

PARTNERS IN CRIME:  
THE LEGAL PROCESSING OF  
MALE-FEMALE CRIMINAL CO-DEFENDANTS

by

CAROL LEE FENSTER  
DEPARTMENT OF SOCIOLOGY  
UNIVERSITY OF DENVER  
DENVER, COLORADO

GRANT #. 78-NI-AX-0029

64988

PARTNERS IN CRIME: A STUDY OF THE LEGAL PROCESSING  
OF MALE-FEMALE CRIMINAL CO-DEFENDANTS

NCJRS

FEB 11 1980

ACQUISITIONS

A Dissertation

Presented to

the Faculty of the Graduate School of Arts and Sciences  
University of Denver

---

In Partial Fulfillment  
of the Requirements for the Degree  
Doctor of Philosophy

---

by  
Carol Lee Fenster  
December 1979

THE GRADUATE SCHOOL OF ARTS AND SCIENCES

OF

THE UNIVERSITY OF DENVER

Upon the recommendation of the chairman of  
the Department of Sociology this dissertation  
is hereby accepted in partial fulfillment of  
the requirements for the degree of

Doctor of Philosophy

*Anne Rankin Maboney*  
Professor in charge of dissertation

*Robert C. Annun*  
Associate Dean for Graduate Studies

Oct. 15, 1979

Date

© Carol Lee Fenster 1979

Reproductions by the U.S. Government  
in whole or in part is permitted  
for any purpose

The material in this project was prepared under Grant No. 78-NI-AX-0029 from the Law Enforcement Assistance Administration, U.S. Department of Justice. Researchers undertaking such projects under Government sponsorship are encouraged to express freely their professional judgment. Therefore, points of view or opinions stated in this document do not necessarily represent the official position or policy of the U.S. Department of Justice.

## ACKNOWLEDGMENTS

Financial support for this study was provided by a Graduate Research Fellowship from the Law Enforcement Assistance Administration. I want to thank Dr. Anne Rankin Mahoney, chairperson of my dissertation committee, for her supervision of the research project. Dr. Mahoney's guidance and support was invaluable throughout my doctoral program. I also want to thank Dr. Wilbert E. Moore for his special assistance during the research project. Dr. William M. Beaney and Dr. Thomas E. Drabek, committee members, were also very helpful. Finally, I want to thank the personnel in the Denver District Court for their cooperation in this study and Jenny Liu for her help in the computer analysis.

TABLE OF CONTENTS

	Page
LIST OF TABLES . . . . .	viii
CHAPTER	
I INTRODUCTION . . . . .	1
Research Questions . . . . .	4
Research Setting . . . . .	7
Significance of the Research Problem . . . . .	9
Objectives of the Research . . . . .	12
Outline of the Presentation. . . . .	13
II A REVIEW OF SOCIETAL REACTION THEORY AND THE LITERATURE ON FEMALE CRIMINALITY . . . . .	14
Societal Reaction Theory . . . . .	15
The Literature on Female Criminality . . . . .	31
Theories of Female Criminality . . . . .	38
Summary Statement of Hypotheses. . . . .	59
III SAMPLE, METHOD, AND ANALYSIS . . . . .	61
Sample . . . . .	61
Methods. . . . .	63
Court Records. . . . .	63
Interviews with Legal Officials. . . . .	68
Observations of Court Proceedings. . . . .	69
Analysis . . . . .	69

	Page
IV ANALYSIS. . . . .	75
Descriptive Information . . . . .	77
Characteristics of the Male-Female Co-Defendants. . .	77
Characteristics of the Offenses . . . . .	82
Hypothesis 3. . . . .	83
Organizational Labeling . . . . .	83
Characteristics of the Male-Male Co-Defendants. . . .	89
Characteristics of the Offenses . . . . .	89
Organizational Labeling . . . . .	90
The Effect of Role Upon Labeling. . . . .	92
Hypothesis 1. . . . .	92
Hypothesis 2. . . . .	98
Hypothesis 4. . . . .	103
The Effect of Offense Variables Upon Labeling . . . . .	128
Hypothesis 5. . . . .	128
Summary . . . . .	153
V CONCLUSIONS AND IMPLICATIONS. . . . .	155
The Effect of Role Upon Labeling. . . . .	155
The Effect of Sex Upon Labeling . . . . .	158
The Effect of Offense Variables Upon Labeling . . . . .	160
Offense Variables versus Organizational Variables and Characteristics of the Defendant. . . . .	160
Significant Predictors of Labeling and Sex of the Defendant . . . . .	162
Significant Predictors of Labeling and Stage of Adjudication. . . . .	164

	Page
BIBLIOGRAPHY. . . . .	167

APPENDIXES

A. DATA COLLECTION FORM AND CODE SHEET. . . . .	185
B. LETTER AND INTERVIEW SCHEDULE. . . . .	203
C. DESCRIPTIVE INFORMATION ON FEMALE-FEMALE CO-DEFENDANTS. . . . .	207

ABSTRACT

LIST OF TABLES

Table	Page
1 Characteristics of the Defendant, Characteristics of the Offense and Organizational Labeling by Sex. . . .	78
2 Defendant's Role in Crime by Sex . . . . .	84
3 Equality of Labels Received by Male-Female Pairs at Three Stages of Adjudication . . . . .	94
4 Equality of Labels Received by Male-Male Pairs at Three Stages of Adjudication . . . . .	96
5 T-test of the Means for Dominant Males and Their Minor Female Partners at Three Stages of Adjudication. .	100
6 T-test of the Means for Dominant Females and Their Minor Male Partners at Three Stages of Adjudication. . .	101
7 T-test of the Means for Dominant Males and Their Minor Male Partners at Three Stages of Adjudication. . .	102
8 T-test of the Means for Males and Females in Unequal Roles at Three Stages of Adjudication. . . . .	105
9 T-test of the Means for Males and Females in Equal Roles at Three Stages of Adjudication. . . . .	107
10 Analysis of Variance Summary Table for Bail. . . . .	109
11 Table of Means and Standard Deviations for Bail. . . . .	110
12 Analysis of Variance Summary Table for Deferred Disposition. . . . .	112
13 Table of Means and Standard Deviations for Deferred Disposition. . . . .	113
14 Analysis of Variance Summary Table for Final Disposition. . . . .	115
15 Tables of Means and Standard Deviations for Final Disposition. . . . .	116
16 T-test of Means for Males and Females in Unequal Roles with Prior Criminal Record as Control Variable at Three Stages of Adjudication . . . . .	120

LIST OF TABLES (continued)

Table	Page
17	T-test of Means for Males and Females in Equal Roles with Prior Criminal Record as Control Variable at Three Stages of Adjudication. . . . . 121
18	Variables, Notations and Frequencies for Multiple Regression Analysis . . . . . 130
19	Summary Statistics of Step-Wise Multiple Regression for Bail ( $Y_1$ ) as Dependent Variable for Males in Male-Female Partnerships . . . . . 135
20	Summary Statistics of Step-Wise Multiple Regression for Deferred Disposition ( $Y_2$ ) as Dependent Variable for Males in Male-Female Partnerships. . . . . 137
21	Summary Statistics of Step-Wise Multiple Regression for Final Disposition ( $Y_3$ ) as Dependent Variable for Males in Male-Female Partnerships . . . . . 143
22	Summary Statistics of Step-Wise Multiple Regression for Deferred Disposition ( $Y_2$ ) as Dependent Variable for Females in Male-Female Partnerships. . . . . 146
23	Summary Statistics of Step-Wise Multiple Regression for Final Disposition ( $Y_3$ ) as Dependent Variable for Females in Male-Female Partnerships . . . . . 149

## CHAPTER I

### INTRODUCTION

In 1975, local newspapers carried the story of an Oklahoma judge who sentenced a man to a prison term four times longer than his female co-defendant on the same armed robbery charge. The judge said the sentence was justified because the female was only minimally involved in the commission of the crime (Associated Press, Denver Post, December, 1975).

A few years ago, several local television stations carried the news story of a young woman about to begin a new life as a prison parolee. Fifteen years earlier she and her boyfriend had embarked on a killing spree across Nebraska which left 11 people dead. He was executed in the Nebraska State Penitentiary but she was sentenced to a women's reformatory.

In a more recent and highly publicized case, the news media carried the story of William and Emily Harris, members of the Symbionese Liberation Army and abductors of Patricia Hearst. The HARRISES are now serving identical terms of 10 years to life in a California prison (Newsweek, 1976:81).

And just last year, a local newspaper carried the story of a husband and wife who were both sentenced to die in Alabama's electric chair for the murder of a grocer during an armed robbery (Denver Post, 1978). The wife intended to appeal her sentence on the grounds that she was minimally involved in the murder of the grocer.

Except for cases such as these which are sensational enough to attract the ~~attraction~~<sup>attention</sup> of the news media, we know little about how the courts treat co-defendants. Although the increasing interest in female criminality has resulted in many studies which compare female offenders as a group to male offenders as a group, there have been no studies which compare the court's treatment of males and females who commit the same crime together. As a result, we do not know much about female criminality when it occurs in the company of a male and we do not know whether the four cases just cited are representative of all cases of male-female co-defendants. To fill this gap in the literature on female criminality, the overall purpose of this study is to provide information about male-female co-defendants, their offenses, and their treatment in the courts.

Even if these four cases are not representative of the many other, less sensational cases of male-female co-defendants, they do serve to illustrate a major point---that is, when two people commit the same crime together, they do not necessarily receive the same treatment in the courts. For most people, this challenges our concept of justice and the need to believe that legal rules are always applied evenly and uniformly, especially when two people commit the same crime together.

But just as this fact perplexes the average citizen, it causes a great deal of consternation among those who actually administer the law. Inequities in the court's treatment of defendants constitute a critical issue in the criminal justice system, particularly in sentencing. Debates on the topic usually revolve around two

themes: equal penalties for equal crimes (advocated long ago by Cesare Beccaria, 1769) and individualized dispositions. Gaylin (1974:3) endorses the idea of equal penalties for equal crimes by saying, "One of the most glaring and provocative of inequities in a world not known for fairness is a disparity in punishment: when like individuals, committing like offenses, are treated differently." Klonoski and Mendelsohn (1971:xvi) echo Gaylin's thoughts ". . .likes should be treated alike, that is, persons convicted of the same crime and having the same backgrounds should receive identical treatment." This particular viewpoint is receiving more and more support because of the trend toward legislatively mandated sentencing schedules (vonHirsch, 1976). Such schedules would require that defendants charged with similar offenses receive similar sentences.

The second theme, individualized dispositions, was developed to counteract the rigidity and consequent harshness of uniform treatment. Under this philosophy, legal officials take into account mitigating or aggravating factors in order to tailor the punishment to suit the individual defendant (D'Esposito, 1969:182).

Regardless of which philosophy of treatment one subscribes to, the question remains, Why are some co-defendants treated alike in the courts while others are treated differently? Because no previous studies have focused on co-defendants we do not know the answer to this question. However, the four cases cited above may provide some insight upon which to base our inquiry.

Recall that in two of the four cases the pairs did not receive the same sentence and in these two cases the female always received

the lighter sentence. Furthermore, in two of the four cases (Oklahoma and Alabama) the females' defense rested on the grounds that they were only minimally involved in the commission of the crime and thus deserved the milder sentence. (Hereafter, participation in the crime is referred to as "role in the crime" or just "role.") Since we have no additional information about these cases, we do not know whether role actually affected the court's treatment of these co-defendants. In other words, we do not know whether some pairs received equal sentences because they played equal roles and whether some pairs received unequal sentences because they played unequal roles. When they received unequal sentences we do not know whether the females received the lighter sentences because they played minor roles or whether they would have received the lenient treatment regardless of their roles. In short, we do not know whether sex or role most affected these decisions. Obviously, other factors could affect the court's treatment of co-defendants but our primary focus in this study is upon the effects of sex and role as reflected in the following research questions:

#### Research Questions

- 1) If co-defendants play equal roles, do they receive equal labels?
- 2) If co-defendants play unequal roles, does the dominant partner receive the harsher treatment?
- 3) When male-female co-defendants play unequal roles, who plays the minor role?
- 4) Do females, regardless of their roles, receive milder treatment than their male co-defendants?

- 5) In addition to sex and role, what other variables affect the court's treatment of male-female co-defendants?

Since role has never been the primary focus of any study, it is important to understand its place within the context of the criminal justice system. A brief discussion of legal versus extra-legal variables and the manifestation of discretion should foster this understanding.

Criminal justice decisions are affected by both legal and extra-legal variables. Legal variables are those which statutes specify as legally relevant and must be taken into consideration such as the severity of the offense or whether the defendant has a prior criminal record. Extra-legal variables are those which are not specified in the legal statutes but nonetheless may affect these court decisions. Examples include age, employment, race or sex. Role would also be classified as an extra-legal variable because there are no Colorado statutes which state that co-defendants should receive dispositions based on their roles in the crime.

A study of the factors affecting court decisions necessarily has to include a discussion of the manifestation of discretion. Discretion is ubiquitous--it occurs at every stage of the adjudication process. Pound (1960:925) defines it as the authority to "act in certain conditions or situations in accordance with an official's . . . own considered judgment and conscience." In other words, discretion allows legal officials to take extra-legal variables into account in the decision-making process as well as to apply legal variables in a discretionary manner. Thus, even though sex and role are

classified as extra-legal variables, discretion allows legal officials to take these two factors into consideration, either individually or in combination with other legal or extra-legal variables. Since discretion permeates the criminal justice system, scholars have spent considerable time and money trying to isolate those factors which affect the decisions of legal officials, especially when discretion results in unequal treatment for people charged with the same offense.

Societal reaction or labeling theory attends to the problem of which factors affect legal decision-making. In societal reaction terminology, these decisions represent official deviant labels conferred upon the alleged offenders by agents of the criminal justice system. Simply put, the theory holds that three categories of variables influence the labeling process: 1) characteristics of the defendant; 2) characteristics of the offense; and 3) characteristics of the deviance-controlling organization as well as those in the organization who do the labeling. As noted above, some of these variables are legally relevant while others are not; nonetheless, all may influence the labeling process.

Briefly, the argument to be presented in the following pages is: although societal reactionists emphasize the influence of the defendant's characteristics upon the labeling process, previous research shows that variables in the offense category have more effect on labeling than any other category of variables (Hagan, 1974; Wellford, 1975). Therefore, in this study we expect offense variables to weigh more heavily in the labeling of co-defendants

than the defendant's characteristics or organizational variables. In the special case of co-defendants, role belongs in this offense category because it is an indicator of the severity of the offense. Sex, an extra-legal variable, is a characteristic of the defendant. If offense variables are more important than the defendant's characteristics then role (an offense variable) should have more effect on labeling than sex (a characteristic of the defendant). Although both sex and role are extra-legal variables, we expect role to weigh more heavily than sex in the labeling of co-defendants because role is not only an offense variable but is also an indicator of the severity of the offense, a legal variable. Even though Colorado sentencing statutes do not make role a mandatory consideration, we expect legal officials to use role in making their decisions. Thus, co-defendants who play equal roles in the crime will be viewed as equally responsible and will receive equal labels, regardless of sex. If co-defendants play unequal roles in the crime, the partner who plays the more dominant role will be viewed as responsible for a more severe version of the crime than the minor partner. As a result dominant partners will receive harsher labels, regardless of sex, because their higher degree of criminal responsibility leaves them less able to avoid and more deserving of a harsher label.

#### Research Setting

Formal official labeling occurs in what Hasenfeld (1972:256) defines as "people-processing organizations." They are organizations which attempt to achieve changes in their "clients," not by altering

basic personal attributes (as in people-changing organizations such as hospitals, prisons, etc.) but by conferring on them a public status or label and often relocating them in a new set of circumstances.

The criminal justice system is a people-processing organization and provides an appropriate arena for the study of labeling decisions. In societal reaction terminology, criminal justice decisions can be taken as valid indicators of formal societal reactions. Such decisions reflect public reaction to particular kinds of deviance implemented and mediated through control agencies such as the courts.

In this study of male-female co-defendants, the decisions of the officials in Denver District Court, City and County of Denver, are viewed as valid indicators of the societal reaction of the People of Colorado. Furthermore, these decisions occur in a series of stages. As such, we focus on three sequential societal reaction decisions: 1) whether the defendant is released on Personal Recognizance (PR) bond or posts bail; 2) whether the defendant receives a deferred disposition or is fully adjudicated instead; and 3) of those who are fully adjudicated, whether the defendant receives a sentence or probation term.

At these three stages the decision constitutes a label which classifies the defendant as a fit subject for official management (Tittle, 1975: 162). Regardless of whether a PR bond is granted or denied and regardless of whether a deferred disposition is granted or the defendant is placed on probation or sentenced, the label specifies how the defendant should be supervised (managed) until the terms of that decision are fulfilled. Therefore, we use the term "label" to refer to these decisions.

### Significance of the Research Problem

This study of male-female co-defendants is important for the following reasons:

1) A study of what factors affect an organization's labeling of people is important because such labels "shape a person's life by controlling his access to a wide range of social settings through the public status they confer; and they may define and confirm the individual's social position when his current status is questioned" (Hasenfeld, 1972:256). For example, the labels "mentally ill," "handicapped," or "epileptic" affect one's social position by triggering both societal and self-reaction but the label "ex-offender" is perhaps most drastic of all because of its debilitating legal stigma upon one's re-integration into the mainstream of society (Schwartz and Skolnick, 1964). And limited opportunities for participation in life's many spheres coupled with altered self-images can lead to further rule-breaking (Erikson, 1972:312; Lemert, 1967; Trice and Roman, 1970). In other words, official negative labeling may be a self-fulfilling prophecy. Therefore, it is imperative that researchers define the factors utilized in the court's labeling of deviants.

2) Theoretically, this study of co-defendants is important because it allows us to apply societal reaction theory to a previously unstudied sample. Two benefits should be realized: First, although societal reactionists generally agree that the three categories of variables in this study---characteristics of the defendant, the offense and the deviance-controlling organization---do affect the

labeling process, there is not necessarily agreement about which variables to include in those categories. The fundamental assertion in this study is that a defendant's role in the crime affects the labeling process and should be included in the offense category because it is a measure of the severity of the offense. Since previous studies of adjudication have not focused on co-defendants, researchers have not studied the effects of this variable. If this study shows that role does influence the labeling process (and if this finding is replicated in subsequent studies) then future applications of societal reaction theory to the adjudication of co-defendants should include this variable in the offense category.

A second benefit is the test of societal reaction's basic tenet, that is, that a person is labeled a deviant primarily as a consequence of his characteristics, particularly the lack of power and resources which marks him as an underdog and places him on the margin of society. If this study shows that the defendant's characteristics have the least explanatory power of the three categories of variables, then we will have provided support for the growing body of theorists who reject the supremacy of societal characteristics in explaining the labeling process.

This study is also important for the following contributions it will make to our knowledge of the female offender:

3) The rising female crime rate is not only documented in official statistics such as the Uniform Crime Reports (1975, 1976), but has resulted in a number of books devoted solely to the study of the female offender. (Recent works include Adler, 1975; Simon, 1975;

Crites, 1977; Brodsky, 1975, as well as numerous articles). Yet these books and articles deal primarily with the female as sole perpetrator of the crime, giving little attention to the female who commits a crime with a partner. If we are to expand our knowledge of the female offender, we need to study her criminal activity in all kinds of roles (Norland and Shover, 1977:96).

Such an approach affords us two unique opportunities: First, we can explore two commonly held beliefs about female offenders-- that they are drawn into crime through association with "bad companions" (Reckless, 1967:403) and/or through their romantic attachments to males (Simon, 1975; Women and Crime Session at Western Social Science Meetings, Denver, April, 1977). Furthermore, we can study the extent of their involvement in crime, and the influence of the Women's Movement upon their criminal behavior and subsequent labeling in the courts, etc.

Second, we can compare the labeling of females to males when they commit the same crime together, rather than relying on measures of differential treatment from samples of males and females who commit the same type of crime, but not together.

Finally, such one-on-one comparisons allow us to pit the theme of "equal penalties for equal crimes" against the theme of "differential treatment" with a more appropriate sample than one comprised of sole perpetrators.

4) The data from this study have implications for constitutional safeguards for defendants as well as policy governing their adjudication.

Both implications revolve around the manifestation of discretion by agents in deviance-controlling agencies such as the courts.

Our legal system operates in such a way that equality before the law and individualized treatment are both important values (D'Esposito, 1969:194). Some of these differences are attributable to legally relevant factors. However, in other cases this disparate treatment is the result of legal officials' incorporation of discretionary factors into the decision-making process. One remedy for this situation is to invoke the Eighth Amendment to insure consistent and equal treatment for persons convicted of the same offense. However, the courts have generally rejected such an approach in *Badders v. United States*, 240 U.S. 391 (1916); *Hedrick v. United States*, 357 F.2d 121 (1966); *United States v. Dorsey*, 151 F.2d 899 (1945); *Beckett v. United States*, 84 F.2d 731 (1936); *People v. Pulaski*, 15 Ill.2d 291, 155 N.E.2d 29 (1959). While a certain amount of discretion is certainly necessary to ensure an appropriate "fit" between the deviant act and the punishment, its manifestation in processing can result in erratic labeling practices which challenge the co-defendants' constitutional right to equal protection under the law as guaranteed in the Fourteenth Amendment.

#### Objectives of the Research

The central objective of this study is to determine whether offense variables, specifically the defendant's role in the crime, are the major determinative factors in the labeling of male-female co-defendants. This information will serve as a data base to which future studies of co-defendants can be compared.

### Outline of the Presentation

This chapter presented the research problem, its setting and significance, the objectives of the study and briefly introduced societal reaction or labeling theory. Chapter II presents an overview of societal reaction theory as well as its uses and restrictions in the study of deviants. Chapter II also presents a review of the literature comparing the court's treatment of male and female co-defendants. This includes a brief history of women and the law, a discussion of empirical research on the court's treatment of men versus women, and how role might influence this treatment.

The methods, sample and analysis employed in the study are explicated in Chapter III. Results of the data analyses are presented in Chapter IV. Statistical tests of the research hypotheses are reported with answers to the research questions. This is followed by a discussion in Chapter V of the implications of the research findings for societal reaction theory and for the court's labeling of co-defendants.

## CHAPTER II

A REVIEW OF SOCIETAL REACTION THEORY AND THE  
LITERATURE ON FEMALE CRIMINALITY

This chapter presents the history of societal reaction theory, its basic tenets and a brief discussion of its inherent weaknesses. Then we develop the central thesis of the study---that offense variables are more important than characteristics of the defendants in the labeling process. Justification is made for inclusion of role as an offense variable. The chapter then builds on this basic assertion by contending that role (an offense variable) should be more important in labeling than sex since the latter is a characteristic of the defendant. Thus sex and role are the major variables under study.

The chapter continues with a review of early common-law notions concerning the criminal responsibility of women (particularly married women), a history of how criminologists and sociologists have portrayed the female offender over the past 100 years, and contemporary empirical research comparing the court's treatment of male and female offenders. Finally, a review of literature is presented on all variables known to influence the labeling process. From the discussion of societal reaction theory plus the review of literature four hypotheses are generated which predict the relationship between sex, role and labeling. A fifth hypothesis predicts the relationship between offense variables and labeling.

### Societal Reaction Theory

In 1938, Tannenbaum published a statement that was to become a landmark of what is now known as either societal reaction theory or the labeling perspective. He wrote:

The process of making the criminal is a process of tagging, defining, identifying, segregating, describing, emphasizing, making conscious and self-conscious; it becomes a way of stimulating, suggesting, emphasizing and evoking the very traits that are complained of. (Tannenbaum, 1938:19-20).

More than a decade later, Lemert published his Social Pathology (1951) followed by Garfinkel's (1956) discussion of status degradation ceremonies. Then, during the decade of the sixties came the now classic statements of Becker (1963), Erikson (1962), Kitsuse (1962) and Cicourel (1963). Since that time there has been much work expanding, modifying, and restating the perspective (for example, see Lemert, 1967; Scheff, 1966, 1974, 1975; Becker, 1973; Rubington and Weinberg, 1968; Gove, 1975, 1976; Schur, 1969, 1971, 1973, 1974; Prus, 1975; Thorsell and Klemke, 1972; Roman and Trice, 1969, 1971; Trice and Roman, 1970; Orcutt, 1973; Lorber, 1966; Freidson, 1965; Bustamente, 1972; Rotenberg, 1974; Scott, 1972; Gusfield, 1967; Lofland, 1969; Downes and Rock, 1971; Bordua, 1967; Gibbons and Jones, 1971; Horan and Austin, 1974; Hartjen, 1974; Kitsuse, 1972; Quinney, 1970; Delamater, 1968; Hirschi, 1975; Mahoney, 1974; Wellford, 1975).

During that same time the theoretical status of the labeling perspective was subjected to critical evaluation (for example, see Gibbs, 1966, 1972; Lemert, 1972, 1974; Hagan, 1972, 1973, 1974; Gove, 1975, 1976; Davis, 1972, 1975). Schur (1971) cites the lack of clear-cut definitions, failure so far to produce a coherent set of

interrelated propositions, testable hypotheses, etc. As a result of this criticism, it is now generally agreed that the societal reaction approach should not be treated as a theory in the formal sense. But, says Schur (1971), formal theoretical status should not be the major criterion in assessing the value of the societal reaction (or as Becker (1973) puts it--the interactionist) approach. Rather the merits of the approach lie in its "capacity for reviving basic truths that sociologists have unwisely ignored, in its partial reordering of focal points for research and in its translation of a good many respected yet neglected notions about deviance and control into a research framework" (Schur, 1971:35). Furthermore, he says, even though labeling is not a formal theory, "the contributions of this perspective to the development of a coherent and systematic theoretical framework for understanding deviation and control are substantial" (Schur, 1971:35). And Bernstein et al., (1977:744) advance this support of labeling by arguing that acceptance of the idea that labeling is not a theory does not prevent us from deducing hypotheses from these "sensitizing conceptions" which test the congruence between them and the labeling of deviants in the real world. Such testing can lead us to the point where "sensitizing concepts become parts of genuine theories that serve the ends of science" (Tittle, 1975:161). Despite this debate over the theoretical status of labeling, it continues to dominate much of the deviance research (Cole, 1975).

The core of societal reaction theory rests on two questions: Why are some individuals and not others labeled deviant? What are

the consequences for the individual of being labeled a deviant (Gove, 1976:221)? This study focuses on the first question as we apply societal reaction theory to the court's treatment of co-defendants.

The theory, developed out of the symbolic interaction tradition and thought to have been a necessary stage in the development of a radical criminological theory (Quinney, 1973), asserts that the power of the deviant relative to the deviance-processing agency is the basis for differentiating the societal response (Becker, 1963; Rubington and Weinberg, 1973; and Schur, 1971). The assumption is that certain members of society, by virtue of either ascribed or achieved statuses, have less power than others to avoid the imposition of a deviant label (Turk, 1969; Quinney, 1970; Chambliss and Seidman, 1971). In addition, the emphasis mandates that the study of labeling include attention to the process by which defendants come to have deviant labels conferred upon them. Decisions reached in this deviance processing are the result of the interplay of several variables, some of which enhance the defendant's power while others impede it.

Much of the deviance literature uses the actor and his behavior to explain deviance. However, societal reaction theory as developed by Lemert (1951, 1967) Kitsuse (1962), Erikson (1962), Becker (1963), and others shifts the focus away from a primary emphasis upon the actor and his behavior to one which includes the audience and the social processes by which individuals come to be defined as deviant by others.

A review of the literature dealing with the application of societal reaction theory shows relative agreement on a core set of assertions which affect this process. Bernstein et al., (1977a:744) briefly list this core set of assertions: 1) the definition of persons as deviant is a constructed definition resulting from a set of interactive

processes (Lofland, 1969; Becker, 1973; Goode, 1975); 2) the societal reaction to deviants is not a direct result of the alleged deviant act (Erikson, 1964; Becker, 1963; 1973; Kitsuse and Cicourel, 1963; Schur, 1971); 3) the societal reaction to deviants varies with the social attributes of the alleged deviant (Becker, 1963; Quinney, 1970); 4) the societal reaction to deviants varies with the organizational imperatives of the deviance-controlling organization (Schur, 1971; Becker, 1973); 5) with the person doing the reacting (Becker, 1973); 6) with the expectations and values of the reactors (Turk, 1969; Schur, 1971); 7) with the deviants' ability to avoid the imposition of the deviant label (Schur, 1971) and with a variety of other ancillary factors (Goode, 1975).

Although these assertions apply to official labeling in any type of organization we are most interested in their relevancy for official labeling in the criminal courts. To state these assertions more concisely as they apply to the courts, labeling theorists maintain that variance in official labeling can be explained by three categories of independent variables: 1) characteristics of the defendant (Gove, 1970; Becker, 1963; Quinney, 1970); 2) characteristics of the offense (Tittle, 1975; Hagan, 1974; Erikson, 1964); and 3) characteristics of the organizational setting in which the labeling takes place (Becker, 1973; Turk, 1969; Schur, 1971).

Variables included in the first category are divided into:

1) social attributes such as age, race, sex, the presence of extended family ties, source of support, and educational, marital and

employment status and 2) prior criminal record. Both are statuses which affect the labeling process but social attributes are classified as extra-legal variables while a criminal record results from prior organizational processing which intermeshes both extra-legal and legal variables (e.g. type of crime, severity and number of charges, etc.). The findings of this study are discussed with this important distinction in mind.

The second category includes the variables of seriousness of offense, number of charges, use of a weapon and role in the crime. The third category includes variables summarizing the results of prior processes such as bail release status as well as the organizational variables of judge, type of counsel, plea-bargaining, probation officer's recommendation, time elapsed from arrest to final disposition, trial format, length of pre-trial detainment in jail, and whether a defendant has another case pending. Although all of these variables may have implications for how co-defendants are labeled, there is disagreement about which category best explains the labeling decisions. In later stages of the analysis, we will return to the question of which of these three categories of variables best explains variation in labeling of male-female co-defendants. At this stage, however, the emphasis is on the second category---the characteristics of the offense.

