregnant. As far as ultimately what's going to happen. On the way to get there, certainly I'll make accommodations for the pregnant person. Like putting off custody for them to deliver and then the postpartum time, nursing time. Things like that I make accommodations for all the time. I tell them that I can't excuse them from anything, but I don't want them early-terming because they are worried about jail or going into the prison. ...it's a question
of when (emphasis added) they’re going to prison, not if (emphasis added) they are going to go.

Sentiments similar to this were also expressed by several other participants. Pregnancy in general was not factored into most sentences but, rather, given extra-ordinary consideration with regards to housing and custody dates, for example. On the rare occasion that a defendant’s pregnancy was accounted for in the sentence, usually one of two conditions was present; the offense was either at the lower end of the severity scale or it involved drugs. Both inversely affected the influence of pregnancy on the sentencing decision.

The first condition, a less severe offense, typically warrants a sentence of probation or jail time. As such, more leeway was available for judges to accommodate the pregnancy. This practice is exemplified by one participant in the following statement.

The easy thing is if I have an individual that I am placing into a county jail setting with probation. ...I’ve been known to continue cases until the child is born. If she’s about to give birth, and it’s a county jail situation, I will very often allow her to return to court to begin the jail sentence when the child is say, six weeks, eight weeks old.

In such circumstances, according to some judges, pregnant defendant’s were often granted a greater amount of leniency than others. While the pregnancy itself was not the
determining factor in the sentence, it nonetheless
influenced the decision. The same cannot be said of drug
offenses though.

The sentences handed down to pregnant defendant's
convicted of drug offenses are often more severe than those
given to others. Several participants admitted that a
defendant's pregnancy did indeed influence their sentencing
decision in cases involving drug offenses. Many felt that
stiffer sentences would reduce the incidences of drug-
addicted newborns. As one participant explained, "I would
exercise my discretion to keep 'Mom' in custody rather than
let her out if I know she's using drugs." This sentiment
was also expressed by another judge who confided, "...I don't
want to let her out of jail if she's pregnant and
potentially using drugs. I don't want to injure the child."
In such cases, judges view the pregnancy as an aggravating
factor rather than a mitigating one when deciding upon the
appropriate sentence.

To further illustrate this sentencing philosophy, one
female judge explained,

In one case I had a pregnant defendant who was in on a
felony probation violation and was going to be given
county jail time. She had about three months of jail
time left to do and the pregnancy had about two and a
half more months to go. She made this impassioned plea
to let her out and do her time on weekends. I could
have done that; I had the discretion to do it and the
District Attorney was not opposed. But I kept her in jail for one reason...the violation of felony probation was drug use. I said, 'I'm sorry, but if I keep you in jail the chances of me getting a drug-free baby at birth are really good. If I let you out, I know for certain I'm not going to get a drug-free baby.'

This specific example highlights the discretionary tactics used by many judges when sentencing pregnant defendants. Pregnancy in these cases proved more of a detriment to the defendant than an attribute.

**Jurisdictional Uncertainties**

Additional findings of this study indicate an overall lack of standardization with regards to the power and authority vested in the courts. Jurisdictions within the criminal justice system were designed as a mechanism to limit unwarranted uses of power (Barak, 1989). As such, separate departments were created to divide the duties and responsibilities within the system. Ideally, these individual departments would work collaboratively in order to provide effective and efficient service for the people. While most participants perceptions surrounding their own limits of power and authority remained relatively uniform, some inconsistencies were found in their perceptions of others. These included both the probation department and the corrections department, as well as other branches of the court system.
Probation

A great deal of emphasis is placed on the relationship between judges and probation officers. Specifically, the reports submitted by officers to judges prior to sentencing. By law, judges are required to read the detailed reports containing background information on the defendant as well as a recommendation by the probation officer. The results of the present study found that while most participants admittedly relied on information regarding the defendant, the same reliance was not placed on the recommendations. Instead, participants varied considerably in their use of the recommendation.

When asked the regularity with which they rely on other courtroom members' recommendations, one participant replied, "I would imagine that with most frequency . . . about 75% of the time . . . I rely upon the probation officer's recommendation." This response was not unlike the majority of others in the study. In fact, two responses were virtually identical. One stated, "I rely quite heavily on the presentence reports given to me by the probation officers because they have conducted a thorough investigation of the client and his or her case." While
another replied, "I rely very heavily on the probation report because they do a very thorough investigation." Most agreed that while their decisions were not always in agreement with the recommendations set forth by probation officers, a large percentage of the time they were.