While one of the basic tenets of labeling theory is that the defendant's characteristics rather than characteristics of the offense are more likely to influence differential decision-making in the criminal justice system, a majority of the research does not support

such a view. The strongest argument against such an assertion comes from Hagan (1974:379) who, after reviewing 20 studies (Sellin, 1928; Martin, 1934; Johnson, 1941; Lemert et al., 1948; Garfinkel, 1949; Johnson, 1957; Green, 1961; Bullock, 1961; Jacob, 1962; Bedau, 1964, 1965; Green, 1964; Partington, 1965; Wolfgang, et al., 1962; Wolf, 1965; Forslund, 1969; Southern Regional Council, 1969; Nagel, 1969; Judson et al., 1969 and Wolfgang et al., 1973) concludes that social attributes (he calls them extra-legal variables--age, race, sex and socio-economic status) contribute very little to researchers' ability to predict judicial sentencing decisions. Charles Wellford (1975:337) in his assessment of labeling theory in criminology concludes that, with respect to juveniles, the variables of "complainant behavior and offense type are considerably more important than class, race, demeanor, etc. as variables affecting the decision to arrest." He cites the studies of Hohenstein, 1969; Black and Reiss, 1970; Terry, 1967; Ferdinand and Luchterhand, 1962; Williams and Gold, 1972, to support his assertion and discredits studies which refute this assertion (e.g. Piliavin and Briar, 1964; Cicourel, 1968; Goldman, 1963; and Thornberry, 1973) as lacking methodological rigor.

Bernstein et al., (1977a) in a study of sentencing as well as decisions occurring earlier in the adjudication process, conclude that characteristics associated with the offense account for more of the explained variance in the decision to fully prosecute a defendant than the defendant's characteristics.

Finally, two Colorado studies support the above findings and assertions. One, administered by the Criminal Justice Research Center, Inc. of Albany, New York, looked at all felony charges in

Denver District Court. The other, conducted under the auspices of the Colorado Judicial Department, analyzed cases of three serious felony offenses (robbery, burglary and assault) throughout the state. The findings of both studies were reported by Beatrice Hoffman (1977).

The two studies, done independently of one another, found that Colorado judges base their sentencing decisions primarily on two variables: the seriousness of the offense and the prior criminal record. Even more interesting is the fact that the Denver study found only six variables to be statistically related to sentencing. These were: number of offenses convicted of, number of prior incarcerations, seriousness of offense, use of weapon, legal status (e.g. whether on probation) and employment record. Note that of the six variables, three deal with the characteristics of the offense-- number of charges, seriousness of offense and use of weapon. Once again, the characteristics of the offense are more important.

The foregoing paragraphs discussed the debate within societal reaction circles over the explanatory power of certain categories of variables. The purpose was to show that although theorists would like to conclude that characteristics of the defendant are the most important factors in adjudication decisions, research proves otherwise. That is, variables associated with the offense tend to have greater explanatory power than characteristics of the defendant. Moreover, we have evidence that judges in Denver District Court (the site of this study) also view this category of variables as most important. This is not to imply that the defendant's characteristics are of no consequence, nor does it underestimate the importance of the third

category of organizational variables which is receiving increasing attention in labeling research (e.g. see Eisenstein and Jacob, 1977; Bernstein et al., 1977a; Nardulli, 1978). But in terms of the explanation of variance in labeling decisions, offense-related variables are more important. Therefore, our focus upon that category of variables in this study of male-female co-defendants is justified by the findings of prior research just cited.

Researchers typically include in this category such variables as the type and severity of the crime as well as the number of charges and whether the defendant(s) used a weapon. Note that all four variables are indicators of the degree of severity of the crime allegedly committed. However, these same researchers have never singled out co-defendants for systematic analysis and such exclusion precludes the study of yet another variable in this category--the role each defendant plays in the commission of the crime. We have already demonstrated that indicators of the severity of the alleged offense are of major importance in explaining variance in labeling decisions made by the courts. In the special case of co-defendants the defendant's role is also an indicator of the severity of the alleged offense and, therefore, should also be important in explaining variation in the labeling of co-defendants.

Role and its relationship to the manifestation of discretion needs elaboration. When two people commit the same crime together, it seems unlikely that both always participate equally; rather, it is probable that in many cases one plays a more dominant role than the other. Role is not a legal variable, that is, it is not defined

by Colorado Statute as a legal criterion for officials to justify differential treatment of co-defendants at any stage of the labeling process. (The one exception is explained in the next paragraph.) Therefore, it is an extra-legal variable, one which is not legally relevant but, nonetheless, one which may influence the labeling process in a discretionary manner as do other extra-legal variables such as age, race and sex. Although it is not legally relevant, it is a measure of a defendant's degree of culpability or criminal responsibility in the commission of the crime and thus serves as an indicator of the severity of the offense, a legal variable.

There are few references to role in the legal literature. However, there is what has come to be known as the "complicity theory" embodied in section 18-1-603 of the Colorado Revised Statutes (1973: 244-246). This section states that "a person is legally accountable as principal for the behavior of another constituting a criminal offense, if, with the intent to promote or facilitate the commission of the offense, he aids, abets, or advises the other person in planning or committing the offense" (Colorado Revised Statutes, 1973:244). The term "principal" means the dominant partner, one who assumes the major responsibility for commission of the crime. In other words, then, both parties in a crime partnership are held equally responsible and thus equally liable for the legal consequences. In *Atwood v. People*, 176 Colo. 183, 489 P.2d 1305 (1971) the court interpreted the statute to mean that even when one defendant is charged as an "accessory" s/he is guilty of the same degree of crime as the principal. The court's interpretation of the statute

in the case of Reed v. People, 171 Colo. 421, 467 P.2d 809 (1970) provided that a defendant need not perform all acts necessary to the commission of the crime in order to be charged as a principal. Furthermore, the case of McGregor v. People, 176 Colo. 309, 490 P.2d 287 (1971) stated that legal officials do not need to spell out which is the principal and which is the accessory when co-defendants are being tried.

According to the Chief Complaint Deputy of Denver's District Attorney's Office, the statute means that both partners in a crime partnership may be charged with the same offense. He says that the only exception is when there is insufficient evidence to support the initial charge and, instead, a charge of conspiracy is filed, usually against the partner whose participation in the commission of the crime is unclear. It is after this initial filing stage, the Deputy says, that role takes on importance both as a legal variable and as an extra-legal variable.

Role has legal implications only when the use of a deadly weapon is involved in the commission of the crime. For example, when one partner robs a store at gunpoint while the other partner waits in the getaway car, both may be charged (according to the complicity statute) with the same offense--in this case Aggravated Robbery, a Class 3 felony punishable by a prison term ranging from 5-40 years. However, even though both are charged with the same offense, the dominant partner (the one with the gun) must receive a prison sentence under the Mandatory Sentencing Act enacted by the Colorado Legislature in July, 1976. This law provides for the automatic

sentencing of defendants using deadly weapons in the commission of a crime. In this type of case, then, the dominant partner is legally liable for the harsher punishment. The minor partner, on the other hand, may or may not receive a sentence. The Mandatory Sentencing Act has little effect on this analysis, however, because it was in effect only during the last six months of the data collection period. Furthermore, very few defendants used guns. Therefore, we shift our focus to the extra-legal influence of role.

Role takes on extra-legal importance at various stages following the initial filing of charges. For example, two people may be charged with the burglary of a home yet information contained in the pre-sentence investigation report or application for deferred disposition may indicate that one played a more dominant role (actually went into the house and removed the goods) while the other partner played a minor, secondary role (helped load the goods into the trunk of the getaway car). At the bail stage, the minor partner may receive a Personal Recognizance (PR) bond while the dominant partner has to post bail. The minor partner may also be allowed to plead guilty to a less serious offense with the dominant partner being denied this privilege or the minor partner may receive a deferred disposition while the dominant partner proceeds to be fully adjudicated and thus eligible for probation or a sentence. According to the Deputy, all of these examples of preferential treatment accorded to the minor partner are possible. Role may maintain its extra-legal influence throughout the adjudication process and is regarded as "one of the facts of the case." A specific example of how role may influence the adjudication of co-defendants is illustrated below:

In 1975, an Oklahoma State District Judge, Richard Armstrong, upheld the idea of differential sentencing for men and women in crime partnerships. He argued that men generally dominate women in crime, and therefore, deserve more severe punishment. His theory was put into practice when he refused to reduce the sentence of a 21 year-old man given a prison sentence four times longer than his female co-defendant on the same armed robbery charge. Judge Armstrong supported his refusal by stating, "The true perpetrator of the crime, the dominant figure, should receive a greater sentence than the subservient individual, regardless of sex." In this case, he argued, the man "led" his then teenaged common-law wife in the commission of the crime and thus deserved the longer sentence (Associated Press, Denver Post, December, 1975).

Judge Armstrong's views suggest that a defendant's role in the criminal act may be an important factor in the adjudication of co-defendants. Certainly his views coincide with the principle of commensurate or just deserts. This principle has been receiving increased attention as a basis for the introduction of presumptive sentencing schedules (see vonHirsch, 1976; LeFrancois, 1976; also, see Casper, 1978, for a discussion of the principle in terms of fairness in sentencing). Simply put, the principle of commensurate or just deserts maintains that one should get what one deserves (vonHirsch, 1976:49). What one deserves (i.e. the punishment) should be based solely on the grounds of what the behavior warrants (vonHirsch, 1976:46). Judge Armstrong believes that dominant behavior warrants longer sentences.

Unfortunately, there have been no empirical studies with which to test Judge Armstrong's assertion. Nor have there been any published opinions or articles to either support or refute this assertion. However, if we translate these views into societal reaction terminology, role has implications for the amount of power and bargaining ability defendants bring to the adjudication process. That is, the dominant defendant is likely to have a disadvantaged, less favorable status and thus less power because such a role implies a greater degree of culpability or responsibility in the commission of the crime. As a result of this diminished power and loss of negotiating abilities, the possibility of resisting a harsh label is decreased. Accordingly, the minor defendant has more power and enhanced negotiating abilities by displaying less criminal responsibility for the crime's commission. The principle of just deserts says that the punishment should be commensurate with what the behavior warrants. If behavior associated with the degree of criminal responsibility is accepted as a basis for punishment, then dominant defendants not only deserve to be labeled more harshly, they are unable to avoid such a label.

In this study, we are primarily interested in whether a defendant's sex or role in the crime best explains labeling in the court. Earlier in this chapter, we presented evidence to show that offense variables are more important to the labeling process than the defendant's characteristics. Then we discussed why role belonged in the offense category and how it could affect labeling. Sex is classified as a characteristic of the defendant. If offense variables are more important, then we expect role to weigh more heavily in the labeling process than sex because role is not only an offense variable

but is also an indicator of the severity of the offense, a legal variable. Legal variables must be taken into account during the adjudication process. Therefore, even though both sex and role are extra-legal variables, we expect co-defendants to be labeled on the basis of role, regardless of sex. If co-defendants are labeled on the basis of role rather than sex, then we expect dominant partners to receive the harsher label, regardless of sex, because they both deserve and are unable to avoid the harsher label. This reasoning provides the foundation for the first hypothesis:

H=Defendants who play the dominant roles in crime partnerships receive harsher labels, regardless of sex, than their partners who play minor roles and are more likely to:

- a) be denied release on a PR Bond
- b) be denied a deferred disposition
- c) receive a sentence rather than probation at the final disposition stage

For those defendants who play equal roles in crime partnerships, the principle of commensurate or just deserts is also salient. Recall that this principle posits that punishment should be based solely on the grounds of what the behavior warrants. If two people play equal roles in committing the same crime together their behavior warrants equal treatment--that is, "equal penalties for equal crimes." Furthermore, in accord with our basic assertion that offense variables, especially role, outweigh the defendant's characteristics, especially sex, we assert that this equality of labeling will occur regardless of the defendant's sex. This reasoning forms the basis for the second hypothesis.

H=Defendants who play equal roles in crime partnerships receive equal labels, regardless of sex, at the bail, deferred disposition and final disposition stages.

A defendant's role in the criminal act is not defined by Colorado Statute as a legal criterion affecting the adjudication process nor do the court records make specific reference to this variable. From the police accounts of the crime and/or the defendant's version of the crime (both contained in the pre-sentence investigation report or application for deferred disposition) a defendant's role is categorized according to these specified criteria. Role in crime is operationalized into three levels--dominant, equal and minor. A dominant partner is identified as doing one or more of the following: suggests the crime, plans the crime, forces the partner to participate, has primary responsibility for commission of the crime, or wields a weapon. A defendant who plays a minor role does one or more of the following: drives the getaway car, accompanies yet does not directly participate in the criminal act, or is an unknowing accomplice. To illustrate: the burglar who breaks in and steals household belongings is coded as the dominant partner while his/her partner who drives the getaway car is coded as playing the minor role. Another example: the defendant who wields the weapon in a store robbery is coded as the dominant partner even though the other partner (albeit weaponless) actually takes the money from the cash register.

Partners are coded as equal when the actions of both are recorded as identical in the police account of the crime. For example, defendants arrested in drug-related crimes are often coded as equals because the police are likely to state that "two individuals were in possession of a certain amount of marijuana." Such information does not allow us to differentiate in terms of roles.

Societal reaction theory gives us little in the way of predictive power concerning whether males or females play dominant roles in crime partnerships. In studies utilizing this theory, and others as well, the sex variable has received little attention probably because many researchers (until recently) considered female criminality too insignificant to be included in empirical works on male criminality. Harris (1977:3-4) laments this shortcoming when he says that theories of crime causation have been developed with little or no attention to this variable "which appears to explain more variance in crime across cultures than any other variable." Admittedly, there are some societal reaction works showing that sex is relevant to social power and status and thus to the deviant's negotiating ability in the adjudication process--males are the more powerful societal members and thus they are more likely to receive the more favorable societal responses (Knowles and Prewitt, 1972; Quinney, 1970; and Reasons, 1974). But such knowledge does not tell us whether males or females are likely to play the dominant roles in crime partnerships. Any insights into the problem will have to come from a review of the literature on male and female offenders in general. Therefore, before hypothesizing any relationship between role, sex, and labeling decisions, it is essential to discuss the nature of female criminality in relation to male criminality as it appears to theorists who have attempted to provide accounts and explanations in this area.

### The Literature on Female Criminality

This next section presents a review of literature pertaining to male and female offenders. It begins with the early common law notions concerning the criminal responsibility of women (particularly married women) and today's legal status of those notions. Then the works of early criminologists and contemporary criminologists and sociologists are traced to show how female offenders have been portrayed throughout the last 100 years. Finally, the section ends with a presentation of empirical research which compares the court's treatment of male and female offenders. Relationships between role, sex, and the labeling process are hypothesized.

To place the study of the court's treatment of men and women in proper perspective we turn to history. The feudal doctrine of coverture formed the theoretical basis for married women's loss or suspension of legal rights at common law. In Latin, covert means *nupta*, that is, veiled or overshadowed. In other words, a married woman's being was overshadowed by that of her husband. Blackstone's description of the doctrine of coverture concurs with the Biblical notions of the unity of flesh of husband and wife:

By marriage, the husband and wife are one person in law; that is, the very being or legal existence of woman is suspended during the marriage, or at least is incorporated and consolidated (Blackstone, Commentaries \*433).

This notion of man and wife being one (or  $1+1=1$ ) formed the basis for two feudal doctrines--the doctrine of interspousal conspiracy immunity and the doctrine of presumed coercion.

In the area of criminal law, the doctrine of interspousal conspiracy immunity (hereafter referred to as the doctrine of conspiracy) prevented a man and woman from being found guilty of conspiracy. The crime of conspiracy is the only one requiring two or more perpetrators and has been defined in *Commonwealth v. Donoghue*, 250 Ky. 343, 347, 63 S.W.2d 3,5 (1933) as a "combination between two or more persons to do or accomplish a criminal or unlawful act, or to do a lawful act by a criminal or unlawful means." Since conspiracy requires two or more persons to act in concert and since husband and wife are one, it would be impossible for a husband and wife to be co-conspirators. This principle was applied when a California court held that husband and wife cannot be convicted of criminal conspiracy in *People v. Miller*, 61 Cal. 107, 22 P. 934 (1889).

In 1960, the United States Supreme Court rejected the rule that a husband and wife are legally incapable of conspiring together. In *United States v. Dege*, 364 U.S. 51 (1960) Mr. Justice Frankfurter, writing for the majority in this 6-3 decision, stated that the Court would not be "obfuscated by the medieval views on the legal status of women and the common law's reflection of them."

Mr. Chief Justice Warren, one of the three dissenters in *United States v. Dege*, 364 U.S. 57 (1960) wrote in his opinion that the doctrine of conspiracy averts the prosecution and conviction of persons for "conspiracies" which Congress never meant to be included in the statute. His principle fear was that a "wife, by virtue of the intimate life she shares with her husband, might easily perform acts that would technically be sufficient to involve her in a criminal conspiracy with him, but which might be far removed from the arm's

length agreement typical of that crime. He viewed the doctrine as a means of protecting the married woman and the solidarity and confidentiality of marriage.

Four years later, the California Supreme Court ruled in *People v. Pierce*, 40 Cal. Rptr. 845, 61 Cal.2d 879, 395 P.2d 893 (1964) that when a husband and wife conspire only between themselves, they cannot claim immunity from prosecution for conspiracy on the basis of their marital status. In addition to California, three other states--- Colorado, Illinois, and Texas---have repudiated the doctrine of conspiracy in the following cases: *Dalton v. People*, 68 Colo. 44, 189 P. 37 (1920); *People v. Martin*, 4 Ill.2d 105, 122 N.E.2d 256 (1954); and *Marks v. State*, 144 Tex. Crim. 509, 164 S.W.2d (1942). But although it was rejected by the U.S. Supreme Court and the above mentioned states, the doctrine lives on. In England and Canada, for example, the rule persists that spouses cannot be co-conspirators as a result of *Mawje v. Regina*, All E.R. 385 (1957) and *Kowbel v. The Queen*, 110 Can. Crim. Cas. Ann. 47(1954). In the United States, the doctrine has been expressly accepted by New Jersey in *State v. Struck*, 44 N.J. Super. 274, 129 A.2d 910 (Essex County Ct. 1957) and Pennsylvania in *Commonwealth v. Allen*, 24 Pa. County Ct. 65 (1900). In the remaining states, the question has not come before the court.

For the purposes of this study, it is important to note that Colorado's repudiation of the doctrine of conspiracy in 1920 means that women may be tried as co-conspirators with their husbands. In other words, the State of Colorado recognizes the criminal

responsibility of married women who commit conspiracy with their husbands. However, what is also interesting, regardless of the state, is the legal insignificance of married women that required cases such as those just cited to come before the Courts in the first place.

The second major feudal doctrine emanating from the common law doctrine of coverture was the doctrine of presumed coercion. Under this doctrine, if a woman committed a crime in her husband's presence it was presumed that she acted under her husband's command and she was relieved of any criminal responsibility for having committed the act.

Blackstone, in his Commentaries, discussed the doctrine of presumed coercion, which by then was already a thousand years old. According to him, the doctrine created for wives "a powerful shield in their defense," that is, a presumption which "could be rebutted only by evidence showing clearly the absence of coercion..." (Blackstone, Commentaries \*28).

Although it may appear that this doctrine rests on the submersion of the wife's legal personality in that of her husband, Perkins (1957:796-805) suggests that it resulted from a complex of legal fictions ultimately depending upon a sex-based discriminatory practice. He suggests that the underlying reason for the common law rule may have been the desire of the administrators of the English legal system to spare the lives of married women accused of certain crimes. Even as late as the beginning of the nineteenth century, there were in England over 200 offenses punishable by death (Koestler, 1956:13).

In an effort to soften this harsh treatment, "benefit of clergy" was instituted. Stemming from practices in early English legal history members of the clergy, a favored social group, were permitted to raise their religious affiliation as a defense to an accusation of a crime punishable by death. When such a defense was raised, the clergyman was bound over to the ecclesiastical court where it was unlikely that he would be convicted of the crime (Perkins, 1957:798).

When first instituted, benefit of clergy was available only to clerks, monks, and nuns. Later, the common law courts gained in prestige and the transfer of a case to the ecclesiastical courts no longer occurred when the benefit of clergy was pleaded. The plea was still valuable in the common law courts, however, because it limited the punishment to a "brand upon the brawn of the thumb and imprisonment not to exceed a year" (Perkins, 1957:798). As the years passed, the English legal administrators again sought to soften the rigors of the penal system. This time, they extended benefit of clergy to any man who could read, whether he was a member of the clergy or not (Perkins, 1957:798). Now at this time, approximately 1353, the art of reading had been mastered by true clerics and a few others, but was certainly not widespread. However, the courts accepted this evidence of reading skill as proof that the accused was a clergyman, knowing full well that he might be a layman, not a cleric.

Of course, because married women were excluded from the clergy, even as nuns, the common law courts refused to extend the benefit of clergy to them. The practical result of this fictionalization

was that if a husband and wife were accused of committing a crime together, the husband could plead benefit of clergy, but his wife could not avail herself of this protection. Therefore, she could be condemned to death.

It was to alleviate this harsh disparity of treatment, Perkins (1957:799) says, that the doctrine of presumed coercion was instituted. Under this doctrine a wife who committed a crime in the presence of her husband (with the exception of treason, murder or misdemeanors) could defend herself on the grounds that she acted under the command or coercion of her husband, and therefore, could not be punished. The end result was that a husband could plead benefit of clergy and the wife could plead the doctrine of presumed coercion and both could be spared from the death penalty.

It seems unlikely that such medieval logic could prevail today. Indeed, benefit of clergy is no longer of any significance, but the presumed coercion principle is far from dead (Kanowitz, 1969:90). Though it has been rejected by California in *People v. Stately*, 91 Cal. App.2d Supp. 943, 206 P.2d 76 (1949) and Kentucky in *King v. City of Owensboro*, 187 Ky. 21, 218 S.W. 279 (1920), as late as 1950 the "majority of our courts hold the presumption still lives in a modified form" (3 Oklahoma Law Review, 1950:442-444). While the presumption is weaker and can be rebutted with a lesser showing of an absence of coercion that was true in the past, Kanowitz (1969:91) says the presumption is recognized in most states and, unless rebutted, prevails. According to Frankel (1973:490-491), the doctrine is antiquated and its actual use has never been subjected to empirical testing. However, it is believed to exist by case law

in some states due to *State v. Ready*, 251 S.W.2d 680 (Mo. 1952), *Doyle v. State*, 317 P.2d 289 (Okla. Crim. App. 1957); *State v. Cauley*, 244 N.C. 701, 94 S.E.2d 915 (1956) and by statutes in Arkansas, Arizona, California, Delaware, Nevada, Oklahoma, South Dakota, and Utah.\* There have been no cases rebutting the doctrine of presumed coercion in Colorado, and acceptance of Kanowitz's assertion leads to the conclusion that the doctrine prevails, although undoubtedly in weakened form. At least, we have no evidence to the contrary.

As a result of many sociological and historical factors influencing woman's position at common law, two threads of thought weave together these common law doctrines of coverture, conspiracy and presumed coercion. The first of these is, as Radin (1936:524) calls it, the theory of "natural male dominance." Perhaps one of the most influential historical factors was the concept of feudal tenures in which the services performed were by their very nature more suited to a man than a woman, by virtue of man's physical strength, and the more practical reason that most women were encumbered by their reproductive and child-bearing roles. This factor, coupled with the Biblical notion of unity of flesh insured that when husband and wife became married, the "one" was the husband and he had legal supremacy. The husband had an undisputed right to chastise his wife and thereby exercise control over her (3 Oklahoma Law Review, 1950:442-444). She was presumed to have no conscience and no control over her own behavior.

---

\*Complete citations for these statutes appear on page 184, after the references.

The second thread of thought implicit in these doctrines is the "protectiveness" of them. Each evolved as a way for women to be protected by men from the cruel bar of justice. However, as Freda Adler (1975:205) points out, these defenses "did not pretend that the woman did not commit the criminal act, but simply contended that she was legally incapable of having done so on her own."

#### Theories of Female Criminality

These notions of male superiority and the need to protect women were carried over from medieval England to the theories expounded by leading criminologists and sociologists in the late nineteenth and early twentieth centuries.

Cesare Lombroso was perhaps one of the earliest criminologists to theorize about female criminality--he reasoned that very few women were involved in crime because they lacked the intelligence to do so. Those who did participate in crime were more like men than other women (Lombroso, 1920). In other words, to be a criminal was unfeminine for women, but natural for men.

In his book, Sex and Society, Thomas (1907) suggests that male criminality is more prevalent because maleness is "katabolic," the animal force which is destructive of energy and allows men the possibility of creative work through this outward flow. Conversely, femaleness is "anabolic," analogous to a plant which stores energy, and is motionless and conservative. Thomas' dichotomy is parallel to the aggressive-passive syndrome often used in explaining differences in male-female criminality. In his later work, The Unadjusted Girl (1923:28), Thomas suggests that criminality is

"curable"; the female criminal just needs sufficient institutionalization to change her anti-social attitudes. Woman (especially the poor woman) is not immoral, she is amoral, devoid of rules as she strives to fulfill her basic "wishes." Among these wishes, is the need to manipulate man's desire for sex to achieve her own ulterior needs. Running throughout both of Thomas' books is the theme of the physiological inferiority of women while men are imbued with high amounts of sexual energy which lead them to pursue women for their sex. Women, in turn, exchange sex for domesticity. Men are the leaders, women the domesticated.

Physiological inferiority was also the theme of Freud's (1933) "Anatomy is Destiny." This inferiority was rooted in woman's inferior sex organs, sans penis, which destined her to be wife and mother, an inferior destiny for an inferior sex. Woman's inferiority was also manifested in her emotionality and inability to make rational judgments--she was simply too weak to make moral decisions. Men, on the other hand, were able to perceive the Hobbesian conflict between satisfying their sexual urges and the social need for suppression of those urges. Freud, like Thomas and Lombroso, portrays man as the aggressor, woman the non-aggressor. If a woman resorted to crime, it was only because she was attempting to emulate men. Portraying an image of aggressiveness was her way of compensating for lacking a penis. Deviant women, Freud concluded, needed professional treatment to learn to accept their sex role. Normal women were passive and sexually indifferent; criminal women were neurotic and maladjusted, sexual misfits.

Eleanor and Sheldon Glueck (1934:96, 318) characterized the delinquent woman as a pathetic creature driven by her sexual impulses. Her childlike irresponsibility would require protective and preventive treatment from the criminal justice system.

Kingsley Davis' (1961) work on prostitution shows influences of both Freud and Thomas. He portrays man as the aggressor, the dominant one in economic, sexual or familial relationships. Woman is once again reduced to an inferior status whether it be in the marital union where she is sexual property or in the prostitution market where she is merely a commodity to be purchased and enjoyed (Davis, 1961:264). Bad women, prostitutes, are perpetually ill and maladjusted because they sell their sexuality on the streets, rather than in the marital boudoir. However, unlike Freud and Lombroso, Davis does not see deviant women as striving to achieve a degree of masculinity, rather, they are merely adjusting to their feminine role in an illegitimate fashion.

Otto Pollak's Criminality of Women (1950) incorporates strands from all of the works previously mentioned. Like the others, he reduces criminality to physiological reasons, but he finds women inherently more capable of manipulation, accustomed to being sly, passive, and passionless. However, this passivity and deceitfulness explain the unreasonably low official crime rates for women. Women use their sexuality to instigate men to commit crimes for them (the Lady Macbeth factor, Crites; 1977:28). If women do commit their own crimes, they are usually of a domestic and undetectable type, occurring in the home with weapons easily accessible to women--kitchen knives, poisons, etc. Another reason for the low

female crime rate, Pollak says, is the chivalrous attitude of the criminal justice system. Man is generally protective of the fairer sex and reluctant to punish. Furthermore, their crimes cause less inconvenience to society (e.g. shoplifting, prostitution) and are less likely to be reported. Pollak, like all the other theorists just mentioned, reduces female criminality to biological causes-- man is biologically the sexual aggressor, woman the receptor. Even when she is deviant, she does so in a surreptitious and unaggressive manner.

If we summarize the works of Lombroso, Thomas, Freud, the Gluecks, Davis, and Pollak these conclusions emerge. First, man is aggressive, woman passive. Such a dichotomy is based in the natural biological and sexual nature of male and female. Second, by nature of this passiveness, woman is inferior--morally, biologically and psychologically. She is devoid of morality and the ability to make rational judgments, therefore, she is incapable of crime, at least serious crime. Similar to the beliefs embodied in the doctrines of conspiracy, coverture and presumed coercion, she is assumed to have no conscience and no control over her own behavior. However, because of innate dominance and aggressiveness, crime is a natural outlet for men's normal sexual urges and wishes. When she is deviant, woman is either trying to be more like a man or sick and maladjusted in her sex role. Either way, her deviance is only transitory and can be "cured" with proper treatment once the causes, usually physiological or psychological, can be found. Such a temporary deviation requires gentle, even chivalrous treatment, not punishment. Man, however,

because of his dominance and aggressiveness has the potential for inevitable criminality. The implication is that he can never be successfully rehabilitated. Third, all the theories embody the positivistic approach to criminality in that the sources of crime are readily identifiable because they reside within the criminal, not in the larger social structure. Finally, all of the theorists are coming from a structural-functionalist approach when they state that this aggressiveness-passiveness syndrome is necessary for the maintenance of a harmonious society.

Even though these writers do not directly address a woman's role in a crime committed with a male partner, woman is portrayed as either incapable of the crime or unlikely to assume leadership or major criminal responsibility when a man is present. Even if women did lead men in crime, chivalry and social conditioning would prevent officials from treating them like men.

The themes of paternalism, protectiveness, and the unnaturalness of female criminality expressed in the foregoing theories are carried over into contemporary works on the court's labeling of female offenders. However, these similar views do not necessarily result in consistent treatment for males compared to females.

Studies of the adjudication of defendants articulate two schools of thought concerning the treatment of females vis-a-vis males:

1) females are treated preferentially, and 2) females are treated more harshly. Simon (1975) summarizes these two schools of thought into the "preferential" thesis and the "evil woman" thesis.

The preferential thesis contends that women are treated preferentially in the courts because of the paternalistic attitudes of

judges who assume women to be the "weaker sex," less dangerous to society, more easily deterred from repeating the crime, and because severe punishment is impractical given their traditional housewife/mother roles (Nagel and Weitzman, 1972:18-25). While the evidence to support the paternalistic attitude of judges is scant, several empirical studies show that females are treated preferentially (i.e. labeled less harshly) over males who commit the same type of offense (Singer, 1973; Arditi et al., 1973; California Bureau of Criminal Statistics, 1972; Pope, 1978). For example, Nagel and Weitzman (1973:18-25) in an analysis of 11,258 criminal cases found that female defendants are treated preferentially at the bail stage and were more likely to be dismissed. Furthermore, once tried, females were less likely to be convicted; if convicted, they were likely to receive shorter sentences than males who commit the same crime. However, the authors fail to control for other important variables, such as the defendants' prior criminal record.

Preferential treatment for females who commit the same type of crime as males was demonstrated in a study of sentence outcomes for 32,694 felony arrestees in the lower and superior courts of 12 northern California counties. The results showed that females were more likely to receive less severe sentences than were male defendants, but the trend was stronger in urban than rural areas (Pope, 1976:217). However, when prior record was controlled the sentencing disparity disappeared in the lower courts but remained in the superior courts. No significant differences were found between male and female in terms of length of probation term.