Yet along the continuum of responses came two extreme positions. On one end was a participant who relied almost exclusively on the probation officers' recommendations, while at the other was one who rarely even read them. Justifying his rationale, the first participant explained, "I've been doing this job for quite a long time, so I kind of get a pretty good idea of what I think a case is worth. Nine out of ten times I usually agree with the officer's recommendation." While the other one professed, "The opinion of the probation officer means nothing to me, and I don't always read their opinion as far as recommendation." This response in particular would indicate that the devices implemented to control abuses of power by one department over the other lack effectiveness.

**Corrections**

Once a defendant is sentenced, he or she is then taken out of the court's jurisdiction and placed into the department of corrections'. It is here where judges relinquish their authority over the defendant and place it
in the hands of the corrections department. The results of this study show that while most participants willfully relinquished such authority, yet often without an adequate understanding of correctional duties and responsibilities.

The department of corrections maintains ultimate power and authority over the facilities that house defendants before, during, and after sentencing. As this study reveals, a majority of participants were unaware of any facilities specifically designed to accommodate pregnant inmates. One participant remarked, "I'm not aware of any. C.I.W. [California Institutions for Women] must have a housing unit for pregnant women, I would think. I honestly don't know." Another asserted, "I know they exist, but I do not know the names of them." As these replies indicate, participants assumed that facilities existed which could accommodate pregnant inmates, yet lacked the specific knowledge of their names.

Additionally, a few judges elaborated on the relationship between the judicial system and the corrections department. One participant explained, "As a practical matter, we don't know or understand a lot about the facilities." Another answered, "When I commit somebody to state prison, I can't tell corrections where to put them. That would be like corrections telling me what sentence to
give somebody." In contradiction to this response though, other replies indicated that some judges do advise the correction department through their recommendations. As one participant explained,

If a woman before me is pregnant, and I have to send her to state prison, I will direct the Department of Corrections to place her in a facility that will be able to handle her prenatal care and after care of the child.

Another asserted, "If I was aware of a state facility and I had a pregnant woman, I would recommend to the Department of Corrections she be housed there." As evident in these responses, restrictions placed on the two jurisdictions are perceived by some, but not all, judges.

Courts

Individual courts maintain separate jurisdictions as well. The limitations placed on different court systems proved meaningful in this study. When asked to what extent they were involved in future decisions regarding the child, all participants were keenly aware of the limitations placed on their jurisdiction. As one judge explained, "I don't have any jurisdiction over the child." Another added, "My jurisdiction is adult criminal, period. I have no legal authority or jurisdiction over a minor." Similarly, one judge affirmed, "I'm not a juvenile court judge; I'm not a
family court judge. I'm a criminal court judge. I will only be concerned if the crime involves something to do with the child, such as child endangerment." These responses exemplified the overall attitude of the entire sample.

While the participants' jurisdiction ended with the adult criminal defendant, many discussed alternative capabilities. Such avenues are discussed in the following responses.

If I suspected abuse, I could pick up the phone and call Child Protective Services...just like anybody else. I can call my colleagues in juvenile and informally exchange information. But I expressly could not have anything to do with the child.

I have ordered parents to attend parenting classes; I have ordered parents to take their child to a doctor; I have ordered parents to attend family counseling sessions with their child. But it's always the parent that I am ordering because that's where I have the jurisdiction.

The only potential power that I could have (and it would be real hard for me to exercise it) is if another branch said that the mother could have the child back, and I disagreed with their order, I could try to pull her back in on a potential probation violation to get her away so that the other order couldn't be carried out.

As these replies suggest, a criminal court judge's jurisdiction is greatly limited. Therefore, several participants indicated that the only way to influence decisions regarding the child was through informal means. While this practice may be deemed unethical by some, these
responses show that the use of informal mechanisms nevertheless prevails.

**Legal and Extra-Legal Variables**

Although the present study focuses primarily on the topic of pregnancy, an interesting pattern emerged with regards to legal and extra-legal sentencing factors. As the above findings suggest, participants often accounted for a defendant’s pregnancy depending on the individual circumstances of the case. In addition to this variable, legal variables such as current offense and past criminal history were factored in as well. As one participant explained, "If I have a woman who is seven months pregnant, she commits murder, she’s going to remain in custody." As with most participants, when the crime in question is of a violent nature, guidelines restrict the discretion one can afford the pregnancy. Another participant supported this postulate by saying, "If an individual, male or female, is involved in violent crime, it’s very unlikely that something like pregnancy is going to come into play because they may well be a danger to the community." Overall, most agree with these sentiments.