Further evidence for the preferential treatment thesis is demonstrated with results from a study of 2,965 male and female defendants arraigned in higher courts in New York State. The authors conclude that females are the more likely recipients of the favorable outcomes, i.e. sentence severity and length of time imprisoned before and after adjudication. A prior record did not seem to make any difference in the dispositions of females (Bernstein et al., 1979).

Other evidence for the preferential thesis comes from a study of 1,255 male and female criminal defendants charged with the same type of offense in seven judicial circuits in Alabama (Alabama Law Review, 1975:676). Although the males were more likely to be released on their own recognizance (the authors attribute that to a female's lack of attachable financial holdings) there was no difference in the amount of bail set for both sexes. However, after this stage preferential treatment surfaces: in grand larceny and violations of the Alabama Uniform Controlled Substances Act, almost three times as many women as men had their charges reduced. Males who pleaded not guilty were convicted at a rate more than seven times greater than females who entered the same plea. At the sentencing stage women were no more likely than men to receive suspended sentences, but when the number of prior misdemeanor and felony arrests as well as felony convictions were similar the mean sentence imposed on women in each offense category was lower than that for males with the exception of drug law violations. The preferential thesis receives further impetus from this study because it shows that even when a woman's prior criminal record is as serious as a man's, she is likely to receive a shorter sentence than her male counterpart.

In their analysis of 23,560 male and female case dispositions in one of the nation's principal urban areas (the actual site was not identified) Kritzer and Uhlman (1977:78-88) found that females received less severe treatment in terms of verdicts and sentence severity.

In a much smaller, but more methodologically rigorous study Swigert and Farrell (1977:26) use a multivariate analysis on the records of 454 homicide cases in a large northeastern state (the actual site was not identified). They found that females were more likely to be convicted of less serious charges than males. The authors assert that being female is a mitigating factor in the assessment of criminality in general and it is this "social pedestal" effect which results in the female's less severe treatment.

Although some suffer methodological weaknesses, the bulk of these studies just cited support the notion that at several stages of the labeling process women are treated preferentially over men who commit the same type of offense.

The second school of thought holds that women are labeled more harshly than men. This school embodies the "evil women" thesis based upon the assumption that crime is more natural for men than it is for women. As a result of this assumption, women who do commit crimes are considered to be "really evil" because they have not only committed a crime, but also violated stereotypic sex role expectations (Simon, 1975). The idea that crime is unnatural for women may also explain why they are viewed as more likely candidates for the indeterminate sentence and why there are even statutory-prescribed longer sentences for females than for males in some states

(see for example, Massachusetts, Connecticut, New Jersey and Iowa).\*

Because women are believed to be less criminal than men their rehabilitation is inevitable. It is only a matter of time. As a result, they can be justifiably detained in prison for as long as necessary to achieve rehabilitation (Temin, 1973:358). Interestingly enough, this harsher treatment is also thought to be a result of paternalistic attitudes by legal officials who seek to "protect" the female criminal, especially the juvenile. The existence of a paternalistic attitude is questioned in a review of literature by Etta Anderson (1976) and there are empirical studies which lend support to the belief that women, particularly juveniles, are labeled more harshly than males. Studies by Terry (1970:86) and Kratcoski (1974) show that females are more likely to be referred to social and welfare agencies than males or held in detention. Other studies show that female juveniles are more likely to be institutionalized for status offenses than males (Velemisis, 1975:109; Datesman and Scarpitti, 1977). In a recent study of adults, Bernstein et al., (1977b) report that women are convicted of more serious offenses than their male counterparts, controlling for the seriousness of the offense for which they were prosecuted.

Interestingly enough, given all the theories and studies dealing with female criminality in relation to male criminality, no studies have addressed males and females who commit the same crime together. Such an approach would have allowed criminologists to more directly assess the extent and nature of female criminality in relation to male criminality and to study the role females play in such ventures

---

\*Complete citations for legal statutes appear on page 184 after the references.

without resorting to armchair speculation. While there are no studies which specifically address the roles played by male-female co-defendants, there are some studies which indirectly offer some insight into the problem.

The literature presents conflicting views as to whether men or women play the dominant role in crime partnerships. Studies of juveniles tend to portray the female as instigator. For example Konopka (1966) in her study of youthful offenders, says that females are instigators of male crime. Vedder and Somerville (1970) in their book on delinquent girls, also stress that females are instigators of male crime. Cavan (1962:32) says the female generally remains in the "background" letting the male take the risks. And Cavan points out that the male often commits crimes for the female--for example, to support her or to entertain her. Certainly, Otto Pollak's (1950) work supports the idea that when a man and woman team up to commit a crime, he is the one to be caught because he commits the overt act; the woman remains in the background playing the role of instigator or motivator. When apprehended, chivalry prevents the man from involving his female counterpart. Note, however, that the first three works cited in this paragraph deal with juveniles and Pollak's work, though on adults, draws upon data gathered prior to 1950.

Turning to works dealing with adults, we find only two studies which offer concrete, empirical evidence. Ward et al., (1969) from an analysis of female inmates at the California Institute for Women conclude that, with respect to crimes of violence, the women

typically played supporting roles to men. The authors went on to compare the offenses committed by this group of offenders to those committed by a similar group incarcerated in the same institution five years later. From this comparison, they conclude that when other persons were involved in the crimes of robbery, assault or homicide, "there was a tendency for the women in the later group to play more active criminal roles" (Ward et al., 1969:902). This tendency was particularly apparent in the robbery cases. The proportion of women identified as "conspirators" and "accessories" (less active criminal roles) declined while those who were crime "partners" (a more active criminal role) increased. The major problem in relying on these findings is that some of the data were collected as early as 1963-64. While the comparison of the early group to the later group of offenders shows an increase in the tendency of females to play more active roles with their male partners, the lack of more recent data leaves us wondering as to the extent of the increase.

Rita Simon, in her book Women and Crime (1975:87-88) concluded from interviews with 30 criminal court trial judges and prosecuting attorneys that "women tend not to be the managers, the organizers, or the planners of most of the crimes with which they are involved." Most of the women become involved in crime through their commitments to husbands or boyfriends. The Ward et al., (1969) finding that psychological dependency upon males may even contribute to a female's delinquency supports Simon's view.

The only other information we have is comments made by legal officials. For example, Stanley Marks, a Denver attorney, comments that "Women just don't approach crime as a business the way men do. They're usually 'helping their guys out' for emotional reasons and his reasons are economic for the most part" (O'Connor, 1977:5). And to reiterate Judge Armstrong's view mentioned earlier: men generally lead women in crime.

Hoffman-Bustamente (1973:131) maintains "it appears that they (women) have played secondary, supportive roles. . . Thus, women seem to commit crimes in roles auxiliary to men, in keeping with their sex roles and for lesser returns often making them more vulnerable to arrest." And Smart (1976:67) says that "consequently, the differential socialization of girls is reflected not only in the types of offenses committed by women but also in the nature of their participation."

Of course, some take exception to this portrayal of women playing minor roles in crime partnerships with men. For example, Adler (1975:18) reports the remark of a lieutenant in a New York City police department who notes that. . ."we see a lot more women purse snatchers, robbers, and a lot more mixed robbery teams, with men and women working as equal partners. Before, it would be only men." Elsewhere in her book, Adler (p. 100) reports the comment of a judge at Old Bailey in London who says, "The girls are even tougher than the boys. It was once assumed that if a man and woman committed a crime, the woman was under the domination of the man. I think that's now rubbish from what I've seen."

Feminists are quick to dispute the idea that women play minor roles in a crime or are drawn into crime through romantic attachments to men. Particularly irritating to them is the suggestion that women are not intelligent enough to commit a crime, much less lead a man in its commission (Millman, 1975:252). They cite female criminals such as Angela Davis who was reputed to have been radically oriented long before her involvement with the Soledad brothers. And Adler (1975:20-21) reports that the Symbionese Liberation Army was actually led by a group of women who only chose black man Donald DeFreeze (Field Marshall Cinque) as "leader" because of the symbolic necessity for a Third World revolutionary cadre to be headed by a black male.

To briefly summarize these findings: empirical evidence on juveniles says females often lead males in crime, yet the only two empirical studies available on adults shows that women play supportive roles with men. Just what brings about this transformation from juvenile female instigator to adult female follower is not clear, but since this study deals with adults our interests focus on the Ward et al., (1969) and Simon (1975) studies. These two studies and the comments of some legal officials indicate that although women are playing more active roles these days, they still tend to play the minor roles with men in crime partnerships. We endorse this belief not only on the basis of the research just cited but also because the demographic profile of female defendants in a preliminary study of co-defendants in this same jurisdiction (Fenster, 1977a; 1977b) shows that they, like other female offenders, come from the lower socioeconomic stratas of society, stratas that traditionally

recognize male dominance and superiority (Crites, 1977:38). Furthermore, the early common-law doctrines and theoretical works summarized earlier in this chapter portray woman as inherently uncriminal, incapable of serious crime and describe her activity with themes of inferiority, paternalism and protectiveness. Finally, while we hear a lot now about the "liberated" woman asserting herself with men we know that, contrary to public opinion, female offenders neither feel part of the Women's Liberation Movement nor support its principles (Bruck, 1975). In fact, many vocally oppose any association with it (Adler, 1975:8). As a result, it seems unlikely that many of the women in this group "led" their partners or assumed the major criminal responsibility in committing a crime. Based on this reasoning, the third hypothesis is advanced:

H-Females play minor roles in crime partnerships with men.

Now we turn our attention to the fourth hypothesis, an extremely important one because it allows us to find out whether role is more important than sex or if sex is more important than role. We have gone into considerable detail discussing the literature on female criminality and showing why we think females are likely to play the minor role with males in crime partnerships. However, this literature also shows that females are generally treated more leniently than males who commit the same type of offenses. Many of these studies suffered methodological weaknesses. In addition, none dealt specifically with male-female co-defendants. Thus, we do not know whether this pattern of leniency for females would persist if the studies had more methodological rigor or when the subjects are male-female

co-defendants. Furthermore, we do not know whether this leniency would persist despite other variables, especially role. Therefore, to alleviate our uncertainty and to allow a direct test of the assertion that role is more important than sex, we are going to predict just the opposite. That is, we predict that female defendants will receive milder labels than their male co-defendants, regardless of their roles in the crime. Even though this assertion runs counter to the central thesis of this study, we feel it is necessary to test both assertions to find out which prevails. This provides the reasoning for the fourth hypothesis:

H=Females receive milder labels than their male co-defendants, regardless of role, and thus are more likely to:

- a) be released on a PR Bond.
- b) receive a deferred disposition
- c) receive probation rather than a sentence at the final disposition stage

At this point, we return to the question, Which of the three categories of variables best explains the labeling of male-female co-defendants? The argument has already been set forth that offense variables are the most important and that a variable within this category and unique to co-defendants, role, should have more effect on labeling than sex. But to conclude the analysis at this stage would leave us wondering which other variables might also explain variation in labeling. Moreover, the question of which category has the most explanatory power has never been pursued using male-female co-defendants as a sample. Therefore, the final hypothesis deals with the explanatory power of the three categories of variables.

Recall that the characteristics of the defendant include age, sex, race, the presence of extended family ties, source of support,

and educational, marital, and employment status and prior record. The second category, characteristics of the offense, includes the seriousness of the offense, number of charges, role and use of weapon. Organizational variables include variables summarizing the results of prior processes such as bail release status as well as the organizational variables of length of pre-trial detainment in jail, judge, type of counsel, plea-bargaining, time elapsed from arrest to final disposition, trial format, and whether the defendant has another case pending.

Societal reaction theorists maintain that official labeling results from the interplay of several variables with the defendant's characteristics taking precedence over the characteristics of the offense and organizational variables (Tittle, 1975:162). It would be conceptually and statistically desirable to propose that each of the three categories explains a certain percentage of the variance in labeling decisions. (For example, characteristics of the defendant = 65%; the offense = 20% and organizational variables = 15%). However, Tittle (1975:163), in his empirical evaluation of labeling theory cautions that the limited development of the theory thus far precludes such propositions. He suggests, instead, that a theoretically plausible proposition might be: "Other variables will account for more of the variance in labeling than will actual rule-breaking behavior." However, after reviewing 17 studies utilizing the labeling approach, he discards this proposition in favor of a less stringent one which states that the defendant's characteristics explain some of the variance in labeling. In other words, he decides not to make the defendant's characteristics the major determinative factor. Schur (1971) and Becker (1973) agree that it is not the

intent of interactionists to restrict the thesis to one which makes characteristics of the deviant the major determinative factor. Earlier in this report, the views and/or findings of Hagan, 1974; Wellford, 1975; Bernstein et al., 1977a; and the two Colorado studies (Hoffman, 1977) showed support for the assertion that characteristics of the offense were the major determinative factors in explaining labeling decisions. None of the works just cited found the other two categories to be unimportant (indeed, there is growing support for the importance of the organizational variables, e.g. Eisenstein and Jacob, 1977; Bernstein et al., 1977a; 1977b; Nardulli, 1978). However, the bulk of the research suggests that the category of offense characteristics is the major determinative factor or as Gove (1976:227) states it . . . "one acquires a deviant label primarily because of one's deviant behavior." Thus, the fifth and final hypothesis is:

H=Variables associated with the offense explain more variation in labeling than either organizational variables or the characteristics of the defendant.

The acceptance or rejection of this final hypothesis has implications for the validity of one of the basic tenets of societal reaction theory, namely, that the deviant label is primarily a consequence of one's social attributes. If we reject the hypothesis by finding that the social attributes of the offender do indeed explain most of the variation in official labeling, then the theory will have one more supportive study. However, if we fail to reject the hypothesis then further support of the more traditional approach to deviance (which focuses on the criminal behavior of the deviant) is

demonstrated. The third possibility is that the organizational variables will have the most explanatory power. Such a finding will be an indicator of the need for further exploration of this increasingly important category as recent researchers have suggested (Bernstein et al., 1977a; 1977b; Eisenstein and Jacob, 1976; Nardulli, 1978).

What follows next is a brief review of the literature which demonstrates the importance of all three categories of variables upon the official labeling of defendants. This review is presented, not by grouping the variables into their respective categories, but by introducing the variable at the appropriate stage of adjudication in which it assumes importance.

Prior criminal record seems to have an adverse effect on adjudication in that defendants with extensive records are more likely to be assigned public counsel (Swigert and Farrell, 1977). The limitations inherent in public counsel combined with an unfavorable prior criminal record seem to adversely affect access to bail (Swigert and Farrell, 1977:25). As a result of the findings of the Manhattan Bail Project, the determination of whether or not to release defendants pending trial is based upon (in addition to prior record) such factors as family ties, employment or school status, residence and discretion (Ares, et al., 1963). However, it is generally true that bail is usually set on the basis of the severity of the offense with which the suspect is charged (Galliher and McCartney, 1977:238). Additional indicators of the offense's severity include use of weapon, number of charges, and role.

Theoretically, the main purpose of bail is to enable persons accused of crime to remain at liberty while preparing for trial. According to Galliher and McCartney (1977:274) the only lawful reason for requiring defendants to post bail is to insure their presence for required court appearances although there may be other reasons which make being out on bail advantageous to both the accused and the court. However, a defendant's bail status has consequences ranging beyond whether or not s/he appears in court. Being a prisoner before and during a trial may prejudice a judge and jury against the defendant, in part because coming to court in the custody of a guard gives the impression of guilt. Another consequence of being detained is the inability to claim a good work and family record while awaiting trial. The jailed defendant does not have this opportunity and thus cannot project this favorable influence upon the judge or jury (Katz, et al., 1972:151-152).

A defendant's unsuccessful access to bail affects final disposition patterns (Ehrman, 1962:21; Chiricos et al., 1972:562-564) because defendants jailed before trial are more likely to be convicted than those charged with similar offenses who were not detained (Foote, 1959; Los Angeles Law Review, 1961:627; Ares et al., 1963:83; Goldfarb, 1965:38-49). In fact, those in jail awaiting a trial are more often convicted irrespective of the seriousness of the charge, the magnitude of the evidence and their prior record (New York Legal Aid Society, 1972; Rankin, 1964). Thus, we see the need for the study of adjudication processually--decisions occurring early in the adjudication process (i.e. bail release status) have consequences for decisions made later in the process.

In handing down final dispositions, judges seem to be influenced by the amount of time elapsed since the arrest. Studies show that the longer the time elapsed from arrest to final case disposition, the less likely the defendant is to be found guilty, especially if this time was spent in detention (Banfield and Anderson, 1968:287-290). This finding is supported by Bernstein et al., (1977a) who found that defendants who had spent a considerable amount of time in jail while awaiting the final disposition of their cases were more likely to have their cases end in a dismissal. They explain this strange relationship by noting that the process itself may serve as the sanction. For example, judges may consider the time the defendant has spent in detention and subtract that from the additional time the defendant would receive were s/he sentenced. Further, the judge subtracts what would be an equivalent to what the defendant would get off for "time off for good behavior." Once those subtractions have been summed, it may become more cost effective to dismiss the defendant rather than to further expend the court's time and money in continuing to process the defendant (Bernstein, et al., 1977a:743-755).

The type of counsel affects the trial format in that only those defendants who admit their guilt or waive their right to trial are disposed of by a judge. It has been argued that negotiations between prosecutor and defense attorney will often result in a bargained settlement of the case (Newman, 1956; Alschuler, 1968; Cole, 1970). While all attorneys engage in plea negotiations, such negotiations are most often utilized by public counsel (Blumberg, 1967). Therefore, the defendant with public counsel is more likely to be adjudicated

guilty, though the charge will most likely have been reduced thereby warranting a less severe punishment.

Turning to characteristics of the defendant, we find that males and persons of lower occupational status are convicted of the more serious charges (Swigert and Farrell, 1977:26). Since blacks and other minority races most often occupy positions in the lower socio-economic classes (Swigert and Farrell, 1977:29) they are more likely to receive harsher treatment. Moreover, they are more likely to be involved in criminal activity in the first place (Hindelang, 1978:93), especially in the crimes of rape, robbery and assault. According to the societal reaction thesis, defendants who are older are more favorably treated (Bernstein et al., 1977c:374-375) however, Chiricos et al., (1972:559) suggest that older defendants are adjudicated guilty more often because they have had more time for extensive criminal records to accrue. These same researchers find that the higher the defendant's level of education the less likely s/he will be found guilty. Marital status or factors associated with it influence adjudication in that married males with children are adjudicated guilty more often than single males (Chiricos et al., 1972:560) while females defendants with children are treated less severely (Bernstein et al., 1979). However, Bernstein et al., (1979) also found that males who have children and are the only adult in the household are less likely to be imprisoned.

Although the literature just reviewed does not distinguish between defendants as sole perpetrators and those as partners, there is no reason to assume that the variables influencing the labeling

process would not be the same for both groups of defendants. Therefore, on the basis of the literature just reviewed, the relevant independent variables are (in their respective categories):

1) Characteristics of the defendant: age, race, sex, the presence of extended family ties, source of support, educational, marital, and employment status, and prior criminal record; 2) Characteristics of the offense: seriousness of the offense, role, number of charges, and use of weapon; 3) Organizational variables: bail release status, judge, type of counsel, plea-bargaining, time elapsed from arrest to final disposition, probation officer's recommendation, length of pre-trial detainment, and whether the defendant has another case pending.

#### Summary Statement of Hypotheses

This chapter began with a discussion of societal reaction theory. We developed the assertion that offense variables have more influence on labeling than characteristics of the defendant. Thus, role (an offense variable) would be more important than sex (a characteristic of the defendant) in explaining the labeling of male-female co-defendants. Drawing upon our discussion of societal reaction theory plus a review of the literature on male and female offenders, five hypotheses concerning the relationship between sex, role, and labeling were generated as well as the relationship between offense variables and labeling. These five hypotheses and the order in which they will be tested in Chapter IV are:

H<sub>1</sub>=Defendants who play equal roles in crime partnerships receive equal labels, regardless of sex.

H<sub>2</sub>=Defendants who play dominant roles in crime partnerships receive harsher labels, regardless of sex, than their partners who play minor roles.

H<sub>3</sub>=Females play minor roles in crime partnerships with males.

H<sub>4</sub>=Females receive milder labels than their male co-defendants, regardless of role.

H<sub>5</sub>=Variables associated with the offense explain more variation in labeling than either organizational variables or characteristics of the defendant.

Now, having laid this foundation, we turn to Chapter III which outlines the methods and analyses used to test these five hypotheses.

## CHAPTER III

## SAMPLE, METHOD AND ANALYSIS

This chapter describes the sample selection, methods of data collection and the statistical analyses used to test the hypotheses.

## Sample

The sample consists of 105 pairs of male-female co-defendants and 151 pairs of male-male co-defendants\* whose felony cases\*\* were filed in Denver District Court from January, 1972, through December, 1977. Although the labeling of male-female co-defendants is the major focus of this study, the male-male co-defendants are included as a control group with which to test the hypotheses regarding the influence of role upon the labeling process. In addition, the descriptive information generated on both types of co-defendants can be used as a data base to which future studies of co-defendants can be compared.

The procedure for selection of these cases was: first, from the cases on the court dockets for the years 1972-77, cases involving partnerships (two partners) were selected. From that list of partners, all those cases in which the files contained either pre-sentence investigation reports or applications for deferred dispositions for

---

\*The original sample included 16 pairs of female-female co-defendants but they were dropped from the statistical analysis because there were so few of them and all of the 16 pairs played equal roles. Instead, a brief description of their characteristics, their offenses, and their treatment in the court is presented in Appendix C.

\*\*Generally, only felony cases are tried in Denver District Court. Misdemeanor cases are tried in Denver County Court.

both partners were chosen. These reports were essential because they were the primary source of background information about the defendants. This procedure yielded 105 pairs of male-female co-defendants. The same procedure was followed for selection of the sample of male-male co-defendants. However, since male-male partnerships occur approximately five times more often than male-female partnerships, a random sample was chosen by selecting every fifth case. This procedure yielded 151 pairs of male-male co-defendants. These cases were arranged by docket numbers assigned by the Clerk of the District Court, Criminal Division, according to the order in which they were brought to the Clerk from the District Attorney's office. The numbering appears to contain no systematic bias; therefore, the procedure of selecting every fifth case is appropriate.

There is a major problem with relying on court records such as pre-sentence investigation reports or applications for deferred dispositions. The problem is that these reports are filed only on those defendants who proceed to the more advanced stages of the adjudication process. These defendants have passed through the stages of police arrest, formal filing of charges by the prosecutor, and the preliminary hearing to determine probable cause. This builds a possible bias into the study because it eliminates defendants who received dismissals or final dispositions at very early court appearances as well as those who were adjudicated without benefit of these reports. As a result, the findings of this study should be interpreted accordingly.

This sample of co-defendants represents a very small portion of the total number of cases tried each year in Denver District

Court. In 1977, the total number of cases filed in this court was 2,468 of which 340 (14%) were defendants acting with one or more co-defendants. When we restrict our major focus to male-female co-defendants, however, we are dealing with an even smaller percentage of the total case load. For example, in any given year the number of male-female co-defendant cases filed in this court represented about two percent of the total case load. This sample is reduced by half, however, because about 50 percent of the cases had either pre-sentence investigation reports or applications for deferred dispositions filed on both defendants. Thus, the sample of male-female co-defendants constitutes about one percent of the total yearly case load in this court. This is, admittedly, a very small proportion yet one which can yield important information about female criminality in relation to male criminality and also provide a foundation for the future study of larger samples of co-defendants.

#### Method

Data were collected using three methods: analysis of court records, interviews with legal officials, and observations of court proceedings. The first method constitutes the major source of data for quantitative analysis while the latter two methods provide supplementary data for a more qualitative view of the labeling of co-defendants.

#### Court Records

Information on the dependent variables--bail, deferred disposition and final disposition--was obtained from the minutes of the trial proceedings in the court records. Information on the

independent variables was obtained from pre-sentence investigation reports or applications for deferred dispositions (the format and information included in both are the same.) These reports were crucial to the data collection process because they were the primary sources of sociological and criminological information on the defendants. While some files contained similar information in the defendant's application for a Personal Recognizance (PR) Bond, this source was not consistently present in all cases and, therefore, was only used for cross-checks or where supplemental information was needed.

Since court records constitute the major source of data for this study, it is appropriate to understand what they are and how they are used by legal officials. Pre-sentence investigation reports are written by probation officers at the request of the presiding judge. These five or six page reports include demographic data on the defendant such as age, sex, race, marital status, education, and occupation as well as the defendant's criminal history which includes previous arrests and incarceration. The reports also contain the type of charge and its prescribed penalty, the offense report written by the arresting police officer, the defendant's statement (if any) to the police upon arrest, a brief phrase describing the disposition of the co-defendant, and a recommendation concerning whether probation should be granted or denied. The information in this report is utilized by the judge in making the final disposition decision and is very important since, in the majority of cases, it is the only comprehensive source of information available to the judge (Hagan, 1976).

An application for a deferred disposition is very similar to the pre-sentence investigation report, but with two important exceptions. First, the report is written by a probation officer after the defendant has entered a plea for a deferred disposition rather than just before a final disposition is handed down. Second, this report does not contain a recommendation from the probation officer regarding probation. In every other way, however, the type of information contained in both reports is virtually identical. Both types of reports are filed by case number in large manila envelopes along with other papers pertaining to the case and stored either in the basement of the building where the District Court presides or in the office of the Clerk of the District Court, Criminal Division.

The third type of court records utilized in this study is the minutes of the courtroom proceedings. Included in these minutes are the charge filed against the defendant, the plea entered by the defendant, the dates of all court appearances, the filing of charge reductions (if any), and the final disposition. These minutes are filed by case number in large binders and stored in the office of the Clerk of the District Court, Criminal Division.

While all three types of records were extremely important because they were the only source of data available on defendants adjudicated years ago, they do not tell us everything we would like to know. First, these records do not capture the courtroom drama or the interpersonal dynamics between legal officials and defendants or among the legal officials themselves. As Carter (1974) and Eisenstein

and Jacob (1977) point out in their studies of courts, these dynamics can have a great impact on criminal justice processing.

Second, although the information contained in these reports allows us to make inferences about the type of people who commit crimes together, these reports are not a complete substitute for actually interviewing and observing these same co-defendants throughout the adjudication process. To conduct such an extensive study far exceeds the resources allocated to this project, but certainly merits application to future studies of co-defendants where larger amounts of time and money can be allocated.

Third, court records only tell us about cases filed in court, not those potential cases where the crimes went undetected. As several legal officials cautioned, a study which relies on court records for data eliminates all those potential defendants who committed crimes but were not apprehended, all those who were apprehended but not arrested, and all those who were arrested but later released for lack of evidence. Furthermore, court records do not tell us why police officers chose to arrest some offenders and not others and why only certain cases were filed in court. In addition, by limiting the sample of co-defendants to cases where only two defendants were filed on, we lose those offenders who actually committed crimes with a partner but only the partner was arrested or those cases where more than two defendants participated in the crime yet only two were filed on.

In addition to our own criticisms, the use of official statistics such as court records is often met with criticism from other

sources as well. Perhaps most notable among the critics is Robert K. Merton (1956:31) whose argument rests on the grounds that such data are not only inappropriate, but unreliable because of the "successive layers of error which intervene between the actual event and the recorded event, between the actual rates of deviant behavior and the records of deviant behavior." He suggests that researchers ". . . go out and collect your own appropriately organized data rather than take those which are ready-made by government agencies" (Merton, 1956:32).

Another source of criticism against the use of official statistics comes from societal reactionists who generally exhibit a methodological preference for field observations and qualitative analyses. While these methods are certainly compatible with interactionist research, there is a strong argument for the use of quantitative analyses to study the process by which the accused come to have deviant statuses conferred upon them (Becker, 1973:16-17; Kitsuse, 1975; Schur, 1975; Goode, 1975:579; Bernstein et al., 1977a:745). Briefly stated, the argument is that if the ratio of those arrested to those labeled as deviant is not 1:1, then the quantitative analyses of official statistics provides an appropriate means for exploring that disparity (Gibbs, 1972:47).

Also, official rates of deviant behavior are used by sociologists because they bear some relevance to the "actual" rates of deviant behavior (Kitsuse and Cicourel, 1963:134). Schur (1971:33) says that official statistics are useful because they tell us a great deal about operations of official agencies of social control and they

accurately depict organizational outcomes. As such, they constitute the best source of information about the process by which deviants are labeled. Therefore, despite the criticism just outlined there appears to be enough support to justify the use of court records in an application of societal reaction theory to the adjudication of co-defendants. However, given the limitations of court records, it seems appropriate to supplement them with an additional source of data--interviews with legal officials. This supplementary data can provide us with a more qualitative look at how co-defendants are adjudicated.

#### Interviews With Legal Officials

Interviews were conducted with one official in the Pre-Trial Release Program (this unit makes recommendations for or against PR Bonds), three defense attorneys, three prosecutors, three probation officers and three judges to gain a more qualitative view of the labeling of co-defendants. The purpose of the interviews was twofold: 1) to learn if, why and how role is important to legal officials at various stages of the adjudication process, and 2) to learn more about female criminality as it occurs in the company of a male. To accomplish these goals, a semi-structured interview with open-ended questions was used. (See Appendix B for copy of interview schedule.) These questions were pre-tested with a prosecutor, a private attorney and a judge. After minor revisions, interviews with these legal officials were obtained by first writing a letter to the department heads. (See Appendix B for copy of letter.) Once permission was granted from these department heads, individual

respondents were contacted by phone and appointments were set. The interviews generally lasted 30 minutes. The results of these interviews were used for clarification of findings in the statistical analysis.

#### Observations of Court Proceedings

Throughout the data collection and analysis, cases of male-female co-defendants were observed. These observations included bail hearings and appearances before judges for case dispositions. The purpose of this approach was to gain insight into the adjudication process as well as to provide guidance in interpreting court records. Additionally, observations of court procedures helped formulate the interview schedule.

#### Analysis

This portion of Chapter III describes how the data are analyzed. First, chi-square tests of significance are used to determine if significant differences exist between males and females in terms of their characteristics, the nature of their offenses and their treatment in the court. Then, the analysis moves to a testing of the hypotheses. Five hypotheses stating the influence of sex, role, and offense variables upon the labeling process were advanced in Chapter II. They were:

Hypothesis 1: Defendants who play equal roles in the crime receive equal labels, regardless of sex.

Hypothesis 2: Defendants who play dominant roles in crime partnerships receive harsher labels, regardless of sex, than their partners who play minor roles.

Hypothesis 3: Females play minor roles in crime partnerships with males.

Hypothesis 4: Females receive milder labels than their male co-defendants, regardless of role.

Hypothesis 5: Variables associated with the offense explain more variation in labeling than either organizational variables or characteristics of the defendant.

These five hypotheses are tested at three major stages of adjudication:

- 1) First, we examine the decision to release a defendant on a PR bond or require bail to be posted.
- 2) Next we examine whether the defendant received a deferred disposition or whether the defendant was fully adjudicated. A deferred disposition is important as a prior selection stage that determines whether a defendant will be eligible for probation or sentencing at the final disposition.\* Deferred dispositions include deferred prosecutions which carry automatic one-year probation terms and deferred judgments which carry automatic two-year probation terms. Successful completion of the probation terms results in erasing the deferred prosecution charge or the deferred judgment conviction from the defendant's record. With either disposition, defendants are presumed guilty.

---

\*Certainly whether defendants are dismissed determines whether they are eligible for sentencing. However, only 13 (2.4%) of the total sample of 512 defendants received dismissals and only 4 (1%) of these were in the sample of male-female co-defendants. This small percentage results from restriction of the sample to cases where pre-sentence investigation reports or applications for deferred dispositions were available for both partners. These reports are not filed on defendants who are dismissed early in the process but only on those defendants who penetrate further into the system. The number of dismissals was too small for statistical analysis; they were eliminated from the study.

3) Finally, for those pairs where neither partner received a deferred disposition (N=43 pairs) we examine the severity of the final disposition decision in terms of whether the defendant received a probation term or a sentence. Unlike the deferred disposition, a conviction at this stage remains on the defendant's record.

All five hypotheses are tested with the sample of male-female co-defendants since they are the major focus of the study. However, since male-male co-defendants were included solely as a comparison group with which to test the influence of role upon labeling, only Hypothesis 1 (Equal partners receive equal labels) and Hypothesis 2 (Dominant defendants receive harsher labels) are tested with them.

Hypotheses 1 (Equal partners receive equal labels) and 3 (Females play minor roles) are tested by means of a chi-square test of significance. Since the data are nominal and consist of a frequency count which is tabulated and placed in the appropriate cells, the chi-square test of significance is the appropriate measure.

Hypotheses 2 (Dominant partners receive harsher labels) and 4 (Females receive milder labels) are tested with a Student's t-test to see if the differences between group means are significant. According to Hypothesis 2 dominant partners (group 1) receive a harsher label than minor partners (group 2). Since the milder label is assigned the higher value, we expect the mean of the first group to be lower than the mean of the second group. According to Hypothesis 4, females (group 2) receive milder labels than their male partners (group 1). In this case, we expect the means of the second group to be higher than the mean of the first group. Note that both hypotheses

predict milder labels (indicated by higher means for the second group) for minor partners and females. Consequently, one-tailed tests of significance are employed.

A two-way analysis of variance is used to test for any interaction effects of sex and role upon these labeling decisions.

According to Hypothesis 5, characteristics of the offense will explain more variation in labeling than characteristics of the defendant or organizational variables. This hypothesis is tested with a multiple regression analysis to identify which variables are the best predictors in the labeling of male-female co-defendants.

The utility of the statistical procedures introduced in this section will be discussed in more detail as they are introduced in the next chapter.

Nominal variables in the multiple regression analysis are dummy coded. Dummy coding consists of assigning a 1 to a given category (for example, PR bond) while all others not belonging to this category are assigned a 0 (for example, no PR bond). Dummy coding is very useful because it transforms nominal variables into the interval level variables required for multiple regression analysis. Role is effect coded. This method of coding is similar to dummy coding but instead of using 1 and 0 this method consists of assigning 1, 0 and -1 to the nominal level independent variable (Kerlinger and Pedhazur, 1973:172-185). Since role is a three-category variable (dominant, equal and minor) this method is useful because it compares each category against the mean of all the other categories. In contrast, dummy coding only allows for the testing of two categories-- one category (1) against the left out category (0). A list of all

the variables used in the multiple regression analysis and the way in which each is coded is presented in Table 18.

The use of dummy variables does violate certain basic assumptions underlying the use of multiple regression analysis. However, it has been demonstrated (Knoke, 1975; Goodman, 1976; Cox, 1970) that multiple regression is robust enough to overcome the violation of assumptions produced when a dependent variable is either dichotomized or transformed into a dummy variable. Furthermore, the results of such analyses produce results very similar to other more sophisticated forms of analysis designed for dichotomous dependent variables (Gunderson, 1974). Finally, some researchers (e.g. Eisenstein and Jacob, 1976; Burke and Turk, 1975:329; Nardulli, 1978) advocate this approach because a great many variables in criminological research lend themselves to dichotomization. Many decisions made in criminal justice processing are "either/or" decisions, e.g. either defendants receive PK bonds or they don't; either defendants receive prison sentences or they don't. In addition, we are often concerned with whether labeling decisions are harsh versus mild, long versus short, etc. This is not to suggest that we are never interested in continuous variables; however, the nature of our inquiry often demands that we use binary measures, i.e. either dummy or dichotomous variables. This is true for dependent as well as independent variables.

Missing data are handled through the use of "listwise deletion." With this method all those observations for which at least one variable has a missing value are excluded from the analysis. While this is a more conservative method of treating missing data than

"pairwise deletion," the results are more reliable since they are based on the same universe of data.

All statistical procedures employ the more liberal .10 level of significance to indicate a relationship worthy of attention. Selection of this less stringent criterion is justified by the exploratory nature of this study and a desire to avoid the possibility of a Type II error. That is, because this is the first study to explore the importance of role with a sample of co-defendants and because future studies of co-defendants depend on these findings, it seems more important to avoid the situation where the null hypothesis of no relationship between role and labeling fails to be rejected when it is actually false. Moreover, as Bernstein et al., (1979) point out, in dichotomous dependent variables the standard errors of regression coefficients are likely to be inflated. Thus, the more liberal .10 significance cut-off reduces the likelihood that an important finding will be ignored.

This chapter described the sample selection, methods of data collection and the statistical analyses used to test the hypotheses. The next chapter presents the results of these analyses.

## CHAPTER IV

## ANALYSIS

This chapter presents the findings of the statistical analyses. The two purposes guiding this research are: 1) to present descriptive information about co-defendants and 2) to find out whether offense variables, particularly role in the crime, are the major determinative factors influencing the labeling of co-defendants. In accord with these purposes, we begin the analysis by describing the characteristics of the male-female and male-male co-defendants, their offenses, and their treatment in the court at various points along the adjudication process. For the sample of male-female co-defendants, a chi-square test is used to determine if there are significant differences between males and females. Then, focusing on three major stages in this process--bail, deferred disposition and final disposition--five hypotheses are tested to determine if offense variables are the major determinative factors in the labeling of co-defendants. Specifically, we are interested in whether one of the offense variables--a defendant's role in the crime--has more effect on the labeling process than the defendant's sex.

The first two hypotheses deal with the relationship between role and labeling. Here we hypothesize that 1) partners who play equal roles receive equal labels and 2) dominant partners receive harsher labels than minor partners. Both hypotheses are tested using a sample of male-male co-defendants as a comparison group. Such a

comparison helps us determine whether role affects the labeling process regardless of the sexual composition of the partnership. Hypothesis 2 is tested separately for males and females in the sample of male-female co-defendants. This procedure allows us to determine whether dominant partners receive the harsher labels, regardless of sex. The remaining hypotheses are tested only for the sample of male-female co-defendants.

The third hypothesis predicts the relationship between sex and role, that is, that females play the minor roles with males in crime partnerships. The fourth hypothesis predicts the relationship between sex and labeling, specifically, that females receive the milder labels, regardless of their roles in the crime. The hypothesis is tested first for partners who play equal roles and then for those who play unequal roles. Such a procedure helps us determine whether females are labeled without regard to their roles in the crime.

At this point, the analysis is extended to include an analysis of variance procedure to test for the possibility that the labeling of co-defendants is affected by the interaction effect of sex and role rather than by sex or role acting alone. Even though the hypotheses were not constructed to include the possibility of this interaction effect we felt it important enough to include in the analysis. The same logic guided an additional extension of the analysis to include the effects of a defendant's sex upon labeling while controlling for the defendant's prior criminal record. Since prior criminal record has been shown to be extremely important in studies which compare male and female offenders, we feel that we can

make a much more definitive statement regarding the effects of sex and role upon the labeling of male-female co-defendants when this variable is taken into account during the analysis.

Finally, the fifth hypothesis predicts the relationship between labeling and three categories of independent variables--characteristics of the defendant, characteristics of the offense and organizational variables. Specifically, we predict that offense variables will explain more variation in labeling than either of the other two categories.

These five hypotheses are tested using data gathered from court records. To supplement these data, results from the interviews with legal officials are presented throughout the analysis for support and clarification of major points. We begin the analysis by briefly describing the sample of male-female co-defendants.

#### Descriptive Information

Table 1 presents the cross-tabulation of characteristics of the defendant, characteristics of the offense and organizational labeling by defendant's sex. A chi-square test is used to determine if there are significant differences between males and females along any of these variables.

#### Characteristics of the Male-Female Co-Defendants

The sample of male-female co-defendants consists of 105 pairs or 210 defendants. According to Table 1, the females were generally younger than the males ( $\bar{X}$ =24 and 27 years, respectively). Both sexes had an average educational level of 11 years. Both sexes were

Table 1

Characteristics of the Defendant, Characteristics of the  
Offense and Organizational Labeling by Sex

Variable	Male Defendants* N=105	Female Defendants* N=105	X <sup>2</sup> for Male-female Differences	Male-male Co-Defendants* N=302
Age	$\bar{X}=27$ Range= 18-52	$\bar{X}=24$ Range= 18-52	p=n.s.	$\bar{X}=24$ Range= 18-59
Educational Level	$\bar{X}=11$ years	$\bar{X}=11$ years	p=n.s.	$\bar{X}=11$ years
Race				
Caucasian	59.6%	62.8%	p=n.s.	46.7%
Black	19.2%	15.2%		22.8%
Chicano	21.2%	22.0%		30.5%
Marital Status				
Not married	30.8%	35.2%	p=n.s.	73.2%
Married	69.2%	64.8%		26.8%
Relationship to Co-Defendant				
Friend	31.4%	31.4%	N.A.	92.7%
Spouse	65.7%	65.7%		00.0%
Sibling/In-Law	2.9%	2.9%		7.3%
Defendant has Children				
No	62.0%	48.0%	p=n.s.	72.0%
Yes	38.0%	52.0%		28.0%
Source of Support				
Other	11.7%	88.9%	p=.001	39.8%
Self	88.3%	11.1%		60.2%
Prior Criminal Record				
None	25.0%	54.2%	p=.001	23.5%
Juvenile/Mis- demeanor Convictions	36.5%	36.2%		25.2%
Felony, No Incarceration	21.2%	6.7%		30.8%
Two Felonies, Incarceration	17.3%	2.9%		20.5%

\*N=105 males and 105 females in male-female pairs and 302 males in male-male pairs unless noted in parentheses next to frequency distribution. N.A. means not applicable.

Table 1 (continued)

Variable	Male Defendants N=105	Female Defendants N=105	X <sup>2</sup> for Male-female Differences	Male-male Co-Defendants N=302
Defendant has Case Pending				
No	85.6%	93.3%	p=.10	85.1%
Yes	14.4%	6.7%		14.9%
Type of Crime Charged				
Murder	00.0%	00.0%	N.A.	2.0%
Rape	00.0%	00.0%		1.3%
Robbery	3.8%	3.8%		14.9%
Agg. Assault	1.9%	1.9%		4.0%
Burglary	9.6%	9.6%		42.4%
Larceny	19.2%	19.2%		12.3%
Forgery	1.0%	1.0%		.7%
Fraud	2.9%	2.9%		.7%
Narcotics	61.5%	61.5%		21.9%
Severity of Crime Charged				
Class 1 Felony	00.0%	00.0%	N.A.	1.3%
Class 2 Felony	00.0%	00.0%		.7%
Class 3 Felony	9.5%	9.5%		31.8%
Class 4 Felony	25.7%	25.7%		32.5%
Class 5 Felony	3.8%	3.8%		13.2%
Narcotics	61.0%	61.0%		20.5%
Defendant Used Weapon in Crime				
No	95.2%	97.1%	p=n.s.	85.5%
Yes	4.8%	2.9%		14.2%
Role				
Equal	55.2%	55.2%	p=n.s.	60.0%
Unequal	44.8%	44.8%		40.0%
In Unequal Role, Percent Playing:				
Dominant	77.0%	23.0%	p=.05	50.0%
Minor	23.0%	77.0%		50.0%
	N=47	N=47		N=60
Type of Counsel				
Public Defender	32.4%	32.4%	N.A.	46.3%
Private Attorney	67.6%	67.6%		53.7%

Table 1 (continued)

Variable	Male Defendants N=105	Female Defendants N=105	X <sup>2</sup> for Male-female Differences	Male-Male Co-Defendants N=302
Time Elapsed from Arrest to Disposition				
1 to 90 days	21.9%	20.0%	p=n.s.	22.2%
91 to 120 days	20.0%	21.0%		14.9%
121 to 150 days	17.1%	19.0%		17.5%
151 to 180 days	8.6%	7.6%		11.6%
181 to 240 days	14.3%	13.3%		11.3%
241 to 365 days	15.2%	15.3%		15.6%
366 + days	2.9%	3.8%		7.0%
Defendant in Plea- Bargaining Negotiations				
No	68.6%	69.5%	p=n.s.	51.8%
Yes	31.4%	30.5%		48.2%
As Result of Plea- Bargaining, Charge Reduced to:				
No Reduction	68.6%	69.5%	p=n.s.	50.3%
Misdemeanor	21.0%	21.0%		26.2%
Felony	11.4%	10.5%		21.5%
Bail				
No PR Bond	78.6%	42.3%	p=.002	79.1%
PR Bond	21.4%	57.7%		20.9%
Bail Amount				
	$\bar{X}$ =\$3,973 N=81	$\bar{X}$ =\$3,948 N=68	p=n.s.	$\bar{X}$ =\$3,672 N=239
Length of Pre- Trial Detention				
	$\bar{X}$ =8 days	$\bar{X}$ =14 days	p=n.s.	$\bar{X}$ =27
Deferred Disposition				
No	59.4%	48.0%	p=n.s.	72.1%
Yes	40.6%	52.0%		27.9%
Final Disposition				
Probation	60.0%	86.0%	p=.006	56.0%
Sentence	40.0% N=60	14.0% N=49		44.0% N=215

Table 1 (continued)

Variable	Male Defendants N=105	Female Defendants N=105	Male-Female Differences	Male-Male Co-Defendants N=302
Average Sentence Length	$\bar{X}$ =37 months N=24	$\bar{X}$ =26 months N=7	p=n.s.	$\bar{X}$ =25 months N=124
Trial Format				
Bench	100%	100%	N.A.	91.7%
Jury	00%	00%		8.3%
Sentence Suspended				
No	71%	72%	p=n.s.	8%
Yes	29%	28%		92%
	N=24	N=7		N=124
Recommendation of Probation Officer				
Probation	56.0%	79.0%	p=.03	56.0%
Probation Denied	36.0%	13.0%		41.0%
Sentence by Statute	8.0%	8.0%		3.0%
	N=64	N=58		N=205

predominantly Caucasian (60% for the males; 63% for the females) with the nonwhites classified as black or Chicano.

Approximately two-thirds of each sex were married. Almost all of these married pairs committed the crime with their spouses. Another 28 percent of the pairs were friends while the remaining co-defendants were siblings or inlaws. Females were more likely to be parents than males (52% and 38%, respectively).

Only 11 percent of the females were self-supporting compared to 88 percent of the males ( $p = .001$ ). Husbands or parents provided the support for those females who were not self-supporting. The occupations of both sexes, when employed, were concentrated in labor, domestic, and manufacturing positions.

There were significant differences in the prior criminal records of the two sexes ( $p = .001$ ). Twice as many females (54%) as males (25%) had no prior criminal records. Furthermore, only 10 percent of the females had felony records compared to 36 percent of the males. More than twice as many males (14%) as females (6%) had open cases pending either in Denver District Court or other jurisdictions ( $p = .10$ ).

#### Characteristics of the Offenses

These male-female co-defendants were arrested for narcotics violations (62%) followed by larceny (19%) and burglary (10%). The remaining nine percent of the crimes fell in the categories of robbery (4%), assault (2%) fraud (2%) and forgery (1%). These crimes are classified as Class 3, 4 and 5 felonies and lie at the less severe

end of the severity spectrum. Neither males nor females were very likely to use weapons in the commission of the crime.

Turning to the roles played by these male-female co-defendants, the table shows that they played equal roles in 58(55%) of the cases which leaves 47(45%) cases where they played unequal roles. Looking at these 47 cases, who plays the minor role?

Hypothesis 3. The predicted relationship between sex and role is stated in Hypothesis 3. First, the null hypothesis is advanced:

$H_0$  = There is no difference between sexes in the tendency to play minor roles in a crime partnership.

The alternate hypothesis is:

$H_3$  = Females play minor roles in crime partnerships with males.

Table 2 shows that males play the minor role in 11(23%) of the cases while females play the minor role in 36(77%) of the cases. Chi-square is significant ( $p = .05$ ). Therefore, we reject the null hypothesis and conclude that females play minor roles with their male partners in a significant number of cases.

#### Organizational Labeling

Before discussing the labels received by these males and females we note some important characteristics about the way in which they were processed.

Private attorneys were retained by both sexes in 71(68%) of the cases with the remaining 34(32%) represented by public defenders. None were tried by a jury. Ninety percent of the cases reached a disposition by the end of one year.

Table 2  
Defendant's Role In Crime By Sex

---

---

	Male	Female
Dominant	77%	23%
Minor	23%	77%
	<u>100% (47)</u>	<u>100% (47)</u> N=94 defendants

df=1  
 $\chi^2=22.5$   
p=.05

Neither sex was more likely than the other to enter into plea-bargaining (charge reduction) negotiations. Thirty-one percent of each sex did plea-bargain, however, and these were almost twice as likely to have their original felony charges reduced to misdemeanors (21%) instead of less severe felonies (11%).

Females received milder treatment at several points along the adjudication process. First, twice as many females (42%) as males (21%) were released on PR bonds ( $p = .002$ ). This preferential pattern diminishes in significance but still prevails when the bail amounts are compared. For those males ( $N=81$ ) and females ( $N=68$ ) who were not released on PR bonds the average bail amounts were \$3,973 and \$3,948. In addition, females were detained in jail while awaiting release on bail a shorter amount of time ( $\bar{X}=8$  days) than males ( $\bar{X}=14$  days). This preferential pattern continues into the deferred disposition stage. Half of the females received deferred dispositions compared to only 39 percent of the males.

Probation officers gave females a significant number of more favorable recommendations than males ( $p = .03$ ). They were recommended for probation 79 percent of the time compared to only 56 percent for the males. Furthermore, the probation officer recommended that probation be denied for only 13 percent of the females compared to 36 percent for the males. However, males and females received identical percentages (8% each) of recommendations for sentences.

Finally, for those defendants who failed to receive deferred dispositions but were fully adjudicated instead ( $N=60$  males; 49 females) we find that males were almost three times more likely to receive prison terms than females ( $p = .006$ ). Twenty-four males (40%)

**CONTINUED**

**1 OF 3**

were sentenced compared to only seven (14%) of the females. In those seven cases where the female was sentenced her partner was also sentenced. When the length of the sentences is compared for these seven pairs the females always received the shorter sentences but the differences between the sexes were not statistically significant. Both sexes received equal proportions of suspended sentences (71% and 72%) and both sexes received average probation terms of 11 months.

What does this descriptive information tell us? If we were to draw a composite picture of the typical couple in a male-female partnership, it would look like this: they are in their 20's with the male three years older; married to one another; and the parents of one or two children. He is employed in a type of unskilled labor while she is not employed. Both fail to complete high school. The offenses they commit are usually narcotics violations or larceny and not extremely serious. The most common offense is a narcotics violation for which they are arrested in their own home. This is her first offense but he has been arrested before. If their roles in the crime are unequal, he plays the dominant role.

What does this information contribute to our knowledge of the female offender in relation to her male partner? First, the fact that they are married to one another, he is older, has a previous record and plays the dominant role in the crime provides some support for the belief that females are drawn into crime through their romantic attachments to males. While we can only speculate on the distribution of power in these marital relationships, it is generally believed that lower middle-class couples such as these

recognize male superiority and dominance. The female in such couples is believed to be financially, emotionally, and socially dependent upon her husband (Fenster, 1977b; 1977c). One could also take the cynical view that these females really did lead the males in crime, but that their behavior is masked by a facade of feminine dependency and obedience to males. The data do not support this alternative explanation but future research should explore this topic in more detail.

The interviews with legal officials tended to confirm this picture of females in minor roles. One defense attorney added that this was particularly true of Chicano couples where the female is socialized to expect male dominance and superiority. However, many legal officials hastened to add that they are reluctant to accept this notion of "presumed coercion" as the female's defense. Prosecutors, in particular, took the position that being a female should not be a mitigating factor in the assessment of criminality. Several invoked the Women's Movement to support their views. They said that if females have equal rights with males, then these same females also have equal responsibilities with males toward society. Just because a female finds herself caught up with a male in a crime does not mean that she can abdicate this responsibility.

Second, we learned from this descriptive analysis that the offenses committed by male-female co-defendants were generally not too serious. Once again, interviews with legal officials confirmed this finding. They added that while the crimes of male-female partners might have grown slightly more numerous and serious over the years, none wanted to give direct credit to the Women's Movement for this increase. Instead, they credit the Women's Movement with

enlightening law enforcement officials in their attitudes toward females which, in turn, results in larger numbers of females entering the criminal justice system. For example, police officers are more willing to arrest a female; prosecutors are more willing to file charges, etc. Thus, while the Women's Movement is not considered to be a motivating force in the lives of these female offenders, it has had a significant effect on those who react to female offenders.

Finally, the descriptive analysis also shows that females receive milder treatment at several points along the adjudication process including the major stages of bail, deferred disposition and final disposition. The issue of greater leniency for females in the criminal justice system was discussed with legal officials. Many, particularly prosecutors and probation officers, felt that females should not be treated more leniently than males unless relevant factors strongly justified such leniency. Public defenders, on the other hand, advocated leniency for everyone, regardless of the reasons! However, despite protestations to the contrary, most officials agreed that females are going to receive milder treatment than their male co-defendants. They explained that despite the Women's Movement, many officials still regard the female offender as less dangerous to society, more easily rehabilitated and less deserving of punitive treatment. Among the reasons cited for this leniency were the chauvinism of legal officials, the conservatism and naivete which prevent them from believing that females are actually capable of committing crimes, and the reluctance to punish a woman with children. As one official put it, "She may be bad, but

she's the only mother those children have." Later in this chapter, we will examine this relationship between sex and labeling to see if it is affected by role. Right now, we move on with the descriptive analysis by briefly describing the sample of male-male co-defendants. Since this sample serves as a comparison group, it is important that we have some knowledge of their characteristics, the nature of their offenses and the labels accorded to them. Table 1 shows this information.

#### Characteristics of the Male-Male Co-Defendants

The sample of male-male co-defendants consists of 151 pairs or 302 defendants. According to Table 1 their ages range from 18 to 59 with an average age of 24. In terms of their racial backgrounds, they were predominantly Caucasian (47%) followed by Chicano (29%) and black (23%). The eleventh grade was the average year of school completed.

The majority (88%) of these paired defendants were friends. Nearly three-quarters of them were married and had children. Sixty percent were employed and self-supporting. Those who were employed were concentrated in labor, domestic, or manufacturing positions.

Nearly a quarter of the defendants had no prior criminal record yet half had felony records. Fifteen percent had open cases pending in either Denver District Court or other jurisdictions.

#### Characteristics of the Offenses

Table 1 shows that the crimes committed by these males fell into the categories of burglary (42%) narcotics (22%) robbery (15%) and

theft (12%). Murder and rape constituted another five percent of the crimes with the remainder classified as fraud and assault. One-third of these crimes were classified as Class 1, 2 or 3 felonies which lie at the more severe end of the severity spectrum. Fourteen percent of the defendants used weapons (usually guns or knives) in the crime.

Turning to the roles played by these co-defendants, the table shows that they played equal roles in 91 (60%) of the cases and unequal roles in the remaining 60(40%) cases.

#### Organizational Labeling

Before discussing the court's labeling of these males we note some important characteristics about the way in which they were processed.

Table 1 shows that private attorneys were retained by 54 percent of the defendants with the remaining 46 percent represented by public defenders. Eight percent of the defendants had jury trials. Half of the cases reached a disposition by the end of one year.

Forty-eight percent of the pairs entered into plea-bargaining (charge reduction) negotiations. Those who did plea bargain had their charges reduced to misdemeanors in 27 percent of the cases.

Probation officers made the following recommendation for these males: probation=56 percent; probation denied=41 percent; and sentence=three percent.

Turning to the labeling of these males, Table 1 shows that 21 percent were released on PR bonds. Those who were not released on PR bonds were required to post an average bail amount of \$3,672.

These males were incarcerated an average of 27 days while awaiting release on bond.

The table further shows that 28 percent of these males received deferred dispositions. Of those who were not filtered out with deferred dispositions but proceeded to be fully adjudicated (N=215) 24 (11%) received sentences while the remaining 191 (89%) males received probation terms. Males placed on probation after being fully adjudicated received average terms of 19 months. The prison terms of those receiving sentences averaged 25 months. Only eight percent of these sentences were suspended.

The preceding paragraphs briefly described the characteristics of both samples of co-defendants, the nature of their offenses, and their labeling by the court. Using a chi-square test of significance for differences between the males and females in the sample of male-female co-defendants, we saw that females received significantly milder treatment at several points along the adjudication process. The remainder of this analysis focuses on three major stages in this process--bail (whether the defendant received a PR bond or not); deferred disposition (whether the defendant was filtered out with a deferred disposition or fully adjudicated); and 3) final disposition (whether the defendants who were fully adjudicated received a sentence or probation term) and the influence of sex, role and offense variables on the decisions at those stages.

These stages were selected to be the major dependent variables in the study because: 1) the preceding table showed them to be stages where significant labeling differences occurred in the adjudication

process, and 2) they represent critical stages in the adjudication process where legal officials must assess the defendant and the offense for evidence that a sanction is warranted. At these three stages the sanction constitutes a label which classifies the defendant as a fit subject for official management. For example, when a defendant is denied a PR bond, s/he is detained in jail until the necessary conditions are met for posting the required bail. If the defendant is awarded a PR bond, s/he must conform to the conditions set forth by the terms of the release or the PR bond is revoked and bail is set. Regardless of whether the PR bond is granted or denied, the defendant is labeled and officially supervised until a case disposition is reached.

Similarly, labeling occurs whether the defendant received a deferred disposition or is fully adjudicated. With the former, there are the terms of the probation and with the latter the defendant is either placed on probation or sentenced. Either disposition constitutes an official label specifying how legal officials should supervise the defendant. Because an official label is conferred at each of these three stages, the term label is used to refer to these decisions.

We turn now to an analysis of the effects of sex and role upon the labels received at the three stages of bail, deferred disposition and final disposition. We focus first on the relationship between role and labeling.

#### The Effect of Role Upon Labeling

##### Hypothesis 1

The first research question asks, Do co-defendants who play equal roles receive equal labels? In response to this question,

the null hypothesis of the relationship between role and labeling is advanced.

$H_0$  = There is no difference between partners who play equal roles and those who play unequal roles in the labels accorded to them.

Then, the alternate hypothesis is advanced:

$H_1$  = Defendants who play equal roles in crime partnerships receive equal labels.

We test this hypothesis with the sample of male-female co-defendants first and then with the sample of male-male co-defendants.

Table 3 shows the data in a two-by-two format using role (equal or unequal) as the independent variable and label (equal or unequal) as the dependent variable at each of the three stages. Looking at the marginals along the right side of the table, we see that male-female co-defendants received equal labels in 68 (65%) of the cases at the bail stage; in 43 (69%) of the cases at the deferred disposition stage; and in 19 (44%) of the cases at the final disposition stage. To see if this equality in labeling is related to equality of roles, a chi-square test of significance is used to determine whether partners who play equal roles receive a significant number of equal labels.

At the bail stage, chi-square is not significant. Thus, we fail to reject the null hypothesis and conclude that equal partners do not receive a significant number of equal labels at this stage.

For those pairs in which one or both partners were filtered out with a deferred disposition (N=62 pairs) chi-square is significant ( $p = .001$ ). We, therefore, reject the null hypothesis and alternatively conclude that partners who play equal roles do receive a significant number of equal labels at this stage.

Table 3

Equality of Labels Received by Male-  
Female Pairs at Three Stages of Adjudication

BAIL		Equal Role	Unequal Role	
Equal Label	66%	64%	(68)	
Unequal Label	34%	36%	(37)	
	<u>100%(58)</u>	<u>100%(47)</u>		
				N=105 pairs df=1 $\chi^2=.05$ p=not significant
DEFERRED DISPOSITION		Equal Role	Unequal Role	
Equal Label	78%	47%	(43)	
Unequal Label	22%	53%	(19)	
	<u>100%(45)</u>	<u>100%(17)</u>		
				N=62 pairs df=1 $\chi^2=7.84$ p=.001
FINAL DISPOSITION		Equal Role	Unequal Role	
Equal Label	0%	63%	(19)	
Unequal Label	100%	37%	(24)	
	<u>100%(13)</u>	<u>100%(30)</u>		
				N=43 pairs df=1 $\chi^2=11.96$ p=.01

Finally, for those pairs in which neither partner was filtered out with a deferred disposition but were fully adjudicated instead (N=43 pairs) chi-square is significant ( $p = .01$ ). Again, we reject the null hypotheses. However, the distribution of cases at this stage shows the alternate hypothesis to be unacceptable because none of the equal partners received equal labels. Therefore, we also reject Hypothesis 1 for this final disposition stage and conclude that equal partners are more likely to receive unequal labels at the final disposition stage.

To summarize for this sample of male-female co-defendants, the prediction that equal partners would receive equal labels was supported at the deferred disposition stage only. At the bail stage, the prediction was not significant. At the final disposition stage, the results were opposite to the prediction.

We now test Hypothesis 1 with the sample of male-male co-defendants.

Table 4 shows the data in a two-by-two format using role as the independent variable (equal or unequal) and label (equal or unequal) as the dependent variable at each of the three stages. Looking at the marginals along the right side of the table, we see that male-male co-defendants received equal labels in 68 (65%) of the cases at the bail stage; in 97 (64%) of the cases at the deferred disposition stage; and in 53 (35%) of the cases at the final disposition stage. To see if this equality in labeling is related to equality of roles, a chi-square test of significance is used to determine whether partners who play equal roles receive a significant number of equal labels.