This study confirms other studies which found that judicial decisions were based partially on extra-legal
variables as well as legal factors. Such variables included pregnancy (as discussed above), employment status, and family ties. The degree to which some judges inevitably gave credence to extra-legal factors varied throughout the study. As highlighted in the following response, one participant attempted to maintain a level of equality and fairness in her decision making process:

I am always a little uncomfortable using the fact that she’s [the defendant] a female and has children because it’s just as frequent that we have males in here who have three or four children, and they are the sole support of their children.

While another declared, “I try to give some priority to women with children (or men with children) because it’s not a sexual issue so much as it is a nurturing issue.” A statement such as this one only solidifies Kathleen Daly’s (1987a, 1987b, 1989) findings that preferential treatment within the courtroom was more attributable to a defendant’s family status than their gender. Although such treatment is theoretically illegal and unethical, these findings show that it nevertheless continues to occur throughout the court system.

Experiences vs. Responses

The results of this study also reveal that disagreements existed between a few participants’ responses and their experiences. One such conflict was illustrated by
a judge who had a great number of pregnant defendants in her courtroom, yet lacked any specific knowledge of available facilities. Although she had presided over a dozen cases involving pregnant defendants come before in less than two years, she was unaware of any state facility specifically designed to accommodate pregnant inmates. "C.I.W. [California Institutions for Women] must have a housing unit for pregnant women, I would think. I honestly don't know," she professed. Asked if this had influenced her decision, she replied, "If I knew of that environment...ABSOLUTELY! (emphasis added)" Although she assumed there were specific facilities designed to accommodate pregnant inmates, such information had failed to influence her decisions up to that point.

The prevalence of pregnant defendants within the courtroom also caused a another disagreement between one participant's response and experience. This particular judge had informed me that in his twenty-two years on the bench he had had only a handful of pregnant defendants. This was not unlike the majority of other participants interviewed in this study. Yet upon further probing, this participant confided, "I've had a bunch now that I think about it, but at low levels." For whatever reason this judge had overlooked several of his past experiences.
Although this oversight was only admitted by one, the possibility that others had done the same nonetheless existed.

**Other Findings**

Additional findings of the study include the prevalence of drug offenses and the way in which a pregnancy is typically brought to a judge's attention. Also, this study revealed similarities and differences between male and female judges, the county their court resides in, as well as the court branch they preside over.

First, a majority of participants in this study reported that in their experiences with pregnant defendants, a disproportionate number of them were brought in on drugs violations. As one judge responded, "The great majority of cases involving women and county jail time, frankly, tend to be drug related." Then went on to explain, "And it generally, under those circumstance, is the kind of thing where the ultimate thing that I think anyone wants to see is that these women get into some kind of program that alleviates the drug problem." This appeared to be a common concern for most. Rather than impose stiff jail or prison sentences, many of the participants expressed the desire to get the defendant (especially one who is pregnant) into a drug rehabilitation program.
Secondly, aside from obvious cases, an overwhelming majority of participants were reportedly informed of the pregnancy by the defense attorney. The judges in this particular study believed most attorneys used the variable to potentially mitigate the outcome of the case. While all of the participants were cognizant and perhaps even a bit sympathetic of the tactics used by attorneys, some were quite weary of those used by the defendant. As one participant explained:

Quite frequently defendants will try to manipulate me. I have found that they often use children as a tool. Like when they know they are going into custody. Instead of coming in alone, they'll walk in with their fourteen kids.

Many others gave similar responses, yet not quite as distrustful. For most, a defendant's pregnancy was merely another factor contained within a case.

Finally, similarities and differences were examined between several variables. This particular study consisted of six male and three female participants. Similar to previous studies though, this study found few differences between the responses of men and women. Yet those that were found could have meaningful implications upon further research. As highlighted in the following response, one female judge refused to consider the number of children a defendant had in her decision:
I get very angry . . . personally angry. I'm a single mom with two young kids. Women come in here and bring their babies with them; or stand in front of me and want to tell me that they're a single mom, so please don't punish them; or the only reason I know the baby's here is because they think if they've got a young child with them I'm not going to sentence them, or I'm going to treat them more easily because of the kids. I find that personally very upsetting because I still have to balance life. And blaming everything in their lives on the fact that they're single moms with two young kids is not fair.