Table 4

Equality of Labels Received by Male-  
Male Pairs at Three Stages of Adjudication

BAIL		Equal Role	Unequal Role	
Equal Label	21%	57%	(98)	
Unequal Label	79%	43%	(53)	
	100%(91)	100%(60)		N=151 pairs df=1 $\chi^2=18.98$ p=.001
DEFERRED DISPOSITION		Equal Role	Unequal Role	
Equal Label	78%	23%	(32)	
Unequal Label	22%	77%	(18)	
	100%(37)	100%(13)		N=50 pairs df=1 $\chi^2=9.95$ p=.01
FINAL DISPOSITION		Equal Role	Unequal Role	
Equal Label	42%	27%	(35)	
Unequal Label	58%	73%	(65)	
	100%(52)	100%(49)		N=101 pairs df=1 $\chi^2=2.14$ p=not significant

The table shows that chi-square is significant at the bail stage ( $p = .001$ ). However, inspection of the frequency distributions within the equal treatment row shows that we cannot accept the alternate hypothesis. Indeed, those receiving equal labels are much more likely to have played unequal roles than equal roles.

For those pairs in which either one or both partners were filtered out with a deferred disposition ( $N=50$  pairs) inspection of the table confirms the claim that defendants who play equal roles receive equal labels ( $p = .01$ ). Thus, the null hypothesis is rejected.

Finally, for those pairs in which neither partner was filtered out with a deferred disposition but fully adjudicated instead ( $N=101$  pairs) chi-square did not reach significance. Thus, we fail to reject the null hypothesis and conclude that defendants who play equal roles do not receive a significant number of equal labels at this stage.

To summarize for this sample of male-male co-defendants, the prediction that equal partners would receive equal labels was statistically significant at the deferred disposition stage only. At the bail stage, the prediction was opposite that shown in the tabled results and failed to achieve significance at the final disposition stage.

To summarize for Hypothesis 1, the results of tables 3 and 4 show that equal partners in both samples of co-defendants receive a significant number of equal labels at only one stage (deferred disposition) out of the three stages. The appropriate conclusion to these findings is that the equality of a defendant's participation in the criminal act does not necessarily result in equality of labeling throughout the adjudication process.

## Hypothesis 2

The second research question asks, Do defendants who play dominant roles receive harsher labels? Here the labels of the dominant partners are compared to those of the minor partners and a t-test is used to determine if there is a significant difference between the group means. At each stage, the dependent variable is coded with the milder label assigned a higher value than the harsher label. For example, at the bail stage, a PR bond is coded as 2, no release on PR as 1; a deferred disposition is coded as 2, not deferred as 1; a probation term is coded as 2, a sentence as 1. In order to answer this research question, we focus on those pairs in each sample of co-defendants who played unequal roles (N=47 pairs of male-female co-defendants; N=60 pairs of male-male co-defendants). The null hypothesis of the relationship between role and labeling states:

$H_0$  = There is no difference between group means of the labels accorded to dominant and minor groups.

The alternate hypothesis is:

$H_2$  = Defendants who play dominant roles in crime partnerships receive harsher labels, regardless of sex, than their partners who play minor roles.

According to this hypothesis we expect the means of the minor partners to be significantly higher than the means of the dominant partners since the higher mean indicates a milder label. We test the hypothesis first with the dominant males and their minor female partners, then with the dominant female partners and their minor male partners and finally with dominant and minor partners in the sample of male-male co-defendants.

Table 5 shows the results of a t-test of the means for dominant males and their minor female partners at the three stages of bail, deferred disposition, and final disposition. At each stage the mean for females is higher than that of the males. However, the results were significant at only the bail stage ( $p = .0005$ ) and final disposition stage ( $p = .10$ ). For these two stages, we reject the null hypothesis and alternatively conclude that dominant male partners receive significantly harsher labels than their minor female partners. At the deferred disposition stage, though, the results of the t-test are not significant. Therefore, we fail to reject the null hypothesis and conclude that dominant male partners do not receive significantly harsher labels at this stage.

Table 6 shows the results of a t-test of the means for dominant females and their minor male partners. At the bail and final disposition stages the means of the females are higher than those of the males. At the deferred disposition stage, the means of the females are lower than the males. However, at all three stages the means do not differ significantly. Therefore, we fail to reject the null hypothesis and conclude that dominant females do not receive significantly harsher labels at any stage.

We now test Hypothesis 2 with the sample of male-male co-defendants. Table 7 shows the results of a t-test of the means for dominant and minor partners at the three stages of bail, deferred disposition and final disposition. Although the minor partners received milder labels at each of the three stages (indicated by the higher mean) none of the relationships achieved significance. Therefore, we fail to reject the null hypothesis and conclude that dominant male partners

Table 5

T-test of the Means for Dominant Males and Their Minor  
Female Partners at Three Stages of Adjudication

	<u>Male</u>	<u>Female</u>	<u>T-test</u>	<u>Significance Level</u>	<u>N</u>
BAIL	1.11	1.47	-3.60	.0005	36 pairs
DEFERRED DISPOSITION	1.39	1.52	-1.08	n.s.	36 pairs
FINAL DISPOSITION	1.44	1.72	-1.33	.10	18 pairs

Table 6

T-test of the Means for Dominant Females and Their  
Minor Male Partners at Three Stages of Adjudication

	<u>Male</u>	<u>Female</u>	<u>T-test</u>	<u>Significance Level</u>	<u>N</u>
BAIL	1.36	1.36	.00	n.s.	11 pairs
DEFERRED DISPOSITION	1.36	1.18	.90	n.s.	11 pairs
FINAL DISPOSITION	1.57	1.71	-.50	n.s.	7 pairs

NOTE: Two of these 11 dominant females received harsher labels than their male partners at the bail stage; four of the 11 females received harsher labels at the deferred disposition stage (these four do not include either of the two females more harshly labeled at the bail stage) and none of the dominant females received harsher labels at the final disposition stage although two of them were sentenced to prison.

Table 7

T-test of Means for Dominant Males and Their Minor  
Male Partners at Three Stages of Adjudication

	<u>Dominant</u>	<u>Minor</u>	<u>T-test</u>	<u>Significance Level</u>	<u>N</u>
BAIL	1.15	1.18	-.50	n.s.	60 pairs
DEFERRED DISPOSITION	1.15	1.18	-.15	n.s.	60 pairs
FINAL DISPOSITION	1.46	1.63	-.70	n.s.	48 pairs

do not receive significantly harsher labels than their minor partners at any of the three stages of adjudication.

To summarize for Hypothesis 2, the findings of Tables 5, 6 and 7 provide mixed results. While dominant males in male-female partnerships receive significantly harsher labels at two out of the three stages, dominant females do not receive significantly harsher labels at any stage. Moreover, dominant males in male-male partnerships do not receive significantly harsher labels at any stage, either. The appropriate conclusion to these tables is that role is unrelated to the severity of labels accorded to all dominant defendants unless the dominant partner is a male in a male-female partnership. Apparently, the sexual composition of the partnerships provides the conditions under which the effects of role are manifested. We will explore this relationship between sex and role more fully in succeeding paragraphs of this section. At this point, however, the comparison group of male-male co-defendants has served its utility, and, except for reference to them in the summary of this chapter, they will cease to be a part of the analysis. For the remainder of this chapter, we focus on the labeling of male-female co-defendants.

#### Hypothesis 4

Here we are interested in answering the research question, Do males or females receive the harsher label? The null hypothesis of the relationship between sex and labeling states:

$H_0$  = There is no difference between group means of the labels accorded to males and females.

The alternate hypothesis is:

$H_4$  = Females receive milder labels than their male co-defendants, regardless of role.

We know from Hypothesis 3 that females tend to play the minor roles and we have already shown with Hypothesis 2 that females in minor roles received significantly milder labels at two of the three stages. In addition, dominant females did not receive significantly harsher labels than their male partners. What we do not know yet is whether females receive milder labels even when they play equal roles with males.

In order to reduce this uncertainty, the hypothesis is tested using role as a control variable. That is, the hypothesis is tested first with those pairs who played unequal roles (N=47 pairs) and then with those pairs who played equal roles (N=58 pairs). The coding of the dependent variable is identical to the system presented earlier in Hypothesis 2 where the higher the mean the milder the label. If the females in both groups have the higher means we can conclude that females receive milder labels regardless of whether they play equal or unequal roles with males. By combining the results from Hypotheses 1, 2 and 4 we can conclude that females receive milder labels regardless of whether they play dominant, equal or minor roles with males.

Table 8 shows the results of a t-test of the means for males and females who played unequal roles (N=47 pairs). According to the table, the mean for females at all stages is higher than for males. This indicates milder labels for females. However, the results were significant only at the stages of bail ( $p = .005$ ) and final disposition

Table 8

T-test of Means for Males and Females in Unequal  
Roles at Three Stages of Adjudication

	<u>Male</u>	<u>Female</u>	<u>T-test</u>	<u>Significance Level</u>	<u>N</u>
BAIL	1.19	1.47	-3.10	.005	47 pairs
DEFERRED DISPOSITION	1.38	1.43	-0.50	n.s.	47 pairs
FINAL DISPOSITION	1.46	1.75	-1.93	.05	24 pairs

( $p = .05$ ). For these two stages we reject the null hypothesis and alternatively conclude that females, regardless of whether they play dominant or minor roles, receive significantly milder labels than their male partners. The results of the t-test are not significant at the deferred disposition stage. Therefore, we fail to reject the null hypothesis and conclude that females do not receive significantly milder labels at this stage. We now test the hypothesis with the equal role group.

Table 9 shows the results of a t-test of the means for males and females who played equal roles ( $N=58$  pairs). As with those pairs who played unequal roles, the means for the females were higher than those for the males which indicates milder labels for the females. However, the results were significant at all three stages of bail ( $p = .025$ ); deferred disposition ( $p = .05$ ) and final disposition ( $p = .005$ ). Therefore, we fail to reject the hypothesis and conclude that even when males and females play equal roles the females receive significantly milder labels at all three stages of adjudication.

To summarize for Hypothesis 4, the results of Table 8 show that females in unequal roles with males tend to receive significantly milder labels at two out of the three stages of adjudication. Table 9 shows that females in equal roles with males receive significantly milder labels at all stages. The appropriate conclusion to both tables is that females, regardless of their roles in the criminal act, receive significantly milder labels than their male partners at the majority of adjudication stages. This suggests that a defendant's sex has a stronger influence upon the labeling process

Table 9

T-test of Means for Males and Females in Equal  
Roles at Three Stages of Adjudication

	<u>Male</u>	<u>Female</u>	<u>T-test</u>	<u>Significance Level</u>	<u>N</u>
BAIL	1.22	1.38	-2.00	.025	58 pairs
DEFERRED DISPOSITION	1.45	1.60	-1.88	.050	58 pairs
FINAL DISPOSITION	1.52	1.91	-3.25	.005	23 pairs

than the defendant's role. However, it is also possible that sex and role interact to influence the labeling process. To test for this interaction effect, we turn to analysis of variance.

Analysis of variance allows the researcher to determine whether independent variables have significant interaction effects upon the dependent variables. In this study, we are interested in whether sex and role interact to affect the labels at the bail, deferred disposition and final disposition stages. Since our data are non-orthogonal (cell frequencies are unequal) we employ a regression-style analysis of variance which is specially designed to handle such data. The characteristic of this approach is the examination of a given effect only after the effects of all the others (including interaction) are adjusted for.

The coding of the dependent variable is identical to the system presented earlier in Hypotheses 2 and 4 where the higher the mean the milder the label. Sex is coded 1 = male, 2 = female. Role is coded as 1 = dominant, 0 = minor.

Assuming that there is no interaction effect between sex and role, the null hypothesis would state:

$H_0$  = There is no interaction between sex and role.

Alternatively, we predict:

$H$  = There is an interaction effect between sex and role.

Table 10 shows the analysis of variance summary table for the first stage of bail. According to the table, there is not a significant interaction effect between sex and role. Therefore, we fail to reject the null hypothesis and conclude, instead, that the effects of sex and role are additive. That is, differences in sex

Table 10  
Analysis of Variance Summary  
Table For Bail

<u>Source of Variation</u>	<u>DF</u>	<u>Mean Square</u>	<u>F</u>	<u>Significance of F</u>
Main Effect	2	1.174	5.795	p=.005
Sex	1	0.549	2.713	p=.10
Role	1	0.549	2.713	p=.10
Explained	2	1.174	5.795	p=.005
Residual	91	0.203		
Total	93	0.223		

N=94 defendants (47 males and 47 females)

Table 11  
 Table of Means and Standard Deviations  
 For Bail

	Role		Row Total
	Minor	Dominant	
Male	$\bar{X}=.136$ N=11 s.d.=.50	$\bar{X}=1.14$ N=36 s.d.=.35	$\bar{X}=1.19$ $\bar{X}=47$ s.d.=.40
Female	$\bar{X}=1.50$ N=36 s.d.=.51	$\bar{X}=1.36$ N=11 s.d.=.50	$\bar{X}=1.47$ N=47 s.d.=.50
Column Total	$\bar{X}=1.57$ N=47 s.d.=.50	$\bar{X}=1.19$ N=47 s.d.=.40	$\bar{X}=1.33$ N=94 defendants s.d.=.47

produce the same results as differences in role. More specifically, according to Table 11, the mean for males as a group is the same as the mean for dominant partners. Likewise, the mean for the females as a group is the same as the mean for minor partners. In other words, one need not know the defendant's role to predict the label. Simply knowing the defendant's sex is sufficient. This is a particularly interesting finding since we later learned from the interviews with legal officials that role is not likely to influence all bail decisions. The information utilized by the judge does not always include the police offense report (which outlines the defendant's involvement in the offense) unless the report is furnished by the prosecutor or defense attorney in an attempt to point out aggravating or mitigating factors to the judge during the bail setting. However, since co-defendants appear together at the bail setting they can be compared to one another in many ways, including roles. Therefore, role can influence the bail decision but since we do not know in which cases the judge actually used the offense report we are unable to discern where the relationship between bail and role is spurious and where it is not.

Table 12 shows the analysis of variance summary table for the deferred disposition stage. According to the table, sex has a significant main effect but more importantly, there is a significant interaction effect between sex and role ( $p=.01$ ). Furthermore, the interaction effect explains a significant amount of variation in this decision ( $p=.05$ ). Therefore, we reject the null hypothesis and alternatively conclude that the effect of role varies between males and females. More specifically, according to Table 13, females in

Table 12  
 Analysis of Variance Summary Table  
 For Deferred Disposition

<u>Source of Variation</u>	<u>DF</u>	<u>Mean Square</u>	<u>F</u>	Significance of F
Main Effects	2	0.426	1.875	n.s.
Sex	1	0.736	3.238	p=.10
Role	1	0.226	0.995	n.s.
Sex X Role	1	1.530	6.731	p=.01
Explained	3	0.683	3.005	p=.05
Residual	86	0.227		
Total	89	0.243		

90 defendants (44 males and 46 females)

Table 13

Table of Means and Standard Deviations  
For Deferred Disposition

	Role		
	Minor	Dominant	Row Total
Male	$\bar{X}=1.22$ N=9 s.d.=.44	$\bar{X}=1.40$ N=35 s.d.=.50	$\bar{X}=1.36$ N=44 s.d.=.49
Female	$\bar{X}=1.54$ N=35 s.d.=.51	$\bar{X}=1.09$ N=11 s.d.=.30	$\bar{X}=1.43$ N=46 s.d.=.50
Column Total	$\bar{X}=1.48$ N=44 s.d.=.51	$\bar{X}=1.33$ N=46 s.d.=.47	$\bar{X}=1.40$ N=90 defendants s.d.=.49

dominant roles have lower means than males in dominant roles. Similarly, females in minor roles have higher means than males in dominant roles. In other words, a dominant female is responded to more punitively than a dominant male yet less punitively than a male when both play minor roles.

Table 14 shows the analysis of variance summary table for the final disposition stage. According to the table, there is not a significant interaction effect between sex and role. Moreover, neither sex nor role have significant main effects though sex does approach significance ( $p = .127$ ). Therefore, we fail to reject the null hypothesis and alternatively conclude that sex and role do not interact to affect this decision nor do either of these variables have significant main effects. More specifically, according to Table 15, the means of females are the same regardless of role. Furthermore, the means of males are the same regardless of role. In other words, role does not affect the labels accorded to males or females at this stage. Although we find larger differences in means when we compare the males to the females, these differences are not significant. In other words, sex appears to have more influence on the final disposition stage than role but this effect does not quite reach significance.

To summarize this analysis of variance procedure, role and sex have additive effects upon the bail stage but interviews with legal officials show that any relationship between role and bail could be spurious. Role and sex interact to affect the deferred disposition stage but neither role nor sex have a significant interaction effect upon the final disposition stage. The appropriate conclusion to

Table 14  
 Analysis of Variance Summary Table  
 For Final Disposition

<u>Source of Variation</u>	<u>DF</u>	<u>Mean Square</u>	<u>F</u>	<u>Significance of F</u>
Main Effects	2	0.272	1.297	n.s.
Sex	1	0.495	2.354	n.s.
Role	1	0.003	0.013	n.s.
Explained	51	0.272	1.297	n.s.
Residual	51	0.210		
Total	53	0.212		

N=54 defendants (28 males and 26 females)

Table 15

Table of Means and Standard Deviations  
For Final Disposition

	Role		Row Total
	Minor	Defendant	
Male	$\bar{X}=1.57$	$\bar{X}=1.62$	$\bar{X}=1.61$
	N=7	N=21	N=28
	s.d.=.53	s.d.=.50	s.d.=.50
Female	$\bar{X}=1.81$	$\bar{X}=1.80$	$\bar{X}=1.81$
	N=16	N=10	N=26
	s.d.=.40	s.d.=.42	s.d.=.40
Column Total	$\bar{X}=1.74$	$\bar{X}=1.68$	$\bar{X}=1.70$
	N=23	N=31	N=54 defendants
	s.d.=.45	s.d.=.48	s.d.=.46

these analysis of variance tables is that role is unlikely to interact with sex.

What the tables show, however, is that sex has significant main effects at the first two stages and it approaches significance at the final disposition stage. This emphasis on sex is substantiated by the pattern of milder labels for females whether they play dominant, equal or minor roles and harsher labels for males whether they play dominant, equal or minor roles. This suggests that the defendant's sex has a stronger influence upon the labeling process than the defendant's role. In other words, the indication is that females receive milder labels because they are females and the males are labeled more harshly because they are males. Given this relationship between sex and labeling, then, what is it about a defendant's sex that influences the labeling process?

One possibility for this relationship between sex and labeling is the tendency of females to have less extensive prior criminal records. Indeed, the descriptive information presented earlier in this chapter showed that the females in this sample had significantly milder prior criminal records than the males. In addition, the interviews with legal officials pointed out the fact that their decisions are greatly influenced by a defendant's prior criminal record. Furthermore, failure to control for prior criminal record is the criticism most often cited against research which compares the court's labeling of male and female offenders. The argument is that the differences attributed to sex would diminish if the focus was limited to males and females with prior criminal records. To avoid any such shortcoming in this study we examine the relationship

between sex and labeling for those pairs where both partners have prior records. In addition, we examine this relationship first for those pairs who played unequal roles and then for those pairs who played equal roles. This procedure will allow us to determine whether a defendant's role affects this relationship. (Prior criminal record is coded as 1 = record, 0 = no record. The sample size precludes controlling for the severity of the prior record. However, we should note that in all of these cases the prior record of the female was either equal to or less serious than that of her male partner. None of the females had more serious prior records than their partners.)

For those pairs who played unequal roles and both partners had prior records (N=20 at bail and deferred disposition stages; N=14 at final disposition) a t-test was computed on the means of males and females to determine if there were significant differences between them. Then, for those pairs who played equal roles and both partners had prior records (N=26 at bail and deferred disposition stages; N=12 at final disposition) a t-test was computed on the means of males and females to determine if there were significant differences between them. If, when holding prior record constant, the females in either the equal or unequal role groups still have significantly higher means (which indicates milder labels) we can conclude that, despite their records and their roles, the females continue to receive significantly milder labels. This finding would indicate that the relationship between sex and labeling is not affected by prior criminal record. On the other hand, if holding prior criminal record constant causes the statistical relationship between sex and

labeling to disappear, then we can conclude that the labels assigned to male-female co-defendants are affected by the nature of their prior records regardless of sex or role.

Table 16 shows that the females in the unequal role group have the higher means at all stages, and the t-tests are significant at the bail ( $p = .01$ ) and final disposition stages ( $p = .10$ ). The statistical relationship between sex and labeling remains at two of the three stages when prior criminal record is held constant.

Turning to those pairs who played equal roles, Table 17 shows that the females have the higher means at all three stages, but the t-tests are significant at the final disposition stage only ( $p = .05$ ). The statistical relationship between sex and labeling disappears at two of the three stages when prior criminal record is held constant. The appropriate conclusion to the findings presented in Tables 16 and 17 is that, regardless of role, when both partners have records the females continue to receive the milder label. However, the differences between males and females are no longer statistically significant at certain stages, but particularly with those who played equal roles. In other words, the labels of males and females more closely resemble each other at certain stages when both partners have prior criminal records. We assume that the higher means of the females can be attributed to the fact that their prior records were generally less serious than those of their male partners. Since the severity of the prior record influences labeling, the females have a decided advantage over the males.

To summarize this section of the analysis, the results from the four hypotheses show that role is not consistently related to the equality or severity of labeling at all stages nor is it likely to

Table 16

T-test of Means for Males and Females in Unequal Roles  
with Prior Criminal Record as Control Variable  
at Three Stages of Adjudication

	<u>Male With Record</u>	<u>Female With Record</u>	<u>T-test</u>	<u>Significance Level</u>	<u>N</u>
BAIL	1.15	1.45	-2.14	.01	20 pairs
DEFERRED DISPOSITION	1.25	1.30	- .33	n.s.	20 pairs
FINAL DISPOSITION	1.36	1.64	-1.47	.10	14 pairs

Table 17

T-test of Means for Males and Females in Equal Roles  
with Prior Criminal Record as Control Variable  
at Three Stages of Adjudication

	<u>Male With Record</u>	<u>Female With Record</u>	<u>T-test</u>	<u>Significance Level</u>	<u>N</u>
BAIL	1.23	1.34	-1.10	n.s.	26 pairs
DEFERRED DISPOSITION	1.42	1.54	- .85	n.s.	26 pairs
FINAL DISPOSITION	1.50	1.83	-1.74	.05	12 pairs

interact with sex to produce a statistically significant effect. Furthermore, when prior record is controlled, the statistical differences between males and females tend to disappear when they play equal roles yet remain when they play unequal roles. Overall, sex seems to have a stronger influence upon the labeling process than role.

However, there was one exception to the pattern. At the deferred disposition stage, dominant females received harsher (though not statistically significant) labels; equal partners received a statistically significant number of equal labels; and role interacted with sex. In other words, role has effects at one stage but not others. This conclusion regarding the effects of role upon labeling is based on data gathered from court records. To supplement these data, we also collected data from interviews with legal officials.

In the next section of this chapter, we present the results from these interviews. These interviews provided the following insights which show how role does or does not affect the labeling process, depending upon which stage of adjudication is under study.

We begin with the bail stage. The Project Director of the Pre-Trial Release Program (the unit responsible for making PR bond recommendations) explained that the report provided by this unit to the judge who sets bail includes the defendant's prior record, residence, family ties, and employment. In addition, this report notes the type of offense allegedly committed by the defendant, but it does not include the police offense report which describes how the offense was committed and the defendant's actions during the offense. However, the judge who sets bail explained that in certain

cases either the prosecutor or the defense attorney will furnish him with an offense report (written by the arresting police officer) in order to point out aggravating or mitigating factors which might affect the bail decision.

The problem is that we do not know when the judge was or was not given an offense report. As a result, we do not know when role was taken into consideration in the bail decision and when it was not. However, the judge said that co-defendants appear together as pairs, not individually, during the bail setting. Both defendants come forward to stand before the judge and he determines bond, first for one defendant and then the other. Thus, the judge can make comparisons between defendants in a pair and, if he has the offense report, these comparisons are likely to include the defendant's role in the crime.

Moving on, we find that role becomes important in later stages of adjudication. Prosecutors, defense attorneys and judges explained how a defendant's role can influence their decisions. For example, prosecutors said that they would be willing to give the minor partner more favorable treatment by either dismissing the charge or reducing it to a misdemeanor, yet the dominant partner might be denied such a favor. In addition, prosecutors said they would be more likely to agree to a deferred disposition for the minor partner but insist that the dominant partner be fully adjudicated instead.

Defense attorneys said that they would be likely to request that the minor partner's charge be reduced to a misdemeanor or even dismissed if that defendant's involvement in the crime was minimal. These same attorneys also noted that judges prefer to hand down equal dispositions to co-defendants when it appears that both defendants were equally involved in the crimes.

The judges agreed that role should be taken into consideration in legal decision-making. However, as noted above, the judge who sets bail may not be able to consider role if he is not furnished with an offense report. The judges who hand down case dispositions said that they consider role in these decisions. They explained that the defendant who is minimally involved in the offense is often treated with more leniency than the more culpable co-defendant. The classic example cited by the majority of legal officials, including judges, was a "typical" case where one defendant waits in the getaway car while the armed co-defendant robs the grocery store. By law, both are charged with the same offense (aggravated robbery) but in reality the driver of the getaway car is likely to receive the milder disposition.

The recommendation made to the judge by the probation officer may also be influenced by the defendant's role. Even though pre-sentence investigation reports are written individually on co-defendants without comparing one to the other, the recommendation made in this report may be influenced by the defendant's role. The probation officers explained that their recommendations are based primarily on the defendant's background rather than on the details of the instant offense. However, if one defendant is obviously less culpable than the other the recommendation would tend to favor this defendant.

It is clear that there are some agreements and some discrepancies between the data from the court records and the data from interviews with legal officials. For example, both sources of data indicate

that role has little effect on bail. However, a major discrepancy is that legal officials say role may affect the deferred disposition and final disposition stages but the data from the court records show that role affects the deferred disposition stage but not the final disposition stage. What are the reasons for these discrepancies?

First, it is possible that the relatively crude measure we used to operationalize role is not sensitive enough to detect when there are differences in role and when there are not. Second, although legal officials say role may affect their decisions there may be few cases where it actually does or the way it affects their decisions is not apparent in the court records. Third, role may not be a discrete variable but inextricably entwined not only with the defendant's sex but other characteristics as well. Fourth, role may be important but it is overshadowed by other factors which are not apparent in the court records such as the strength of the evidence or the interpersonal dynamics between court personnel. Finally, it may simply be that role affects the deferred disposition stage but not the other stages.

Recall that the data from court records served as the major source of information on co-defendants while the data from interviews with legal officials was intended to serve as a secondary or supplementary source of data. We expected the two sources of data to complement one another. Instead, we find that both sets of data contradict one another. Given these contradictions, which data source should we regard as more representative of the labeling of co-defendants in Denver District Court? We are going to abide by our original intention to

use the court records data as the major source of data on co-defendants for the following reasons: First, the court records data provides information on all male-female co-defendants whose cases were filed in the court (for whom information was available on both partners) from 1972 through 1977. On the other hand, the legal officials we interviewed were unable to recall cases adjudicated as far back as 1972 because few of them were employed by this court at that time. In fact, the majority of legal officials we interviewed took office during the past two to three years. Thus, the cases they could recall occurred either towards the end of the data collection period (1977) or after the data collection period had ended (1977 to the present). Even those officials who had been employed by the court all through the data collection period tended to recall cases occurring during recent months and years. Thus, their recollections are not necessarily representative of all cases filed in the court during the data collection period from 1972 through 1977.

Second, the court records data provided detailed information on each case in the sample including demographic characteristics, type of offense and role, and the disposition. Legal officials, on the other hand, were unable to recall such specific information on any individual case. Instead, their recollections were extremely general and their conversations tended to deal with "types" of cases rather than specific cases.

Finally, the third reason for viewing court records as the major source of data is these records yield larger samples than the interview data. These larger samples are more amenable to statistical analysis, particularly multivariate analysis. Thus, for these three reasons:

1) the representativeness of the court records data; 2) the detailed information it provides on each pair in the sample; and 3) the ability to use multivariate analysis on these data, we choose to remain with our original intention of using court records data as the major source of data and viewing interview data as secondary.

This is not to suggest that the interview data was inferior or invalid. On the contrary, the interview material provided a rich source of data on public officials' policies and experiences with co-defendants and helped to clarify some of the statistical findings. Furthermore, we have no reason to doubt the validity of these interviews. Once permission from administrative heads was granted, all legal officials willingly participated in the project and did not appear to answer the interview questions under duress. Each group of officials (probation officers, defense attorneys, prosecutors and judges) tended to offer the same sort of responses to the interview questions. In other words, there was a great deal of consistency among members of each group. We regard the interview data as an invaluable addition to our study of co-defendants but, because of the three major reasons cited above, the court records will be viewed as the major source of data and these records show that role does not affect labeling at every stage.

The preceding analysis examined the effects of sex and role upon the legal processing of male-female co-defendants. However, as many studies have shown, decisions reached in the criminal justice system result from the interplay of several variables, not just a few. Therefore, in this final portion of the analysis we look at the

effects of all the variables known to influence legal processing. The purpose is to determine the best predictors of the labels assigned to males and females.

#### The Effect of Offense Variables Upon Labeling

Recall that according to societal reaction theory, three categories of variables affect the labeling process. These three categories and the variables within each category are: 1) characteristics of the defendant--this category includes the social characteristics of age, sex, race and educational, marital, and employment status, whether the defendant has minor children to care for, source of support, stability of residence, and extended-family ties in Denver. This category also includes the defendant's prior criminal record; 2) characteristics of the offense--this category includes the severity of the offense, number of charges, use of weapon, and role; and 3) organizational variables--this category includes trial format, whether the defendant plea-bargained; length of pre-trial detainment, time elapsed from arrest to case disposition, type of counsel, probation officer's recommendation, judge, and the results of prior organizational processing such as the defendant's bail release status and whether s/he has another case pending.

#### Hypothesis 5

The fifth and final research question is, Which variables best predict the labels assigned to males and females? In response to this question the null hypothesis states:

$H_0$ =All three categories explain equal amounts of variance in labeling.

The alternate hypothesis, based on a review of the research in Chapter II, states the following relationship:

H<sub>5</sub>=Variables associated with the offense explain more variation in labeling than either organizational variables or the characteristics of the defendant.

This hypothesis is tested with a stepwise multiple regression analysis. The purpose of such an analysis is to "select the number of variables necessary to account for almost as much of the variance as is accounted for by the total set" (Kerlinger and Pedhazur, 1973: 285). According to the hypothesis, most of the variables in this "minimum number" will be those associated with the characteristics of the offense.

Basically, a stepwise multiple regression shows how much each additional variable increases (or adds increments to) the explained variance ( $R^2$ ) while taking into account the variables already in the equation. Since the main reason for using a stepwise multiple regression is to select a smaller set of variables from those available, we need a criterion for deciding when the variables are no longer adding statistically significant increments. In this study, a significant F-ratio indicates that the incremental change in  $R^2$  is statistically significant. When the F-ratio ceases to be significant, the additional variables are not adding statistically significant increments to the total explained variance and are not included in this smaller set of variables.

Table 18 lists all variables, their frequencies and notations. Nominal variables are coded as dummy variables while role is effect coded (see Chapter III for a discussion of the coding). Since there

Table 18  
Variables, Notation and Frequencies  
for Multiple Regression Analysis

NOTATION	VARIABLE	SCALE	MALE-FEMALE PARTNERS	
			Male (N=105)*	Female (N=105)*
Y <sub>1</sub>	Bail Status	No P.R. Bond (0)	78.6%	42.3%
		P.R. Bond (1)	21.4%	57.7%
Y <sub>2</sub>	Deferred Disposition	No (0)	59.4%	48.0%
		Yes (1)	40.6%	52.0%
Y <sub>3</sub>	Final Disposition	Sentence (0)	40.0%	14.0%
		Probation (1)	60.0% (60)	86.0% (49)
X <sub>1</sub>	Age	Interval Scale Range=18-59 years	$\bar{x}$ =27 years	$\bar{x}$ =24 years
X <sub>2</sub>	Race	Not White (0)	40.4%	37.2%
		White (1)	59.6%	62.8%
X <sub>3</sub>	Educational Level	Interval 0-16 years	$\bar{x}$ =11 years	$\bar{x}$ =11 years
X <sub>4</sub>	Marital Status	Not married (0)	30.8%	35.2%
		Married (1)	69.2%	64.8%
X <sub>5</sub>	Defendant is Sole Caretaker of Minor Children	No (0)	36.3%	38.8%
		Yes (1)	1.0%(38)	13.6%(54)
X <sub>6</sub>	Defendant is Self-Supporting	No (0)	11.7%	88.9%
		Yes (1)	88.3%	11.1%
X <sub>7</sub>	Employment Status at Arrest	Not employed (0)	26.2%	51.5%
		Employed (1)	73.8%	48.5%

\*Percentages based on 105 males and 105 females in male-female partnerships and 302 males in male-male partnerships unless specified in parentheses next to frequency distribution.

Table 18 (continued)

NOTATION	VARIABLE	SCALE	MALE-FEMALE PARTNERS		
			Male (N=105)	Female (N=105)	
X <sub>8</sub>	Residence	Not Stable	(0)	4.7%	3.1%
		Stable	(1)	95.3%	96.9%
X <sub>9</sub>	Extended Family Ties in Denver	No	(0)	4.1%	1.3%
		Yes	(1)	95.9%	98.7%
X <sub>10</sub>	Pending Case in Another Court Action	No	(0)	85.6%	93.3%
		Yes	(1)	14.4%	4.8%
X <sub>11</sub>	Prior Record*	No Arrests or Convictions	(1)	25.0%	54.3%
		Juvenile or Adult Misdemeanor Convictions or both	(2)	36.5%	36.2%
		One Felony Conviction, no Incarceration	(3)	21.2%	6.7%
		Two Felony Convictions, One Incarceration or both	(4)	17.3%	2.9%
			(5)		
X <sub>12</sub>	Felony in Past 5 Years	No	(0)	72.1%	92.4%
		Yes	(1)	27.9%	7.6%
X <sub>13</sub>	Severity of Crime Charged: (Felony)	Class 1	(1)	00.0%	00.0%
		Class 2	(2)	00.0%	00.0%
		Class 3	(3)	9.5%	9.5%
		Class 4	(4)	25.7%	25.7%
		Class 5	(5)	3.8%	3.8%
		Drugs	(6)	61.0%	61.0%

\*Adapted from Sterling (1977).

Table 18 (continued)

NOTATION	VARIABLE	SCALE	MALE-FEMALE PARTNERS	
			Male (N=105)	Female (N=105)
X <sub>14</sub>	Number of Offenses Charged	Interval Scale 1-8	$\bar{x}=2.3$	$\bar{x}=2.2$
X <sub>15</sub>	Type of Counsel	Public Defender	(0) 32.4%	32.4%
		Private Attorney	(1) 67.6%	67.6%
X <sub>16</sub>	Trial Formal	Bench	(0) 100.0%	100.0%
		Jury	(1) 00.0%	00.0%
X <sub>17</sub>	Plea-Bargaining	No	(0) 68.6%	69.5%
		Yes	(1) 31.4%	30.5%
X <sub>18</sub>	Role	Minor	(-1) 10.5%	34.3%
		Equal	(0) 55.2%	55.2%
		Dominant	(1) 34.3%	10.5%
X <sub>19</sub>	Length of Pre-Trial Detainment	Interval Scale 0-98 days	$\bar{x}=14$ days	$\bar{x}=8$ days
X <sub>20</sub>	Time Elapsed From Arrest to Disposition	0-90 days	(1) 22%	20%
		91-thru 120	(2) 20%	21%
		121-thru 150	(3) 17%	19%
		151-thru 180	(4) 9%	8%
		181-thru 240	(5) 14%	13%
		241-thru 365	(6) 15%	15%
		366 +	(7) 3%	4%
X <sub>21</sub>	Weapon Used	No	(0) 95.2%	98.1%
		Yes	(1) 4.8%	2.9%
X <sub>22</sub>	Probation Officer's Recommendation for Probation	No	(0) 44.0%	21.0%
		Yes	(1) 56.0%	79.0%

are a large number of independent variables from which these best predictors will emerge, it is desirable to eliminate as many as possible prior to the regression procedure. Thus, a preliminary step in this regression analysis is to examine the zero-order (Pearson Product-Moment) correlations between the independent and dependent variables. At each stage of adjudication, variables whose net effects were not statistically significant at .10 or better were excluded. If a variable appears in Table 18 and not in the succeeding tables it did not have a statistically significant net effect. A similar procedure was followed in selecting judges for inclusion in the regression equations.

A total of 15 judges tried these 105 cases of co-defendants. However, only six judges tried eight or more cases. Pearson Product-Moment correlations were computed between the three dependent variables and these six judges (judge was dummy coded, e.g. judge 1=1; all other judges=0). Judges who correlated with the dependent variable at .10 or better were included in the regression equation.

Multicollinearity proved to be a problem with only two variables--"prior criminal record" and "felony arrest in past five years." They correlated at .70. Since prior criminal record tells us more about the defendant's criminal history (that is, whether the arrest record was juvenile, misdemeanor or felony and whether the defendant had ever been incarcerated) than the felony arrest the latter was excluded from the analysis. This preliminary procedure left an average of four to ten variables (depending on the adjudication stage) to be entered into the regression equations. Since regressions

for the three dependent variables are examined for males and females, separately, this reduction results in a more appropriate number of independent variables for samples of 105 defendants.

We turn first to an analysis of the best predictors of the court's labeling of males in male-female partnerships. Table 19 presents the summary statistics of the stepwise multiple regression for the dependent variable of bail. The likelihood of being released on a PR bond increases if: 1) the defendant is employed when arrested; 2) the defendant does not have a case pending in other court action; 3) the defendant is the sole caretaker of his minor children.

Since none of the offense variables appear in the table, we reject the hypothesis that offense variables explain the most variation. Instead, the defendant's employment status is the best predictor ( $R^2=4\%$ ). Pending action and whether the defendant has minor children raise the total explained variance to seven percent.

The finding that defendants who are employed and/or the sole caretakers of their minor children are more likely to receive PR bonds coincides with Ares et al., (1963:73) in that employment stability and family responsibilities are important factors influencing the bail decision. Both variables are utilized in assessing a defendant's flight risk and potential danger to society and are considered to have a positive influence on the defendant's presence for required court appearances. Perhaps the more interesting of the two findings is that legal officials are favorably influenced by whether a male has minor children to care for since such considerations are traditionally reserved for females. However, Bernstein et al., (1979) report a similar finding.

Table 19

Summary Statistics of Step-Wise Multiple Regression for Bail ( $Y_1$ )  
as Dependent Variable for Males in Male-Female Partnerships

Variable	Multiple R	$R^2$	$R^2$ Change	Simple R	B	Beta	F-Ratio	Significance Level
Employment	0.20380	0.04153	0.04153	-0.20380	-0.20516	-0.22225	4.203	p=.05
Pending Case	0.25985	0.06752	0.02599	-0.14720	-0.17775	-0.14898	2.676	p=n.s.
Defendant is Sole Care-Taker of Minor Children	0.26470	0.07007	0.00254	-0.05399	-0.21896	-0.05266	0.260	p=n.s.

The finding that defendants who have cases pending in other court actions are treated punitively at this stage is not surprising since it indicates a greater criminal liability and tendency toward recidivism. Furthermore, the defendant who commits a crime while on bail for another crime violates the conditions of the original bail.

To summarize for this first dependent variable of bail status, the decision to grant a PR bond is not the result of offense variables but rather the defendant's employment status. However, the fact that the total set of variables explains only seven percent of the variance suggests a failure to define those variables salient to this decision.

Table 20 presents the summary statistics of the stepwise multiple regression for the dependent variable of deferred disposition. The likelihood of receiving a deferred disposition decreases if: 1) the defendant enters into plea-bargaining; 2) the defendant is pre-trial detained for a longer period of time; 3) the defendant has a greater number of arrest charges 4) the time elapsed since the defendant's arrest is longer; 5) the defendant has a case pending in another court action; 6) the defendant used a weapon in the commission of the crime; 7) Judge 5 tried the case. The likelihood of receiving a deferred disposition increases if: the defendant is self-supporting; 2) the defendant has a higher level of education; 3) the defendant is represented by a private attorney rather than a public defender; 4) the defendant is white.

The most significant predictor at this stage is whether a defendant enters into plea negotiations ( $R^2=23\%$ ). Five more variables-- number of arrest charges, number of days in pre-trial detainment, time elapsed since arrest, source of support, and educational level--

Table 20

Summary Statistics of Step-Wise Multiple Regression for Deferred Disposition ( $Y_2$ )  
as Dependent Variable for Males in Male-Female Partnerships

Variable	Multiple R	R <sup>2</sup>	R <sup>2</sup> Change	Simple R	B	Beta	F-Ratio	Significance Level
1. Plea-Bargaining	0.47503	0.22565	0.22565	-0.47503	-0.4447	-0.39858	23.604	p=.01
2. Number of Arrest Charges	0.58535	0.34263	0.11698	-0.33530	-0.15193	-0.31554	14.236	p=.01
3. Length of Pre-Trial Detainment	0.62749	0.39374	0.05111	-0.30906	-0.00630	-0.24920	6.661	p=.01
4. Time Elapsed Since Arrest To Disposition	0.67865	0.46056	0.06682	-0.29194	-0.06323	-0.23022	9.662	p=.01
5. Defendant is Self-Supporting	0.69625	0.48476	0.02419	0.25069	0.23339	0.14540	3.616	p=.01
6. Educational Level	0.70917	0.50292	0.01816	0.26298	0.02945	0.13369	2.777	p=.05
7. Private Attorney	0.71718	0.51435	0.01142	0.06800	0.05310	0.14470	1.764	p=n.s.
8. Race	0.72122	0.52016	0.00581	0.13298	0.06564	0.06270	.897	p=n.s.
9. Pending Case	0.72321	0.52303	0.00286	-0.12598	-0.09616	-0.06272	.438	p=n.s.
10. Presence of Deadly Weapon	0.72439	0.52474	0.00172	-0.14794	-0.17603	-0.05409	.260	p=n.s.
11. Judge 5	0.72451	0.52492	0.00018	-0.19886	-0.02738	-0.01524	.027	p=n.s.

each add statistically significant increments which raise the explained variance to 50%. The remaining variables increase the explained variance to a total of 53%. Of the six significant variables, three are indicators of organizational variables. Furthermore, although number of arrest charges increases the explained variance by 12%, only one other variable in the offense category (weapon) appears in the table. Moreover, six of the 11 variables in this table are organizational variables. Therefore, the decision to grant a deferred disposition is more directly the result of organizational rather than offense variables. Thus, Hypothesis 5 is rejected.

The societal reaction emphasis upon social attributes is not supported by these data. Only three social attributes appear in the table and only one contributes significantly to the decision. That defendants who are self-supporting receive the favorable decision is explained by the image of responsibility (as opposed to one who does not work and/or receives welfare) which may favorably influence legal officials.

The finding that white defendants who are better educated receive less severe labels agrees with the interactionist thesis that those who are well integrated into society (i.e. the socially advantaged) tend to receive the favorable societal reactions. They are, by virtue of their more advantageous social standing, more powerful, and therefore more able to resist the imposition of a negative label. The finding with regard to race is consistent with the literature documenting the harsher treatment of non-whites in the criminal justice system (e.g. Wolfgang and Riedel, 1973; Bullock, 1961;

Turning to the organizational variables, we find that defendants who plea-bargain are less likely to receive deferred dispositions. The explanation for this may be more procedural than substantive since charge reductions are rarely given to those who ask for deferred dispositions in this court. During the interviews, prosecutors pointed out that they are reluctant to agree to deferred dispositions for defendants with prior criminal records or very severe arrest charges. Realizing their ineligibility, these defendants negotiate for charge reductions instead. Thus, defendants charged with less severe crimes and/or those without prior criminal records ask for deferred dispositions while those without such advantages opt for charge-reductions in an effort to minimize the severity of the final disposition.

Although Judge 5 does not add a significant increment to the explained variance at this stage, it appears that defendants tried by this judge are unlikely to receive deferred dispositions.

The finding that defendants fare better when represented by a private attorney rather than a public defender supports other research documenting the negative effects of public counsel (e.g. Swigert and Farrell, 1977). It may be that private attorneys are more skillful at winning the favorable decisions for their clients. However, they are also more selective in the cases they accept. For example, private attorneys are often unwilling to represent defendants with pending cases. This unwillingness stems from the need to protect one's reputation as a successful criminal lawyer. Sensitive to the loss of bargaining power a prior offender invokes and unwilling to suffer the courtroom consequences, private attorneys may withhold legal

services from those defendants whose immediate past behavior predicts a career of criminality. This aura of criminality is further enhanced when the negative effects of being non-white, poorly educated and not self-supporting are added. Thus, characteristics of the defendant plus his current legal status combine not only to limit his financial resources in retaining a private attorney but also to hamper the willingness of the private attorney to take on the defense because of the reputational risk.

The finding that defendants who are pre-trial detained for longer periods of time are denied a deferred disposition is consistent with the Wald and Freed (1966), Roballo (1974) and Bernstein et al., (1977a) thesis that defendants carrying the label of "pre-trial detainee" are processed with an additional negative status. The fact that a prior set of legal officials responded negatively to the defendant may be an indication to the present set of legal officials that continued negative labeling is warranted. Such a policy maintains organizational consistency. In effect, a sort of social typing may be occurring whereby a defendant's failure to win a PR bond becomes a category defining the appropriate set of responses in future processing.

The finding that defendants whose cases take longer to process are ultimately denied a deferred disposition runs contrary to the belief that case delay works to the defendant's advantage due to disappearance of prosecution witnesses and loss of memory about incidents over time (Blumberg, 1967; Rosett and Cressey, 1976). Banfield and Anderson (1968:287-290) found that conviction rates declined from 92 percent to 48 percent when cases were substantially

delayed. An explanation for the fact that case delay works to the defendant's disadvantage in this study could be that those defendants who were denied the deferred disposition may have originally petitioned for it and their subsequent denial and full prosecution merely extended the adjudication period. Furthermore, court personnel may decide to be punitive toward the defendant who unrealistically asks for a deferred disposition and thereby takes up precious time on an already crowded court docket.

Looking at the two offense variables in the table, the finding that defendants charged with a greater number of charges are less likely to receive a deferred disposition may be related to evidence since a greater number of charges implies a more substantial case against the defendant. What is curious here is that it is the number of charges rather than the severity of those charges which affects the decision. We also find that defendants who use weapons in the crime are less likely to receive the deferred disposition. This is consistent with the interactionist thesis that the "value" of the offense, as perceived by the reactors, affects the determination of the appropriate societal response (Schur, 1971). In this case, the use of a weapon represents a more serious threat to society and warrants more severe punishment.

To summarize, neither the offense variables predicted in the hypothesis nor the social attributes emphasized by societal reactionists explain the most variance at this stage. Instead, organizational variables (i.e. plea-bargaining, pre-trial detainment, time elapsed, etc.) emerge as the most significant predictors.

Finally, the summary statistics of the stepwise multiple regression for the dependent variable of final disposition are presented in Table 21. The likelihood of receiving the less severe final disposition (i.e. probation) decreases if: 1) the defendant has a heavier prior criminal record; 2) the defendant was pre-trial detained for a longer period of time; 3) the defendant has a case pending in another court action; 4) Judge 9 tried the case. The likelihood of receiving the less severe final disposition increases if: 1) the defendant is white; 2) the defendant has a higher level of education.

The unexpected finding that none of the offense variables appear in the table challenges the Gove (1976:277) statement that one acquires a deviant label primarily because of one's behavior. Thus, Hypothesis 5 is rejected. Instead, prior criminal record emerges as the most significant predictor of the labeling at this stage ( $R^2=20\%$ ). The only other variables to add statistically significant increments are the length of pre-trial detainment (9%) and pending case action (5%). The social attributes of race and employment do not add appreciable amounts of explained variance but raise the total to 36 percent. Since all five of the variables in this table, (with the exception of prior criminal record) were discussed at the deferred disposition stage and the directions are the same, the discussion is limited to that variable plus a brief discussion of the effect that Judge 9 had on this stage.

The finding that defendants with heavier prior records receive the harsher final dispositions suggests differential treatment on the

Table 21

Summary Statistics of Step-Wise Multiple Regression for Final Disposition ( $Y_3$ ) as  
Dependent Variable for Males in Male-Female Partnerships

Variable	Multiple R	$R^2$	$R^2$ Change	Simple R	B	Beta	F-Ratio	Significance Level
1. Prior Criminal Record	0.44368	0.19685	0.19685	-0.44368	-0.14557	-0.30546	11.520	p=.01
2. Length of Pre-Trial Detainment	0.53112	0.28209	0.08524	-0.33301	-0.00473	-0.29329	5.462	p=.01
3. Pending Case	0.57724	0.33320	0.05111	-0.35672	-0.25503	-0.20092	3.449	p=.05
4. Judge 9	0.59982	0.35979	0.02659	-0.29953	-0.17973	-0.15725	1.827	p=n.s
5. Race	0.60088	0.36106	0.00127	0.33563	0.05069	0.05130	.450	p=n.s
6. Employment Status	0.60144	0.36173	0.00067	0.13011	-0.03269	-0.03119	.044	p=n.s
7. Educational Status	0.60157	0.36189	0.00016	0.22276	-0.00348	-0.01454	.010	p=n.s

basis of accumulated disadvantaged status. Schur (1971) asserts that legal officials use "retrospective <sup>interpretation</sup> introspection" to determine their responses. If a defendant has a prior record, assumptions about his culpability in the present case and the appropriate response to that case may be influenced by his alleged past. Thus, those defendants with extensive prior criminal records, having been previously labeled guilty, accrue a disadvantaged status.

If a defendant's case is tried by Judge 9, the defendant is more likely to be fully adjudicated than to receive a deferred disposition. Whether Judge 9 just happened to try cases where deferred dispositions were inappropriate or whether he is a more punitive judge is not clear.

To summarize, the severity of the final disposition meted out to convicted defendants is not the direct result of the offense. Rather, it seems that negative statuses carried forth from prior organizational processing (i.e. prior criminal record) and organizational variables (i.e. length of pre-trial detainment and pending case) play the major role in determining whether a defendant receives the more favorable final disposition.

We turn now to an analysis of the best predictors in the court's treatment of females in male-female co-defendants. Looking first at the dependent variable of bail status, the zero-order correlation indicates that only one variable--marital status ( $R=-.18$ ) is significant at the .10 level. The direction of the correlation coefficient suggests that the unmarried female is more likely to receive the PR bond. This finding is unexpected since the unmarried female is often treated more punitively because of her non-traditional lifestyle.

However, since only one significant variable emerged from the zero-order correlation, there is no regression table and the appropriate conclusion is that this finding regarding bail status is invalid and the analysis has failed to tap the salient variables. Future research should probe this stage in more detail.

Table 22 presents the summary statistics of the stepwise multiple regression for the dependent variable of deferred disposition. The likelihood of receiving a deferred disposition decreases if:

- 1) the defendant enters into plea-bargaining;
- 2) the defendant's number of arrest charges is greater rather than lesser;
- 3) the defendant plays the dominant role in the crime;
- 4) the defendant does not have a stable residence;
- 5) the defendant was pre-trial detained for a longer period of time;
- 6) the time elapsed from the defendant's arrest to disposition is greater rather than lesser;
- 7) the defendant has a case pending in other court action.

The likelihood of receiving a deferred disposition increases if:

- 1) Judge 15 tries the case
- 2) the defendant is represented by a private attorney rather than a public defender;
- 3) the severity of the arrest charge is milder.

Although three of the four offense variables appear in the table and are in the predicted direction none of them explain the most variance. However, two variables--number of charges and role--add statistically significant increments to the total explained variance. We, therefore, reject Hypothesis 5 and conclude that offense variables do not explain the most variation in the deferred disposition stage. Instead, the most significant predictors are whether the defendant enters into plea-bargaining ( $R^2=28\%$ ), with Judge 15, type of counsel,

Table 22

Summary Statistics of Step-Wise Multiple Regression for Deferred Disposition ( $Y_2$ )  
as Dependent Variable for Females in Male-Female Partnerships

Variable	Multiple R	R <sup>2</sup>	R <sup>2</sup> Change	Simple R	B	Beta	F-Ratio	Significance Level
1. Plea-Bargaining	0.52864	0.27946	0.27946	-0.52864	-0.47805	-0.43576	22.108	p=.01
2. Judge 15	0.57565	0.33137	0.05191	0.26894	0.28603	0.17726	4.347	p=.01
3. Private Attorney	0.61071	0.37296	0.04159	0.34162	0.05183	0.14897	3.648	p=.01
4. Role	0.63713	0.40593	0.03297	-0.16267	-0.12861	-0.16996	2.997	p=.05
5. Number of Arrest Charges	0.65727	0.43201	0.02608	-0.19890	-0.07742	-0.13539	2.433	p=n.s.
6. Time Elapsed from Arrest to Disposition	0.66473	0.44817	0.00986	-0.22002	-0.03138	-0.11952	0.919	p=n.s.
7. Residence	0.67276	0.45260	0.01073	-0.23435	-0.27115	-0.10061	1.000	p=n.s.
8. Severity of Arrest Charge	0.67564	0.45649	0.00389	0.19090	0.03130	0.06693	0.358	p=n.s.
9. Length of Pre-Trial Detainment	0.67639	0.45750	0.00101	-0.34157	-0.00175	-0.04186	0.091	p=n.s.
10. Pending Action	0.67661	0.45781	0.00030	-0.13138	-0.04477	-0.02017	0.027	p=n.s.

number of charges, and role adding significant increments which bring the total explained variance to 41 percent.

The defendant's residence, the severity of the arrest charge and Judge 15 are the only variables which have not been discussed in previous sections. The finding that a defendant's unstable residence (i.e. whether she is a newcomer to Denver, a transient, etc.) has a negative influence on whether she received a deferred disposition concurs with the Ares et al. (1963) emphasis on this variable. Legal officials may view the defendant who is either a newly established resident of the city or "just passing through" as unstable and less likely to abide by the terms and conditions of the deferred disposition. This effect may be particularly obvious for females since a female without a stable residence is unusual.

The severity of the arrest charge affects the deferred disposition because persons charged with more serious or more violent crimes represent a more serious threat to society and warrant more severe punishment. The prosecutors explained during the interviews that they use discretionary judgment in granting deferred dispositions but that the nature of the offense and the defendant's prior record are the major factors influencing this decision.

If a female was tried by Judge 15, she was likely to receive a deferred disposition. This judge added a significant increment to the explained variance. Either the judge is less punitive towards females or their crimes and backgrounds warranted deferred dispositions.

To summarize, the decision to grant a deferred disposition rests primarily on organizational variables--plea-bargaining and judge--although offense variables contribute significantly to the explained

variance. The decision is not significantly affected by the characteristics of the defendant.

Table 23 presents the summary statistics of the stepwise multiple regression for the dependent variable of final disposition. The likelihood of receiving a less severe final disposition (i.e. probation) decreases if: 1) the defendant has a case pending in another court action 2) the defendant has a heavier prior criminal record; 3) Judge 15 tries the case. The likelihood of receiving the less severe final disposition increases if: 1) the defendant is married; 2) the defendant is employed; 3) the defendant is white.

As with males, the most surprising finding is that none of the offense variables influence the final disposition decision. Instead, pending case action is the most significant predictor ( $R^2=33\%$ ) with marital and employment status adding the only significant increment to raise the explained variance to 41 percent. The absence of all offense variables in this table calls for rejection of Hypothesis 5 and the conclusion that the severity of the final disposition is not significantly explained by offense variables.

All of the variables appearing in this table have been previously discussed, including marital status and Judge 15. However, here the directions are the opposite those found at earlier stages. Therefore, we briefly discuss these two findings.

In this stage, the married female is granted the favorable label while at the bail stage she received the harsher label. The finding that being married increases the female's chances of receiving a probation term instead of a sentence supports the belief that judges are reluctant to sentence females, particularly married females.

Table 23

Summary Statistics of Step-Wise Multiple Regression for Final Disposition ( $Y_3$ )  
as Dependent Variable for Females in Male-Female Partnerships

Variable	Multiple R	R <sup>2</sup>	R <sup>2</sup> Change	Simple R	B	Beta	F-Ratio	Significant Level
1. Pending Action	0.56980	0.32468	0.32468	-0.56980	-0.43631	-0.36463	22.115	p=.01
2. Marital Status	0.61490	0.37810	0.05343	0.35783	0.11030	0.16146	3.866	p=.05
3. Employment Status	0.63716	0.40597	0.02787	0.34768	0.10656	0.16054	2.064	p=n.s.
4. Prior Criminal Record	0.64757	0.41934	0.01337	-0.47842	-0.04740	-0.12738	0.990	p=n.s.
5. Judge 15	0.65412	0.42787	0.00853	-0.38592	-0.24429	-0.10550	0.626	p=n.s.
6. Race	0.65440	0.42824	0.00037	0.24697	0.01464	0.02117	0.027	p=n.s.

Explanations for this preferential labeling usually involve the notions of chivalry and paternalism. For example, it is said that judges find it difficult to be punitive toward females when they liken them to other females they know, and would rather "protect" the female from the discomfort and stigma of imprisonment. Furthermore, imprisonment may be impractical given the traditional housewife/mother role.

Just why the married female is less apt to find herself behind bars is not altogether clear from these data but the nature of the sample offers this explanation. Recall that two-thirds of the sample were married pairs with children. While these pairs were over-represented in the entire sample, they are equally represented with unmarrieds in those 43 pairs who proceed to be fully adjudicated. However, when we look at just those seven pairs where females received sentences (incidentally, whenever a female was sentenced, her partner was also sentenced but she always received the shorter sentence) the married pairs are underrepresented. Seventy-one percent of these seven pairs were single without children. In other words, although the same proportions of married and unmarried pairs were eligible for sentencing, the females who were sentenced were much more likely to be single and childless. Conversely, those who were given probation terms were more likely to be married with children. Although other mitigating factors could have influenced these results, it appears that we have some support for the belief that judges are reluctant to sentence married females with children.

Although Judge 15 was more likely to grant deferred dispositions to females, he is more likely to sentence those females who proceed

to be fully adjudicated. We have no specific information about Judge 15 to help explain this finding. However, there are two possible explanations: either Judge 15 just happened to try the majority of cases where females were sentenced and/or he is more punitive toward females whose crimes and criminal backgrounds warrant more severe punishment.

To summarize for this decision, the major determinative factors at the final disposition stage are the legal status (pending case) and marital status of the defendant. This decision is not affected at all by offense variables but half of the variables in the table represent characteristics of the defendant. In addition, this stage is not affected by as many organizational variables as the deferred disposition stage.

In summary, comparisons of the regression tables for males and females reveal several points worthy of our attention. First, and most important for the hypothesis guiding this analysis, we find that offense variables (including role) do not explain the most variation in labeling at any of the stages for either males or females. Instead, characteristics of the defendant and organizational variables have the most explanatory power. This indicates that males and females are not labeled primarily as a result of their criminal behavior (as we predicted in the hypothesis) but as a result of their characteristics and variables associated with the court. The implications of this finding for societal reaction theory as well as policies governing the adjudication of male-female co-defendants are discussed in the next chapter.

Second, the significant predictors are not the same for both sexes. For example, at the bail stage the only significant predictor for females is marital status while for males the decision is most affected by employment status and pending case action. At the final disposition stage, the most significant predictors for males are prior criminal record, length of pre-trial detainment and pending case action while for females their legal status (pending case action) and marital status are most important. It is only at the deferred disposition stage that some similarity emerges. Although the ordering is not identical for both sexes the majority of the significant variables in both deferred disposition tables are in the organizational category with plea-bargaining emerging as the most significant predictor for both sexes. The fact that the important predictors are not the same for males and females at the majority of stages suggests that the defendant's sex per se provides a different context in which to apply legal norms. The implications of this finding for societal reaction theory, research and policies governing the court's treatment of males and females are discussed in the next chapter.

Third, these comparisons show that the important predictors vary from stage to stage. The fact that the major determinative factors are not the same at all three stages of adjudication suggests that they vary with the decision being made and the point in the adjudication process at which the decision occurs. The implications of this finding for societal reaction theory, research and policies governing the court's treatment of males and females are discussed in the next chapter.

### Summary

The analysis began by presenting descriptive information on the characteristics of the male-female co-defendants, the nature of their offenses, and their treatment in the court. Males and females in the male-female group were compared to each other to see if there were significant differences between them in these areas. Then--focusing on the three stages of bail, deferred disposition and final disposition--five hypotheses were tested with data from court records. These data were used to test the assertion that offense variables, particularly role, would weigh more heavily in the labeling of co-defendants than the defendants' characteristics, especially sex. Data from interviews with legal officials and observations of courtroom proceedings supplemented the court records data.