This confirms the response of another female judge who suspected that other women in her profession would have some kind of unique disposition towards pregnant defendants, but that she did not. Although differences between the responses of male and female judges were revealed in this study, more research is necessary to generalize these results.

Also, this study looked at potential differences between the counties of Los Angeles and San Bernardino. Perhaps the most noteworthy difference was that cases involving pregnant defendants were much more prevalent in San Bernardino County than Los Angeles County. Most participants in Los Angeles could recall very few incidences with pregnant defendants. This was not the case in San Bernardino. There, pregnancy was almost a regular occurrence for judges. As such, judges in San Bernardino County possessed more experience and knowledge with regard
to the problems that often arise during a defendant's pregnancy, and were thus more standardized in their practices.

In addition, the different branches of courts that each participant presided over were also analyzed. All but one judge came from the California superior court system. While most of these judges handled a wide array of criminal cases, one in particular specialized in drug violations. Although differences were perhaps to be expected, very few were found. Due to the nature of female criminality, the cases involving pregnant defendants typically dealt with drug violations regardless of the court. Therefore, even those participants not exclusively appointed to hear drug cases did so and with great regularity. The only other participant not currently appointed to hear general criminal court cases was a juvenile court judge. Yet he too had several years experience in the superior court system. While the terminology used in the juvenile system is quite different from that in the criminal one, the decisions handed down by this participant ultimately reflected outcomes similar to those of the other participants.
CHAPTER FIVE
Summary And Conclusion

The concept of this particular research study arose out of an interest in the increasingly controversial topic of fetal abuse. Although fetal abuse refers to the specific act of harming one's fetus, it nevertheless remains one of only a few topics within the field of criminal justice research which addresses both pregnancy and the court system. Lacking a detailed examination of the specific relationship between pregnancy and judicial decisions, this study attempted to rectify the deficiency. The purpose of this narrowly focused study was to identify what, if any, influence a defendant’s pregnancy had on judicial decisions.

Although this topic has yet to generate a tremendous amount of concern, the number of pregnant women within the system nevertheless continues to increase. As past experiences suggest, this increase will undoubtedly cause an additional impediment on the already overburdened system. While pregnant women only constitute a small portion of all defendants, their unique condition often requires special attention. Yet accommodating these special needs within the courtroom poses a wide array of ethical dilemmas for researchers and practitioners alike. Bound by the notion of equality under the law, judicial officers are legally
restricted from exhibiting preferential treatment. This includes providing accommodations for a defendant's pregnancy. Yet problems often arise when judges must choose between their legal obligation towards impartiality and their moral obligation towards the unborn child. As this paper has highlighted, it is a judicial quandary one must address.

Literature suggests that judicial discretion pervades the criminal justice system. Such discretion has enabled judges to maintain enormous amounts latitude with regards to sentencing, which in turn has caused a proliferation of biases. Within the past few decades, a great number of research studies have examined the topic of judicial disparities and female defendants. Overall, a general pattern of preferential treatment has been found. Most studies reported that female defendants were more likely than their male counterparts to receive leniency by the courts. While guidelines have since been implemented to combat excessive use of discretion, many continue to argue that judge's still retain a great deal of freedom in their sentencing decisions.

Although most researchers concluded that preferential treatment was granted solely on the basis of one's gender, Kathleen Daly extended this argument to include one's family
status as well. Using the results of several different research studies, Daly found one's family status to be a better determinant of sentencing outcomes than one's gender. Ultimately, she concluded that "familed" defendants (those with children to support, husband, etc.) were more likely to receive leniency in their sentences than "non-familed" defendants. These results have propelled the current direction of research in the area of courtroom disparities.

Regardless of which factor is most influential, a larger debate surrounds the legality and morality of admitting extra-legal variables into the sentencing stage of a case. Essentially, this is the basis for the current research study. Among the extra-legal variables already researched include: race, sex, age, employment status, and family status. While some were found to affect outcomes at various stages of the court system, others were not. One topic which had yet to be examined though was pregnancy. Although such incidences remain minimal, they are nevertheless increasing. Unlike other variables, pregnancy presents a greater dilemma for judges because the morality of its inclusion is often not in question. When compassion is bestowed upon pregnant defendants, many can justify showing sympathy not so much for the mother, but rather the
child inside her. Only time will tell what research studies will be conducted on the topic in the future.