The first four hypotheses predicted the relationship between sex, role and labeling. Specifically, the assertion was that role would be more important than sex. The results from tests of these hypotheses do not support our assertion. Instead, co-defendants seem to be labeled on the basis of sex, with females receiving the milder labels regardless of their roles in the crime. Even when both partners had prior criminal records, the females continued to receive the milder labels although the statistical significance of these differences depended on whether the partners played equal or unequal roles in the crime and which state of adjudication we looked at. In addition, at two of the three stages, role did not interact with sex to produce a significant effect.

The fifth hypothesis predicted that offense variables would explain the most variation in labeling in a multiple regression

analysis. Once again, the results do not support this assertion. Instead, characteristics of the defendants were the best predictors of labeling followed by organizational variables. Furthermore, the best predictors differed between males and females and from stage to stage suggesting that factors affecting labeling vary on the basis of the defendant's sex and the stage of adjudication under study.

Taken together, these results show that role is not consistently related to the equality or severity of labeling of co-defendants at all stages and neither role nor other offense variables explain the most variation in the multiple regression analysis.

However, four exceptions limit the conclusiveness of this finding that role and other offense variables are not important at all stages in the labeling of co-defendants. At the deferred disposition stage dominant females received harsher (though not statistically significant) labels; equal partners received a statistically significant number of equal labels; role interacted with sex to produce a significant effect and role added a statistically significant amount of variance to the total explained variance in the multiple regression analysis for females.

However, even with these exceptions, we can conclude that role and other offense variables are not the major factors in labeling at the majority of the adjudication stages. Instead, characteristics of the defendant including sex, are the major factors at the majority of stages. This indicates that we should have derived our assertions from the basic societal reaction tenet, that is, that deviants are labeled primarily on the basis of their personal characteristics. The implications of these findings are discussed in the next chapter.

## CHAPTER V

## CONCLUSIONS AND IMPLICATIONS

The purpose of this chapter is to draw together the findings presented in the preceding chapter and to discuss their implications for societal reaction theory, research on co-defendants, and policies governing their adjudication.

## The Effect Of Role Upon Labeling

We began this study with two goals: 1) to provide descriptive information about male-female co-defendants; and 2) to test the assertion that offense variables, particularly role, would be the major determinative factors in the labeling of co-defendants. We reasoned that if offense variables were more important than the defendant's characteristics, then role (an offense variable) would be more important than sex (a characteristic of the defendant). Thus, co-defendants would be labeled on the basis of role, regardless of sex.

As part of this assertion we advanced five hypotheses. The first four hypotheses predicted the relationship between sex, role and labeling and allowed us to determine whether sex or role most affected the labeling process. More specifically, we predicted that partners who played equal roles would receive equal labels, regardless of sex, and that dominant partners would receive harsher labels than minor partners, regardless of sex. To further test this assertion that role would take precedence over sex, we predicted that females

would receive the milder label, regardless of their roles in the crime. Of course, we assumed that this latter prediction would not be supported by the data. The fifth hypothesis predicted that offense variables would explain more variation in labeling than either the defendant's characteristics or the organizational variables when tested in a multiple regression analysis.

These hypotheses were tested with a sample of 105 pairs of male-female co-defendants whose felony cases were filed in Denver District Court over a six-year period from 1972-77. The sample is restricted to those pairs who were not dismissed at very early court appearances but instead proceeded to the more advanced stages of adjudication and thus had either pre-sentence investigation reports or applications for deferred dispositions in their records. In addition, the sample includes only those pairs whose records contained information on both partners. Thus, these conclusions do not apply to all male-female co-defendants adjudicated in this court during that time period but only to those pairs whose records met the criteria for inclusion in the study. Furthermore, these conclusions are based upon a sample comprised primarily of narcotics offenders and may not be applicable to courts at different levels (e.g. misdemeanor or federal courts) or in other jurisdictions where narcotics offenses are not the primary charges filed against the defendants.

Keeping in mind the possible bias these limitations place on the study's conclusions, the results from the data analysis do not support our assertion that offense variables, especially role, are the major determinative factors in the labeling of co-defendants. The tests show that, with some exceptions, role was not related to the equality

or severity of labeling of co-defendants at all stages of adjudication. Furthermore, offense variables (including role) were not the best predictors of labeling in the multiple regression analysis. In other words, none of the offense variables (including role) significantly affected this labeling process. The exceptions to this conclusion occurred at the deferred disposition stage where dominant females received harsher (though not statistically significant) labels; equal partners received a statistically significant number of equal labels; role interacted with sex; and role added a statistically significant amount of explained variance for females in the multiple regression analysis.

The fact that offense variables do not significantly affect this labeling will be discussed later in this chapter; right now, let's focus on the results pertaining to role. We just concluded that role was not consistently related to the labeling of co-defendants. What are the implications of this finding for societal reaction theory, research and policies governing the adjudication of co-defendants?

The fact that role is not consistently related to the labeling of co-defendants suggests that its status within the societal reaction framework is questionable. Yet, this is the first study to look exclusively at co-defendants, the finding is based on a small sample and small samples hinder statistical analysis. Moreover, as noted earlier, role did affect the deferred disposition stage. Therefore, because of these limitations and exceptions, additional research is needed with larger samples in other jurisdictions before we can reach any conclusions regarding role's status within the societal reaction framework.

Second, this finding has implications for research on co-defendants. Future studies should not only develop more sensitive measures of a defendant's role in the crime but also explore the more indirect ways in which role can influence the court's treatment of co-defendants. For example, we learned that co-defendants are rarely represented by the same attorney. When both defendants are indigent, one is assigned to a public defender, the other to a court-appointed attorney. Generally speaking, the private attorney is assigned the "easier" case, i.e. the defendant whose involvement in the crime is minimal. In cases of male-female co-defendants, this is usually the female. This leaves the public defender with the "harder" case, i.e. the defendant whose role is more severe. This is usually the male. Thus, role may affect whether public or private counsel represents the defendant. In turn, the type of counsel a defendant has may affect his/her disposition.

Third, the finding has implications for policy governing the adjudication of co-defendants. Although role is an indication of

the severity of the offense it is classified as an extra-legal variable. As such, it need not be considered in legal decision-making. However, the majority of legal officials interviewed said that role should be considered as a matter of policy because it provides a way to make sure the defendant gets the punishment s/he deserves--a sort of just deserts principle. However, if the results of this study are valid, this is one unofficial policy that is adhered to in theory but not in practice.

#### The Effect Of Sex Upon Labeling

We have just discussed the finding that role was not consistently related to the labeling of co-defendants. Instead, it appears that defendants are labeled primarily on the basis of their sex. Not only do females as a group receive milder treatment at several points along the adjudication process but females received milder labels at the bail, deferred disposition and final disposition stage regardless of whether they played dominant, equal or minor roles.

This finding of greater leniency for females coincides with those studies which support the thesis of preferential treatment for females in the criminal justice system. However, this is the first study to reach such a conclusion when the defendants are a male and female charged with committing the same crime together. This is the strongest evidence yet to support the trend of leniency for females in the criminal justice system.

However, these notions of leniency are both reinforced and challenged when the analysis focused only on those pairs with prior

criminal records. Recall that when we focused on these pairs, the females received the milder treatment. Of these same pairs who played unequal roles, the statistical relationship between sex and labeling remained. This finding reinforces our concept of leniency--even when both partners have prior criminal records the female continues to get the preferential treatment although we observed that this milder treatment could be due, in part, to the less serious nature of the females' prior criminal records. Yet, when the pairs played equal roles the statistical relationship between sex and labeling diminished to the point where it was significant at only the final disposition stage. In other words, a pair's similarity in terms of criminal history and role in the crime was responded to with similar treatment at the majority of adjudication stages. This latter finding challenges our notions of leniency for females and suggests that such notions might have to be re-evaluated if researchers would select more homogeneous samples of males and females for their comparisons. The finding that the statistical relationship between sex and labeling is unaffected by the similarity of prior criminal record and role at the final disposition stage but not the other stages suggests that future research needs to assess which conditions affect similarity of treatment and at which stages of the adjudication process such treatment is likely to occur.

The importance of these findings depends upon one's philosophy towards statistical versus substantive significance. Babbie (1973: 312-313) says that statistical tests of significance provide an objective yardstick against which to estimate the significance of relationships between variables, yet he cautions that relationships

which are not statistically significant are not necessarily unimportant. In this study, the fact that there is any difference at all in the labels accorded to males and females charged with the same crime is important. And it appears that sex contributes more to this differential labeling than role.

#### The Effect Of Offense Variables Upon Labeling

We have just discussed the results from the first four hypotheses which dealt with the relationship between sex, role and labeling. These results suggest that co-defendants are labeled on the basis of sex rather than roles in the criminal act. Thus our assertion that role would significantly affect the labeling of co-defendants was not supported. Now we turn to a discussion of the multiple regression analysis which was designed to test the assertion that offense variables would explain more variation in the labeling of males and females than either characteristics of the defendant or organizational variables. This analysis revealed three major points worthy of our attention in terms of their implications for societal reaction theory, research on co-defendants, and policies governing their adjudication.

#### Offense Variables versus Organizational Variables and Characteristics of the Defendant

The first major point is that offense variables (including role) are not the best predictors of the labeling of males or females. Instead, characteristics of the defendant have the most explanatory power followed by organizational variables. This suggests that

male-female co-defendants are labeled, not as a result of their criminal behavior (as we predicted) but primarily because of their characteristics, prior record and variables associated with the organization. This finding has two important implications for societal reaction theory.

First, it suggests some support for the basic tenet of societal reaction theory, that is, that deviants are labeled according to their characteristics. Although these characteristics were not always the best predictors of the labeling process they contributed significantly to the explained variation at the bail and final disposition stages for both sexes. When we combine this finding with the fact that sex instead of role determined the labeling of these co-defendants, we must draw the conclusion that the defendant's characteristics, including sex, are better predictors of the labeling of co-defendants than offense variables, including role. In other words, in generating our hypotheses we should have followed the societal reaction thesis that offenders are given deviant labels primarily on the basis of their social characteristics.

Second, the finding suggests that greater attention be given to variables associated with organizational priorities of the court or what Bernstein et al., (1977b:382) call the "bureaucratic component." Although organizational variables contribute significantly to almost all of the stages, the importance of this category was particularly obvious at the deferred disposition stage. As noted earlier, this is a very important interim stage which determines who is fully adjudicated and thus eligible for a final disposition. Since organizational variables (e.g. plea-bargaining, length of pre-trial

detainment, etc.) are the major factors affecting this very important stage, the theory should pay closer attention to such structural considerations.

Third, this finding has implications for policies governing the adjudication of male-female co-defendants. It suggests that the labels they receive are determined to a significant extent by their characteristics. With the exception of prior criminal record, none of these characteristics are legally relevant. This means, then, that extra-legal variables weigh heavily in the labeling of male-female co-defendants. Now, it is certainly true that the consideration of extra-legal variables helps legal officials tailor the punishment to suit the individual needs of the defendant. However, it is also true that no official guidelines govern the use of these variables. As a result, considerable discretion is left in the hands of legal officials. The nature of these data do not allow us to detect any direct abuse of this discretion, yet the potential for discrimination seems apparent.

#### Significant Predictors of Labeling and Sex of the Defendant

The second major point is that the significant predictors are not the same for both sexes at two out of the three stages. This suggests that a defendant's sex per se provides a different context in which to apply legal norms. In addition, we noted earlier that being female provides an advantageous sexual status in terms of receiving milder labels. Taken together, these findings regarding sex have implications for theory and research as well as policy governing the adjudication of male-female co-defendants.

First, the findings indicate that sex is an important variable and should be included in societal reaction theory. The societal reaction framework, as Bernstein et al., (1979) note, has failed to address sexual status as a relative determinative factor. Societal reaction theorists, and researchers from other theoretical orientations as well, have failed to include sex in their theories because the crimes of females are considered less dangerous and less worthy of study. Furthermore, there are so few female criminals that their small sample size hinders the analysis. As Rasche (1975:11) points out, "Small populations of female offenders mean that researchers interested in them will have few subjects for study, complicating statistical findings and, of course, lowering the generalizability of the data." As a result of these limitations imposed by studying female criminality, many researchers restrict their inquiries to male deviants. The result of this limited focus is, as Harris (1977:3) points out ". . . general theories of criminal deviance are now no more than special theories of male deviance." Since characteristics of the defendant are known to influence the labeling process, failure to consider sex as one of these characteristics may be a serious theoretical limitation.

Second, the finding has implications for policy governing the adjudication of male-female co-defendants. These findings provide support for the notion of organizational sexism. However, unlike many other organizations, this sexism works to the advantage of the female rather than against her. Our finding of sexism in the adjudication of co-defendants is particularly provocative because it

is the policy of this court to charge co-defendants with the same crime, thus making them eligible for the same disposition. Though a sizeable percentage of co-defendants in this sample actually received identical dispositions, the majority did not. If these unequal dispositions are reached on the basis of legal considerations, then the harsher treatment of males is justified. Since they are not, we suggest that future research attend to the question of whether these males' constitutional rights to equal protection under the law are being violated.

#### Significant Predictors of Labeling and Stage of Adjudication

The third major finding is that the important predictors are not the same at all three stages for males or females. This coincides with our earlier finding that role affected one stage but not others. This suggests that the important variables vary with the decision being made and the point in the adjudication process at which the decision occurs. This finding has implications for societal reaction theory and research as well as policy governing the adjudication of male-female co-defendants.

First, the finding indicates that societal reaction theory should take into account the sequential nature of the labeling process. Variables salient to one stage may not be salient to another. Moreover, the effects of decisions occurring early in the adjudication process (e.g. the length of pre-trial detainment) may be carried over into later decisions (e.g. the sentencing decision). This finding underscores Schur's (1971) assertion that the labeling process is fluid and dynamic rather than static. Failure to take into account

this important nature of the adjudication process hinders the generation of hypotheses appropriate for specific stages under study.

Second, in order to reformulate societal reaction theory to conform to the sequential nature of adjudication, research utilizing the theory also needs to proceed along these lines. That is, instead of focusing on single stages (e.g. the sentencing stage) researchers should look at decisions made in preceding stages which might have consequences for these later decisions. Recent studies by Sterling (1977) and Bernstein et al., (1977a; 1977b) strongly advocate this sequential approach to the study of adjudication. When other data sets are analyzed for all labeling decisions in sequence, then theorists can determine whether the dependence between certain categories of variables and labeling increases or decreases as one moves through the adjudication process. Furthermore, data from studies utilizing this approach can help theorists explicate the conditions under which certain variables are more or less salient.

Third, in terms of policy, it appears that legal officials do not base their decisions on the same set of factors at all three stages. We do not know whether this reflects a general inconsistency in decision-making from stage to stage or whether it reflects a certain practicality on the part of these legal officials. Perhaps it is unnecessary and impractical to insist that the same variables govern decisions at all stages. Assuming that the goal of legal officials is to process as many cases as possible in the least amount of time, it may be expedient to utilize only those variables salient to that decision. When we know "why" some variables are salient at

certain stages and not others we may then be able to determine when salience represents systemic discrimination.

Inasmuch as these findings are based on a small sample gathered from one jurisdiction in an urban setting, we are limited in the conclusions we can draw. Future research on co-defendants is necessary to determine the generalizability of these findings across jurisdictions in both urban and rural settings and other deviance-processing agencies. However, if these findings are representative, they suggest that neither role nor other offense variables weigh heavily in the labeling of male-female co-defendants. Instead, characteristics of the defendants, including sex, play the most significant part in this process. In short, co-defendants are labeled in spite of their criminal behavior, not because of it.

BIBLIOGRAPHY

## BIBLIOGRAPHY

- Adler, Freda  
 1975 Sisters in Crime: The Rise of the New Female Criminal.  
 New York: McGraw Hill.
- Alabama Law Review  
 1975 Project, "Alabama law review summer project 1975: A study  
 of differential treatment accorded female defendants in  
 Alabama criminal courts." Alabama Law Review 27:676.
- Alschuler, Albert W.  
 1975 "The prosecutor's role in plea bargaining." University  
 of Chicago Law Review 36:50-112.
- Anderson, Etta  
 1976 "The 'chivalrous' treatment of the female offender in the arms  
 of the criminal justice system: a review of the literature."  
 Social Problems 23:350-357.
- Arditi, Ralph R., Frederick Goldberg, Jr., and M. Martha Hartle;  
 John H. Peters and William R. Phelps.  
 1973 "The sexual segregation of American prisons." Yale Law  
 Journal 82:1229-73.
- Ares, Charles, Anne Rankin and Herbert Sturz  
 1963 "The Manhattan bail project: an interim report on the use  
 of pre-trial parole." New York University Law Review 38:  
 67-95.
- Associated Press  
 1975 "Men generally dominate women in crime partnership, judge  
 says," Denver Post. December.
- Banfield, Laura and C. David Anderson  
 1968 "Continuances in the Cook county criminal courts." University  
 of Chicago Law Review 35:259.
- Beccaria, Cesare  
 1769 An Essay on Crimes and Punishments (2nd English translation).
- Becker, Howard S.  
 1963 Outsiders: Studies in the Sociology of Deviance. New  
 York: Free Press.  
 1967 "Whose side are we on?" Social Problems 14:239-247.  
 1973 "Labelling theory reconsidered." Pp. 177-208 in Howard  
 Becker (ed.) Outsiders. New York: Free Press.

- Bedau, Hugo A.  
1964 "Death sentences in New Jersey," Rutgers Law Review 19:  
1-64.
- 1965 "Capital punishment in Oregon, 1903-64." Oregon Law  
Review 45:1-39.
- Bernstein, Ilene Nagel, William R. Kelley and Patricia A. Doyle  
1977a "Societal reaction to deviants: the case of criminal  
defendants." American Sociological Review 42:743-755.
- Bernstein, Ilene Nagel, Edward Kick, Jan T. Leung, and Barbara Schulz  
1977b "Charge reduction: an intermediary stage in the process  
of labelling criminal defendants." Social Forces 56:362-384.
- Bernstein, Ilene Nagel, John Cardascia and Catherine E. Ross  
1979 "Sex differences in the processing of criminal defendants."  
In Rodolfo Alvarez (ed.), Social Indicators of Institutional  
Discrimination: Management and Research Tools. Jossey-Bass.
- Black, Donald and A. Reiss  
1970 "Police control of juveniles." American Sociological Review  
35:63-77.
- Blackstone, William  
1778 Commentaries on the Laws of England, 8th ed. Oxford:  
Clarendon Press.
- Blumberg, Abraham S.  
1967 "The practice of law as a confidence game: organizational  
cooptation of a profession." Law and Society Review 1:15-39.
- Brodsky, Annette M. (ed.)  
1975 The Female Offender. Sage Contemporary Social Science Issues  
19. Beverly Hills, Calif.: Sage.
- Bruck, Connie  
1975 "Women against the law." Human Behavior, December.
- Bullock, Henry  
1961 "Significance of the racial factor in the length of prison  
sentences." Journal of Criminal Law, Criminology and Police  
Science 52:411.
- Burke, Peter and Austin Turk  
1975 "Factors affecting postarrest dispositions: a model for  
analysis. Social Problems 22:313-322.
- Bustamente, Jorge  
1972 "The 'wetback' as deviant: an application of labelling  
theory." American Journal of Sociology 77:706-718.

- California Bureau of Criminal Statistics  
1972 Crime and Delinquency in California. Sacramento: Department of Justice, State of California.
- Casper, Jonathan  
1978 "Having their day in court: defendant evaluations of the fairness of their treatment." Law and Society Review 12:237-251.
- Cavan, Ruth S.  
1962 Criminology. (Third edition) New York: Crowell.
- Chambliss, W. J. and R. B. Seidman  
1971 Law, Order and Power. Reading, Ma.: Addison-Weseley.
- Chiricos, Theodore G., Philip D. Jackson and Gordon P. Waldo  
1972 "Inequality in the imposition of a criminal label." Social Problems 19:553-572.
- Cicourel, Aaron  
1968 The Social Organization of Juvenile Justice. New York: John Wiley.
- Cole, George F.  
1970 "The decision to prosecute." Law and Society Review 4: 331-343.
- Cole, Stephen  
1975 "The growth of scientific knowledge: theories of deviance as a case study." In L. Coser (ed.), The Idea of Social Structure: Papers in Honor of Robert K. Merton. New York: Harcourt, Brace and Jovanovich.
- Cox, D. R.  
1970 Analysis of Binary Data. London: Methuen and Co.
- Crites, Laura  
1977 The Female Offender. Lexington, Mass.: D. C. Heath and Co.
- Datesman, Susan K. and Frank R. Scarpetti  
1977 "Unequal protection for males and females in the juvenile courts." Pp. 59-77 in Theodore N. Ferdinand (ed.), Juvenile Delinquency: Little Brother Grows Up. Beverly Hills, Calif.: Sage Publications.
- Davis, Kingsley  
1961 "Prostitution." Contemporary Social Problems. Edited by Robert A. Nisbet. New York: Harcourt Brace and Jovanovich. Originally published as "The sociology of prostitution." American Sociological Review 2(5) October 1937.

Davis, Nannette J.

1972 "Labeling theory in deviance research: a critique and reconsideration." *Sociological Quarterly* 13:447-474.

1975 *Sociological Constructions of Deviance: Perspectives and Issues in the Field*. Dubuque, Iowa: William C. Brown.

D'Esposito, Julian Jr.

1969 "Sentencing disparity: causes and cures." *Journal of Criminal Law, Criminology and Police Science* 60:182-194.

DeLamater, John

1968 "On the nature of deviance." *Social Forces* 46:445-455.

Denver Post

1978 "Man, wife in Ala. facing execution." Friday, May 19, page 7.

Downes, David and Paul Rock

1971 "Social reaction to deviance and its effects on crime and criminal careers." *British Journal of Sociology* 22:351-364.

Ehrmann, Sara B.

1962 "For whom the chair waits." *Federal Probation* 26:14-25.

Eisenstein, James and Herbert Jacob

1977 *Felony Justice: An Organizational Analysis of Criminal Courts*. Boston: Little, Brown and Co.

Erikson, Kai T.

1962 "Notes on the sociology of deviance." *Social Problems* 9:307-314.

1964 "Notes on the sociology of deviance." Pp. 9-21 in Howard S. Becker (ed.), *The Other Side: Perspectives on Deviance*. New York: Free Press.

Fenster, Carol Lee

1977a "Characteristics of females who commit crimes with males." Paper presented to the meeting of the Western Social Association, Denver, April.

1977b "Differential sentencing of male-female co-defendants." Paper presented at the UCLA Research Symposium on Indicators of Institutional Racism-Sexism, Los Angeles, April. Rodolfo Alvarez, Chairman.

1977c "Differential dispositions: A preliminary study of male-female partners in crime." Paper presented at the meeting of the American Society of Criminology, Atlanta, November.

- Ferdinand, Theodore and Elmer Luchterhand  
 1962 "Inner city youth, the police, the juvenile court and justice." *Social Problems* 18:510-527.
- Foote, Caleb  
 1956 "Vagrancy-type law and its administration." *University of Pennsylvania Law Review* 104:603-50.
- Forslund, Morris A.  
 1969 "Age, occupation and conviction rages of white and Negro males: a case study." *Rocky Mountain Social Science Journal* 6:141.
- Frankel, Lois J.  
 1973 "NOTE: Sex discrimination in the criminal law: the effect of the equal rights amendment." *American Criminal Law Review* 2:469-501.
- Freidson, Eliot  
 1965 "Disability as social deviance." Pp. 71-99 in Marvin Sussman (ed.) *Sociology and Rehabilitation*. Washington, D.C. American Sociological Association.
- Freud, Sigmund  
 1933 *New Introductory Lectures on Psychoanalysis*. New York: W. W. Norton.
- Garfinkel, Harold  
 1949 "Research note on inter- and intra-racial homicides," *Social Forces* 27:369.
- 1956 "Conditions of successful degradation ceremonies." *American Journal of Sociology* 61:420-424.
- Gaylin, Willard  
 1974 *Partial Justice: A Study of Bias in Sentencing*. New York: Alfred A. Knopf.
- Gibbs, Jack  
 1962 "Rates of mental hospitalization: a study of societal reaction to deviant behavior." *American Sociological Review* 27:782-792.
- 1966 "Conceptions of deviant behavior: the old and the new." *Pacific Sociological Review* 9:9-14.
- 1972 "Issues in defining deviant behavior." Pp. 39-68 in R. A. Scott and Jack Douglas (eds.) *Theoretical Perspectives on Deviance*. New York: Basic Books.
- Glueck, Eleanor and Sheldon  
 1934 *Four Hundred Delinquent Women*. New York: Alfred A. Knopf.

Goldman, Nathan

- 1963 The Differential Selection of Juvenile Offenders for Court Appearances. National Council on Crime and Delinquency.

Goode, Erich

- 1975 "On behalf of labeling theory." Social Problems 22:570-583.

Goodman, Leo A.

- 1976 "The relationship between modified and usual multiple regression approaches to the analysis of dichotomous variables." Pp. 83-110 in David R. Heise (ed.), Sociological Methodology. San Francisco: Jossey-Bass.

Gove, Walter R.

- 1975 "The labelling perspective: an overview." Pp. 3-20 in Walter A. Gove (ed.), The Labelling of Deviance: Evaluating a Perspective. New York: Wiley.
- 1976 "Deviant behavior, social intervention, and labeling theory." Pp. 219-227 in Lewis A. Coser and Otto N. Larsen (eds.), The Uses of Controversy in Sociology. New York: Free Press.

Green, Edward

- 1961 Judicial Attitudes in Sentencing. London: MacMillan and Company Ltd.
- 1964 "Inter- and intra-racial crime relative to sentencing." Journal of Criminal Law, Criminology and Police Science 55:348.

Gunderson, M.

- 1974 Retention of trainees: A study with dichotomous dependent variables. Journal of Econometrics 2:79-93.

Gusfield, J.

- 1967 "Moral passage: the symbolic progress in public designations in deviance." Social Problems 15:175-188.

Hagan, John

- 1972 "Cognitive assumptions in the explanation of opiate addiction." Presented at the meeting of the Pacific Sociological Association, Portland, April. Cited in Walter R. Gove, "The labelling perspective: an overview." Pp. 3-20 in Walter R. Gove (ed.) The Labelling of Deviance: Evaluating a Perspective. New York: Wiley.
- 1973 "Labelling and deviance: a case study in the 'sociology' of the interesting." Social Problems 20:447-458.
- 1974 "Extra-legal attributes and criminal sentencing: an assessment of a sociological viewpoint." Law and Society Review 8:357-383.

**CONTINUED**

**2 OF 3**

Hagan, John

- 1974 "Conceptual deficiencies in an interactionist's perspective on 'deviance.'" *Criminology* 11:383-404.
- 1975 "The social and legal construction of criminal justice: a study of the pre-sentencing process." *Social Problems* 22:620-637.

Harris, Anthony

- 1977 "Sex and theories of deviance: toward a functional theory of deviant type-scripts." *American Sociological Review* 42:3-16.

Hasenfeld, Yeheskel

- 1972 "People-processing organizations: an exchange approach." *American Sociological Review* 37:256-263.

Hindelang, Michael J.

- 1978 "Race and involvement in crimes." *American Sociological Review* 43:93-109.

Hirschi, Travis

- 1975 "Labelling theory and juvenile delinquency: an assessment of the evidence." Pp. 181-203 in Walter R. Gove (ed.), *The Labelling of Deviance: Evaluating Perspective*. New York: Wiley.

Hoffman, Beatrice

- 1977 "Are judges really unfair, prejudiced and arbitrary?" P. 16 in the *Denver Post*, Sunday, February 27, 1977.

Hoffman-Bustamente, Dale

- 1973 "The nature of female criminality." *Issues in Criminology* 8:131.

Hohenstein, William

- 1969 "Factors influencing the police disposition of juvenile offenders." In M. Wolfgang and T. Sellin, (eds.) *Delinquency: Selected Studies*. New York: Wiley.

Jacob, Hubert

- 1962 "Politics and criminal prosecutions in New Orleans," *Tulane Studies in Political Science* 8:77.

Johnson, Elmer H.

- 1957 "Selective factors in capital punishment." *Social Forces* 36:165.

Johnson, Guy

- 1941 "The Negro and crime." 217 *The Annals of the American Academy of Political and Social Science*, 93.

- Judson, Charles J., James J. Pandell, Jack B. Owens, James L. McIntosh, and Dale L. Matschullat  
 1969 "A study of the California penalty jury in first degree murder cases," *Stanford Law Review* 21:1297.
- Kanowitz, Leo  
 1969 *Women and the Law: The Unfinished Revolution*. Albuquerque: University of New Mexico Press.
- Katz, Lewis, Lawrence Litwin and Richard Bamberger  
 1972 *Justice is the Crime: Pretrial Delay in Felony Cases*. Cleveland: Case Western Reserve University Press.
- Kitsuse, John I.  
 1962 "Societal reaction to deviant behavior: problems of theory and method." *Social Problems* 9(Winter).  
 1972 "Deviance, deviant behavior and deviants: some conceptual problems." In William Filstead (ed.) *An Introduction to Deviance: Readings in the Process of Making Deviants*. Chicago: Markham.  
 1975 "The 'new conception of deviants' and its critics," Pp. 273-284, in Walter Gove (ed.) *The Labelling of Deviants*. New York: Wiley.
- Kitsuse, John I. and Aaron Cicourel  
 1963 "A note on the uses of official statistics." *Social Problems* 11:131-139.
- Klonoski, James and Robert Mendelsohn  
 1971 *The Politics of Local Justice*. Boston: Little, Brown and Co.
- Knoke, David  
 1975 "A comparison of log-linear and regression models for systems of dichotomous variables." *Sociological Methods and Research* 3:416-434.
- Knowles, L and K. Prewitt  
 1972 "Racism in the administration of justice." In Charles Reasons and Jack Juykendall (eds.) *Race, Crime and Justice*, Pacific Palisades: Goodyear.
- Koestler,  
 1956 *Reflections on Hanging*, 13.
- Konopka, Gisela  
 1966 *The Adolescent Girl in Conflict*. Englewood Cliffs, New Jersey: Prentice-Hall.