This particular study used personal interviews to extract detailed responses from the participants. Through phone calls and referrals, a sample of nine judges was constructed. Each judge was asked a series of five questions relating to pregnancy and judicial decisions. The responses received were then examined and placed into various categories. Finally, in an attempt to extract significant findings, an analysis was conducted on the different categories.

The analysis produced several interesting results. Perhaps the most significant was that pregnancy did indeed have an influence on judicial decisions. In support of the initial hypothesis, the results of this study showed that judges were in fact influenced by a defendant's pregnancy. While this influence was primarily limited to decisions not pertaining to the sentence, this discovery was nevertheless important.

Additionally, this analysis produced findings which supported the overall contention that the criminal justice system lacks both organization and standardization. The information shared between the different divisions, as well as court branches, was greatly limited. Few participants
knew either the functions or responsibilities of the other divisions. Instead, their knowledge was primarily limited to their own court and the system it was in. Most participants appeared to lack the desire to better understand the other divisions and their duties.

Also, results of the study showed that in addition to pregnancy, participants accounted for other extra-legal variables as well. Among the most prevalent were the defendant's family and employment status.

Other findings included differences between male and female judges, as well as between the number of pregnant defendants reported in the two counties. Although this study lacks generalizability, important divisions were found between the responses of male and female judges. Pregnancy, as a biological characteristic unique to women, appeared to provoke passionate responses from two of the three female participants interviewed. While male participants expressed concerns for the pregnancy, females were much more emotionally driven in their arguments.

Also, difference were found between the incidences of pregnant defendants reported in Los Angeles County and those in San Bernardino County. Contrary to population size, San Bernardino County appeared to have a greater prevalence of pregnant defendants than Los Angeles County. Although an
explanation for this phenomenon has to be identified, it is nevertheless an important finding.

Several implications can be made from these findings. First, this particular topic has been greatly understudied. Not only was literature sparse, but judges who had experience with pregnant defendants as well. The overall small number of pregnant defendants has undoubtedly contributed tremendously to this lack of interest. Second, judges differentiate between judicial decisions and sentencing decisions. When asked if a pregnancy influenced their sentencing decisions, most participants vehemently denied its affect. Yet, they would then go on to willfully explain its impact on other decisions. Third, there is an overall lack of understanding by practitioners within the field of criminal justice with regards to the system and its various departments. Several judges in this study were admittedly unaware of the different correctional facilities which subsequently housed the defendants they sentenced. Finally, the pregnant condition of a defendant is almost always brought to the attention of the judge for which presented as a mitigating factor in the case. Many judges reported that it is a tool often used by the defense attorney or defendant herself to gain a sympathetic ear and manipulate the outcome of the case.
As previously discussed, this research study contained several limitations which curtailed the generalizability of the findings. Since this was an exploratory research study, many fundamental conditions were impractical. The most obvious being a large sample size. Also, the selection process lacked any sense of randomization. Both of these limiting factors can be attributed to the exploratory nature of the research design. In addition, not all of the participants were superior court judges. Although one was technically within the superior court system, he only handled drug cases. The other, while experienced in superior court cases, was currently a presiding judge in juvenile court. Yet many significant findings were extrapolated from the research regardless of these limitations.

First and foremost, additional research studies on the topic are imperative. In an attempt to find more conclusive results, additional time and resources should be spent researching the issue. Also, better communication lines should be formed between the courts and all other departments within the system. Without a proper understanding of the system as a whole as well as its separate divisions, the field of criminal justice will remain in a constant state of chaos. Finally, consistent
guidelines pertaining to pregnancy should be created and implemented. A common problem found throughout the system is that the special needs of pregnant defendants are not often attended to. Until such time as uniform policies and facilities are designed to adequately address this growing population, the problems surrounding the issue of pregnancy will continue to plague the criminal justice system.
APPENDIX: Interview Schedule

1. When, if at all, does a defendant's pregnancy influence your sentencing decision? Do other factors such as type of offense, age of defendant, and number of children dictate the inclusion or exclusion of the pregnancy? Please give an example.

2. Aside from obvious cases, how is the pregnant condition of a defendant brought to your attention? Typically, at what point are you made aware of it?

3. With what frequency do you rely on other courtroom members and their recommendations to guide your sentencing decisions? Are there some you rely on more than others? Please give an example.

4. Are you aware of any state facilities specifically designed to accommodate pregnant inmates? If so, does their existence factor into your decision? Please give an example.

5. To what extent are you involved with future decisions regarding the child? Are you primarily concerned with the short-term care of the child, or does your concern extend into long-term as well? Please give an example.
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