- Kratcoski, Peter C.  
 1974 "Differential treatment of delinquent boys and girls in juvenile court." *Child Welfare* 53:16-22.
- Kritzer, Herbert M. and Thomas M. Uhlman  
 1977 "Sisterhood in the courtroom: sex of judge and defendant in criminal case disposition." *Social Science Journal* 4:77-88.
- LeFrancois, Arthur Gardner  
 1978 "An examination of a desert-based presumptive sentence schedule." *Journal of Criminal Justice* 6:35-46.
- Lemert, Edwin  
 1951 *Social Pathology*. New York: McGraw-Hill.  
 1967 *Human Deviance, Social Problems and Social Control*. Englewood Cliffs, N.J.: Prentice-Hall.  
 1972 "Social problems and the sociology of deviance." Pp. 3-25 in Edwin Lemert (ed.) *Human Deviance, Social Problems and Social Control*. Englewood Cliffs, N.J.: Prentice-Hall.  
 1974 "Beyond Mead: the societal reaction to deviance." *Social Problems* 21:457-468.
- Lemert, Edwin M. and Judy Rosberg  
 1948 "The administration of justice to minority groups in Los Angeles County." 11 *University of California Publications in Culture and Society* 1.
- Lofland, John  
 1969 *Deviance and Identity*. Englewood Cliffs, N.J.: Prentice-Hall.
- Lombroso, Cesare  
 1920 *The Female Offender* (trans.) Originally published in 1903. New York: Appleton.
- Lorber, Judith  
 1966 "Deviance as performance: the case of illness." *Social Problems* 14:302-310.
- Los Angeles Law Review  
 1961 "The institution of bail as related to indigent defendants." *Los Angeles Law Review* 21:627.
- Mahoney, Anne Rankin  
 1974 "The effect of labeling upon youths in the juvenile justice system: a review of the evidence." *Law and Society Review* 9:583-614.

- Martin, Roscoe  
1934 The Defendant and Criminal Justice. University of Texas. Bulletin No. 3437: Bureau of Research in the Social Sciences.
- Merton, Robert K.  
1956 New Perspectives for Research on Juvenile Delinquency. H. Witmer and R. Kotinsky (eds.) U.S. Government Printing Office.
- Millman, Marcia  
1975 "She did it all for love: a feminist view of the sociology of deviance." Pp. 251-279 in Marcia Millman and Rosabeth Moss Kanter (eds.) Another Voice: Feminist Perspectives on Social Life and Social Change. Garden City: New York: Anchor Press-Doubleday.
- Nagel, Stuart  
1969 The Legal Process from a Behavioral Perspective. Homewood, Illinois: The Dorsey Press.
- Nagel, Stuart and Lenore Weitzman  
1972 "Double standard of American justice." Society 9:18-25.
- Nardulli, Peter F.  
1978 "Plea bargaining: an organizational perspective." Journal of Criminal Justice 6:217-231.
- Newman, Donald J.  
1956 "Pleading guilty for considerations: a study of bargain justice." Journal of Criminal Law, Criminology and Police Science 46:780-790.
- Newsweek  
1976 "Judging the Jury." August 23, page 81.
- Norland, Stephen and Neal Shover  
1977 "Gender roles and female criminality: some critical comments." Criminology 15:87-104.
- O'Connor  
1977 "Women in crime." Westword 1 (November 17):5.
- Oklahoma Law Review  
1950 "Note: Husband and Wife: The Common Law Presumption of Coercion." 3:442-444.
- Orcutt, James  
1973 "Societal reaction and the response to deviation in small groups." Social Forces 52:259-267.

Partington, Donald

- 1965 "The incidence of the death penalty for rape in Virginia."  
Washington and Lee Law Review 22:43.

Perkins, Rollin M.

- 1934 "The doctrine of presumed coercion." Iowa Law Review 19:507.  
1957 Criminal Law. Pp. 796-805.

Piliavin, Irving and Scott Briar

- 1964 "Police encounters with juveniles." American Journal of  
Sociology 70:206-214.

Pollak, Otto

- 1950 The Criminality of Women. Philadelphia: University of  
Pennsylvania Press.

Pope, Carl E.

- 1976 "The influence of social and legal factors on sentence dis-  
positions: a preliminary analysis of offender-based trans-  
action statistics." Journal of Criminal Justice 4:203-221.  
1978 "Sentence dispositions accorded assault and burglary offenders:  
an exploratory study in twelve California counties." Journal  
of Criminal Justice 6:151-165.

Pound, Roscoe

- 1930 Criminal Justice in America. Brown University Press.  
1960 "Discretion, dispensation and mitigation: the problem of  
the individual special case." New York University Law  
Review 35:925.

Quinney, Richard

- 1970 The Social Reality of Crime. Boston: Little, Brown and Co.  
1973 "Occupational structure and criminal behavior: prescription  
violation by retail pharmacists." Social Problems 11:179-185.

Radin, Max

- 1936 Handbook of Anglo-American Legal History. St. Paul,  
Minnesota: West.

Rankin, Anne

- 1964 "The effect of pretrial detention." New York University Law  
Review 39:641-655.

Reasons, Charles

- 1974 The Criminologist: Crime and the Criminal. Pacific Palisades:  
Goodyear.

Reckless, Walter

- 1967 The Crime Problem. New York: Appleton-Century-Crofts.

## Roman, Paul and Harrison Trice

1969 "The self reaction: a neglected dimension of labeling theory." Paper presented at the meeting of the American Sociological Association, San Francisco, August. Cited in Walter R. Gove, "The labelling perspective: an overview." Pp. 3-20 in Walter R. Gove (ed.) The Labelling of Deviance: Evaluating a Perspective. New York: Wiley.

1971 "Normalization: a neglected complement to labeling theory." Paper presented at the meeting of the American Sociological Association, Denver, August. Cited in Walter R. Gove, "The labelling perspective: an overview." Pp. 3-20 in Walter R. Gove (ed.), The Labelling of Deviance: Evaluating a Perspective. New York: Wiley.

## Rotenberg, Mordechai

1974 "Self-labelling: a missing link in the societal reaction theory of deviance." Sociological Review 22:335-354.

## Rubington, Earl and Martin Weinberg

1968 Deviance: The Interactionist Perspective. New York: MacMillan.

1971 "Labeling." Pp. 163-171 in Earl Rubington and Martin Weinberg (eds.) The Study of Social Problems. New York: Oxford University Press.

## Scheff, Thomas J.

1966 Being Mentally Ill: A Sociological Theory. Chicago: Aldine.

1974 "The labelling theory of mental illness." American Sociological Review 39:442-452.

1975 "Reply to Chauncey and Gove." American Sociological Review 40(April).

## Schur, Edwin M.

1969 "Reactions to deviance: a critical assessment." American Journal of Sociology 75:309-322.

1971 Labelling Deviant Behavior. New York: Harper and Row.

1973 "Deviance and disorganization: persisting problems and emerging emphases." Presented at the meeting of the American Sociological Association, August. Cited in Walter R. Gove, "The Labelling of Deviance: Evaluating a Perspective." New York: Wiley.

## Schwartz, Richard and Jerome Skolnick

1964 "Two studies of legal stigma." Pp. 103-117 in H. Becker (ed.) The Other Side. Glencoe, Illinois: Free Press.

- Scott, Robert  
1972 "A proposed framework for analyzing deviance as a property of social order." Pp. 9-35 in Robert Scott and Jack Douglas (eds.) Theoretical Perspectives on Deviance. New York: Basic Books.
- Sellin, Thorsten  
1928 "The Negro criminal: a statistical note." 140 The Annals of the American Academy of Political and Social Science 52.
- Simon, Rita James  
1975 The Contemporary Woman and Crime. Crime and Delinquency Issues, A Monograph Series. Rockville, Maryland: National Institute of Mental Health.
- Singer, Linda  
1973 "Women and the correctional process." American Criminal Law Review 11:295-305.
- Smart, Carol  
1976 Women, Crime and Criminology: A Feminist Critique. London: Routledge and Kegan Paul.
- Southern Regional Council  
1969 Race Makes the Difference. Atlanta.
- Sterling, Joyce Sheila  
1977 "Criminal justice processing: the determinants of the decision to go to trial. Unpublished doctoral dissertation.
- Swigert, Victoria Lynn and Ronald A. Farrell  
1977 "Normal homicides and the law." American Sociological Review 42:16-32.
- Tannenbaum, Frank  
1938 Crime and the Community. Boston: Ginn.
- Temin, Carolyn Engel  
1973 "Discriminatory sentencing of women offenders: the argument for ERA in a nutshell." American Criminal Law Review II: 355-372.
- Terry, Robert  
1967 "Discrimination in the handling of juvenile offenders by social control agencies." Journal of Research in Crime and Delinquency 4:218-230.  
  
1970 "Discrimination in the handling of juvenile offenders by social control agencies." Pp. 78-92 in Peter G. Garabedian, Don Gibbons (eds.), Becoming Delinquent: Young Offenders and the Correctional System. Chicago: Aldine.

- Thomas, W. I.  
1907 Sex and Society. Boston: Little, Brown and Company.  
1923 The Unadjusted Girl. New York: Harper and Row.
- Thornberry, Terrence  
1973 "Race, socio-economic status and sentencing in the juvenile justice system." Journal of Criminal Law and Criminology 64:90-98.
- Thorsell, B. A. and L. W. Klemke  
1972 "The labeling process: reinforcement and deterrent." Law and Society Review 6:393-403.
- Tittle, Charles  
1975 "Labelling and crime: an empirical evaluation." Pp. 157-79 in Walter Gove (ed.), The Labelling of Deviance. New York: Wiley.
- Trice, Harrison, and Paul Roman  
1970 "Delabeling, relabeling and Alcoholics Anonymous." Social Problems 17:538-546.
- Turk, Austin  
1969 Criminality and the Legal Order. Chicago: Rand McNally.
- Vedder, Clyde and Dora Somerville  
1970 The Delinquent Girl. Springfield, Illinois: Charles C. Thomas.
- Velemesis, Margery  
1975 "The female offender." Crime and Delinquency Literature (March):94-112.
- von Hirsch, Andrew  
1976 Doing Justice: The Choice of Punishments. New York: Hill and Wang.
- Ward, David A., Maurice Jackson and Renee E. Ward  
1969 "Crimes of violence by women." Pp. 843-909 in Donald J. Muhlwill and Melvin M. Tumin (eds.), Crimes of Violence, A Staff Report to the National Commission on the Causes and Prevention of Violence.
- Wellford, Charles  
1975 "Labelling theory and criminology: an assessment." Social Problems 22:332-345.
- Williams, Jay and Martin Gold  
1972 "From delinquent behaviors to official delinquency." Social Problems 20:209-227.

Wolf, Edwin

1965 "Abstract of analysis of jury sentencing in capital cases:  
New Jersey: 1937-1961." Rutgers Law Review 19:56.

Wolfgang, Marvin E., Arlene Kelly and Hans C. Nolde

1962 "Comparison of executed and convicted among admissions to  
death row." Journal of Criminal Law, Criminology and Police  
Science 53:301.

Wolfgang, Marvin E. and Marc Riedel

1973 "Race, judicial discretion, and the death penalty." 407  
The Annals of the American Academy of Political and Social  
Science 119.

## Legal Cases

Badders v. United States, 240 U.S. 391 (1916).

Hedrick v. United States, 357 F.2d 121 (10th Cir. 1966).

United States v. Sorcey, 151 F.2d 899 (7th Cir. 1945).

Beckett v. United States, 84 F.2d 731 (6th Cir. 1936).

People v. Pulaski, 15 Ill.2d 291, 155 N.E.2d 29 (1959).

Atwood v. People, 176 Colo. 183, 489 P.2d 1305 (1971).

Reed v. People, 171 Colo. 421, 467 P.2d 809 (1970).

McGregor v. People, 176 Colo. 309, 490 P.2d 287 (1971).

Commonwealth v. Donoghue, 250 Ky. 343, 347, 63 S.W.2d 3,5 (1933).

People v. Miller, 61 Cal. 107, 22 P. 934 (1889).

United States v. Dege, 364 U.S. 51 (1960).

People v. Pierce, 40 Cal. Rptr. 845, 61 Cal.2d 879, 395 P.2d 893 (1964).

Dalton v. People, 68 Colo. 44, 189 P. 37 (1920).

People v. Martin, 4 Ill.2d 105, 122 N.E.2d 256 (1954).

Marks v. State, 144 Tex. Crim. 509, 164 S.W.2d 690 (1942).

Mawje v. Reginam, All E.R. 385 (1957).

Kowbel v. The Queen, 110 Can. Crim. Cas. Ann. 47 (1954).

State v. Struck, 44 N.J. Super. 274, 129 A.2d 910 (Essex County Ct. 1957).

Commonwealth v. Allen, 24 Pa. 64 (Bucks. Co. Ct. 1900).

People v. Stately, 91 Cal. App.2d Supp. 943, 206 P.2d 76 (1949).

King v. City of Owensboro, 187 Ky. 21, 218 S.W. 279 (1920).

State v. Ready, 251 S.W.2d 680 (1950).

Doyle v. State, 317 P.2d 289 (Okla. Crim. App. 1957).

State v. [unclear], 244 N.C. 701, 94 S.E.2d 915 (1956).

## Legal Statutes

- Ark. Stat. Ann. § 41-114 (1964).
- Ariz. Rev. Stat. Ann. § 13-134 (1956).
- Cal. Penal Code Ann. § 26 (1970).
- Colo. Rev. Stat. Ann. § 18-1-603 (1973).
- Del. Code Ann. tit. 11, § 105 (1953).
- Nev. Rev. Stat. § 194.010 (1968).
- Okl. Stat. tit. 21, § 157 (1951).
- S.D. Comp. Laws Ann. § 22-3-1 (1967).
- Utah Code Ann. § 76-1-41(8) (1953).
- Massachusetts Gen. Laws Ann. ch. 125, § 16 (1958).
- New Jersey Ann. § 30: 4-155 (1964).
- Connecticut Gen. Stat. Ann. § 18-65 (Supp. 1972).
- Iowa Code Ann. § 245.7 (1969).

APPENDIX A

DATA COLLECTION FORM AND CODE SHEET

## PARTNERS IN CRIME:

The Legal Processing of Male-Female  
Criminal Co-Defendants

Data Collection Form

Carol Fenster 11/77

VARIABLES RELATED TO OFFENSE AND ADJUDICATION

Docket No. \_\_\_\_\_ Year \_\_\_\_\_ Courtroom \_\_\_\_\_ Judge \_\_\_\_\_

Defense Attorney \_\_\_\_\_ Prosecuting Attorney \_\_\_\_\_

Charge 1st \_\_\_\_\_ 2nd \_\_\_\_\_

3rd \_\_\_\_\_ Explanation of crime \_\_\_\_\_

\_\_\_\_\_ Bail \_\_\_\_\_

Date of arrest \_\_\_\_\_ Date brought to trial \_\_\_\_\_ Severed \_\_\_\_\_

Plea 1st \_\_\_\_\_ 2nd \_\_\_\_\_ Final Disposition \_\_\_\_\_

Sentence type and length \_\_\_\_\_ Probation \_\_\_\_\_

Restitution \_\_\_\_\_ Fine \_\_\_\_\_ Court Costs \_\_\_\_\_ Waived right to speedy

trial \_\_\_\_\_ Jury \_\_\_\_\_ Comments \_\_\_\_\_

DEFENDANT'S BACKGROUND

Age \_\_\_\_\_ Race \_\_\_\_\_ Sex \_\_\_\_\_ Height \_\_\_\_\_ Weight \_\_\_\_\_ Deformities \_\_\_\_\_

Marital status \_\_\_\_\_ Number times married \_\_\_\_\_ Age/first marriage \_\_\_\_\_

Dependents: # \_\_\_\_\_ young/old= \_\_\_\_\_ Age/birth of 1st child \_\_\_\_\_

Care of dependents \_\_\_\_\_ Occupation \_\_\_\_\_

Employment Status/Arrest \_\_\_\_\_ Last Grade Completed \_\_\_\_\_

Specialized training \_\_\_\_\_ I.Q. \_\_\_\_\_ Illness, Drug Addiction \_\_\_\_\_

\_\_\_\_\_ Criminal Record: Juvenile/Adult/#/Severity:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Relationship to Co-Defendant \_\_\_\_\_ Place crime committed \_\_\_\_\_

Place arrested \_\_\_\_\_ Role in crime \_\_\_\_\_

Instigator of crime \_\_\_\_\_ weapon \_\_\_\_\_ Used by \_\_\_\_\_

Pre-sentence investigation report recommendation \_\_\_\_\_

Probation officer \_\_\_\_\_

DEFENDANT'S PARENTS AND SIBLINGS

Father: Occupation \_\_\_\_\_ Age \_\_\_\_\_ Ed. Level \_\_\_\_\_

Criminal record \_\_\_\_\_

Comment \_\_\_\_\_

Mother: Occupation \_\_\_\_\_ Age \_\_\_\_\_ Ed. Level \_\_\_\_\_

Criminal record \_\_\_\_\_

Abusive or neglectful parents \_\_\_\_\_

Siblings Criminal Record \_\_\_\_\_

ADDITIONAL COMMENTS:

## PARTNERS IN CRIME

The Legal Processing of  
Male-Female Criminal Co-DefendantsCarol Fenster  
Principal Investigator

CODEBOOK

Data obtained from  
Denver District Court  
Records, Criminal  
Division, 1972-77

Variable	Column	Description	Code Range	Code Description
CARD ONE				
1	1-5	Denver District Court Record number		five digit number
2	6	Access to bail	1-5,9	1=P.R. bond 2=released on 10% cash bond 3=released on money or property bond 4=bond set, not released (e.g. parole revocation, prior record, etc.) 5=no bond set (too serious offense or prior record) 9=missing value
3	7	Final disposition	1-5,9	1=dismissed 2=deferred prosecution 3=deferred judgment/sentencing 4=probation 5=sentence 9=missing value
4	8	If went to jury trial	1-3,9	1=no jury trial 2=acquittal 3=conviction 9=missing value
5	9	If sentenced; type of sentence	1-9	1=probation 2=fine 3=restitution 4=jail 5=reformatory 6=prison 7=probation (incarceration suspended)

Fenster, July, 1978

Codebook 2

Variable	Column	Description	Code Range	Code Description
				8=probation with terms (e.g. treatment for alcoholism, drugs, Mountain Park program, etc.)
6	10-12	Length of sen- tence	000-996,999	000=indeterminate minimum sentence 001=994=actual # of months 995=life 996=no incarceration imposed 999=missing value
7	13-15	Length of sen- tence, maximum for highest crime convicted of	001-996,999	001-994=number of months 995=life 996=no incarceration imposed 999=missing value
8	16-18	Length of sen- tence, minimum for second highest crime convicted of	000-996,999	Same coding as Variable #6
9	19-21	Length of sen- tence, maximum for second highest crime convicted of	001-996,999	Same coding as Variable #7
10	22-24	Length of sen- tence, minimum for third highest crime convicted of	000-996,999	Same coding as Variable #7
11	25-27	Length of sen- tence, maximum for third highest crime convicted of	001-996,999	Same coding as Variable #7
12	28	If more than one sentence:	1-3,9	1=concurrent 2=consecutive 3=not applicable 9=missing value

Fenster, July, 1978

Codebook 3

Variable	Column	Description	Code Range	Code Description
13	29-31	Length of probation	000-099	000=no probation 001-95=number of months 098=unspecified length 099=missing value
14	32	Sex of defendant	1-2	1=male 2=female
15	33	Race of defendant	1-5,9	1=Caucasian 2=Black 3=Chicano or Spanish Surname 4=American Indian 5=Other (Oriental, Italian, etc.) 9=missing value
16	34-35	Educational level	01-30,99	actual number of years 99=missing value
17	36	Any specialized training (aside from college)	1-5,9	1=no specialized training 2=business 3=cosmetology 4=mechanic 5=other 9=missing value
18	37-39	Occupation	001-004,009	001=laborer 002=maid, domestic or janitorial work 003=clerical (sales/secretary) 004=manufacturing 005=student 006=housewife 007=professional 008=nurse 009=missing value 100=managerial
19	40	Employment status at time of arrest	1-4,9	1=not employed 2=employed part-time 3=employed full-time 4=student 9=missing value

Fenster, July, 1978

Codebook 4

Variable	Column	Description	Code Range	Code Description
20	41	If student, status at time of arrest	1-3,9	1=part time 2=full time 3=not applicable 9=missing value
21	42	Source of support	1-6,9	1=self 2=parents/relatives 3=spouse 4=friend 5=welfare 6=other 9=missing value
22	43	Children at home to care for	1-3,9	1=children/no other adult 2=children/other adult at home 3=not applicable (no children) 9=missing value
23	44	Marital status	1-6,9	1=single 2=separated 3=divorced 4=widowed 5=common-law spouse 6=married 9=missing value
24	45	Number of years married	0-4,9	0=none 1=one year or less 2=2-5 years 3=6-10 years 4=10 or more years 9=missing value
25	46	Residence	1-2,9	1=stable 2=not stable 9=missing value
26	47	Family ties	1-2,9	1=relatives in Denver 2=no relative in Denver 9=missing value

Fenster, July, 1978

Codebook 5

Variable	Column	Description	Code Range	Code Description
27	48	Defendant's criminal status at time of arrest (pending action)	1-3,9	1=no pending action 2=misdemeanor pending 3=felony pending 9=missing value
28	49	Defendant's criminal status at time of arrest (pending action)	1-9	0=no previous adjudication 1=bail 2=probation 3=parole 4=bail and probation 5=bail and parole 6=probation and parole 7=all three of above 8=escapee of prison 9=missing value
29	50	Prior arrest severity (Joyce Sterling, 1977)	1-4,9	1=no record 2=juvenile and/or misdemeanor 3=one felony and/or misdemeanor; no incarceration 4=two felonies or more; incarceration 9=missing value
30	51-52	Prior arrest severity	01-8,11,22,33,09	00=no record 01=juvenile misdemeanor 02=juvenile felony 03=juvenile both 04=adult misdemeanor 05=adult felony 06=adult both 07=juvenile and adult, misdemeanor 08=juvenile, misdemeanor/adult felony 11=juvenile felony/adult misdemeanor 22=juvenile felony/adult felony 33=juvenile both/adult both 09=missing value

Fenster, July, 1978

Codebook 6

Variable	Column	Description	Code Range	Code Description
31	53-54	If prior record, conviction	01-8,11,22,33,09	00=no conviction 01=juvenile conv; misd. 02=juvenile conv; felony 03=juvenile conv; both 04=adult conv; misd. 05=adult conv; felony 06=adult conv; both 07=juv. misd/adult felony 08=juv. felony/adult misd. 11=juvenile and adult misd. 22=juvenile/adult felony 33=juvenile both/ adult both 09=missing value
32	55	Severity of prior conviction (Most recent)	1-7,9	1=no conviction 2=juvenile probation 3=juvenile, fine-restitution 4=juvenile, prison 5=adult, fine-restitution 6=adult, probation 7=adult prison 8=jail 9=missing value
33	56-57	Total number of prior arrests	00-99	00=none 01-95=actual number 99=missing value
34	58-59	Number of adult felony convictions	00-99	00=none 01-95=actual number 99=missing value
35	60-61	Number of adult misd. convictions	00-99	00=none 01-95=actual number 99=missing value
36	62-63	Number of juvenile convictions	00-99	00=no convictions 01-95=actual number 99=missing value
37	64	Prior adult incarceration	0-9	0=no incarceration 1-8=actual number 9=missing value

Fenster, July, 1978

Codebook 7

Variable	Column	Description	Code Range	Code Description
38	65	Prior juv. incarceration	0-9	0=no incarceration 1-8=actual number 9=missing value
39	66	Felony conv. within 5 years	1-2,9	1=yes 2=no 9=missing value
40	67	Seriousness of first offense with which charged	1-9	1=class 1 felony; life to death 2=class 2 felony; 10-50 years 3=class 3 felony; 5-40 years 4=class 4 felony; 1-10 years 5=class 5 felony; 0-5 years 6=sale narc. drugs 7=poss. narc. drugs 8=obt. by deceit/fraud 9=misdemeanor
41	68	Seriousness of second offense with which charged	1-5,9	Same as Variable #40
42	69	Seriousness of third offense with which charged	1-5,9	Same as Variable #40
43	70	Seriousness of fourth offense with which charged	1-5,9	Same as Variable #40
44	71	Type of partner- ship	1-3	1=male-male 2=female-female 3=male-female
45	72-78	Number of first offense with which charged		actual number

Fenster, July, 1978

Codebook 8

Variable	Column	Description	Code Range	Code Description
46	79	Card number	1-6	six cards per docket number (3 per defendant) 1-3=#1(older) 4-6=#2(younger)
47	80	Defendant number	1-6	1=male in M-F 2=female in M-F 3=older male in M-M 4=younger male in M-M 5=older female in F-F 6=younger female in F-F
CARD TWO				
48	1-5	Denver District Court Record number		five digit number
49	6-12	# of second offense with which charged		actual number
50	13-19	# of third offense with which charged		actual number
51	20-26	# of fourth offense with which charged		actual number
52	27	# of offenses with which charged		actual number
53	28-29	Seriousness of first offense with which charged (According to Uniform Crime Reports)	1-27	1=criminal homicide 2=forcible rape 3=robbery 4=aggravated assault 5=burglary 6=larceny=theft 7=motor vehicle theft 8=simple assault 9=arson 10=forgery & counterfeiting 11=fraud 12=embezzlement 13=stolen property (buying and rec.) 14=vandalism 15=carry and possess. weapons 16=prostitution and commer. vice 17=sex offense 18=narcotic drug laws

Fenster, July, 1978

Codebook 9

Variable	Column	Description	Code Range	Code Description
				19=gambling 20=family & children offenses 21=dwi 22=liquor laws 23=drunkenness 24=disorderly conduct 25=vagrancy 26=all other offenses 27=conspiracy 99=missing value
54	30	Type of most serious charge	1-4	1=property crime 2=personal crime 3=victimless crime 4=not applicable
55	31	Release status pending final disposition	1-3,9	1=no detention 2=detention less than 30 days 3=detention more than 30 days 9=missing value
56	32	Type of counsel	1-3,9	1=public defender 2=court-appointed private 3=private or retained 9=missing value
57	33-37	Amount of bail		actual amount in five digits 99998=P.R. Bond; no amount set 99997=no bail set 99999=missing value
58	38-39	Age of defendant		actual age
59	40	Trial format	1-2	1=bench 2=jury
60	41	Plea(first)	1-4,9	1=deferred plea 2=not guilty 3=nolo contendere 4=guilty 5=missing value

Fenster, July, 1978

Codebook 10

Variable	Column	Description	Code Range	Code Description
61	42	Plea(second)	1-4,9	Same as Variable #60
62	43	Plea bargaining	1-2,9	1=no 2=yes 9=missing value
63	44	Type of reduced charge as result of plea-bargaining	1-3	1=felony 2=misdemeanor 3=not applicable
64	45	Role in crime	1-4	1=dominant 2=equal 3=minor 4=unable to determine
65	46	Instigator	1-7	1=male in M-F 2=female in M-F 3=older male in M-M 4=younger male in M-M 5=older female in F-F 6=younger female in F-F 7=unable to determine
66	47	Recommendation of probation officer	1-6,9	1=no recommendation 2=probation 3=probation with terms 4=probation denied 5=sentence to reformatory 6=sentence to prison 9=missing value
67	48	Judge followed probation officer recommendation	1-3,9	1=yes 2=no 3=not applicable 9=missing value
68	49	Defendants severed for trial	1-2	1=yes 2=no
69	50	Relationship to partner	1-9	1=stranger 2=friend 3=co-worker 4=boyfriend/girlfriend 5=common-law spouse

Fenster, July, 1978

Codebook 11

Variable	Column	Description	Code Range	Code Description
				6=spouse 7=sibling or in-law 8=other 9=missing value
70	51-52	Age at 1st marriage		00=not married actual age 09=missing value
71	53-54	Age/birth 1st child		actual age 00=no children 09=missing value
72	55	Intelligence quotient	1-3,9	1=above average (above 110) 2=average (90-110) 3=below average (90 and below) 9=missing value
73	56	Defendant's illness including physical, mental, and emotional or drug addiction ever during life	1-2,0	1=yes 2=no 9=missing value
74	57-59	Defendant's father/occupation	001-9	001=laborer 002=maid or domestic work, janitor 003=clerical (sales/secretary) 004=manufacturing 005=student 006=housewife 007=professional 008=nurse 009=missing value 100=managerial
75	60	Defendant's mother/occupation	1-9	Same as Variable 74 (minus the zero)

Fenster, July, 1978

Codebook 12

Variable	Column	Description	Code Range	Code Description
76-77	61	Defendant's father/mother prior record	1-4,9	1=yes, father 2=yes, mother 3=yes, both 4=no, neither 9=missing value
78	62	Sibling's criminal record	1-2,9	1=yes 2=no 9=missing value
79	63	Parent's incarcerated	1-4,9	1=no, neither 2=yes, father 3=yes, mother 4=yes, both 9=missing value
80	64	Sibling's incarcerated	1-4,9	1=no, none 2=yes, brother 3=yes, sister 4=yes, both 9=missing value
81	65	Abusive, neglectful parents	1-2,9	1=yes 2=no 9=missing value
82	66	Broken home as child	1-4,9	1=no 2=death 3=desertion 4=divorce 9=missing value
83	67-68	# of siblings		actual number 00=none 99=missing value
84	69	Defendant's position among siblings	1-4,9	1=only child 2=eldest 3=middle 4=youngest 9=missing value
85	70	Work record	1-2,9	1=good 2=poor 9=missing value

Fenster, July, 1978

Codebook 13

Variable	Column	Description	Code Range	Code Description
86	71	Character references	1-2,9	1=good 2=poor 9=missing value
87	72	Place crime committed	1-5,9	1=own home 2=victim's home 3=business or store 4=street 5=other 9=missing value
88	73	Place arrested	1-5,9	Same as Variable #87
89	74	Motive for crime	1-4,9	1=no motive 2=personal revenge 3=financial need 4=other 9=missing value
90	75	Relationship to victim	1-9	0=no victim 1=stranger 2=friend 3=co-worker 4=employer 5=relative 6=spouse/common-law 7=spouse 8=other 9=missing value
91	76	Defendant affected by drinking or drugs during crime	1-4,9	1=No 2=drinking 3=drugs 4=both 2 and 3 9=missing value
92	77-78	Number of days incarcerated awaiting disposition		actual number until 98 98=98 and over
	79	Card number	1-6	six cards per docket number (3 per defendant)
93	80	Defendant number	1-6	1=male in M-F 2=female in M-F 3=older male in M-M 4=younger male in M-M 5=older female in F-F 6=younger female in F-F

Fenster, July, 1978

Codebook 14

Variable	Column	Description	Code Range	Code Description
GARD THREE				
94	1-5	Denver District Court Docket number		five digit number
95	6-11	Date of arrest		actual date in six digits (e.g. 10/12/76)
96	12-17	Date of final disposition		actual date in six digits
97	18-22	Time elapsed since arrest to final disposition		actual # of days (five digits)
98	23	Use of weapon	1-4,9	1=no 2=weapon present, not used 3=weapon present, threatened 4=weapon used 9=missing value
99	24	Type of weapon	1-5,9	1=no weapon used 2=gun 3=knife 4=club 5=other 9=missing value
100	25	Victim's injuries	1-4,9	0=no victim 1=no injuries to victim 2=minor injuries 3=major injuries 4=victim died as result of injuries
101	26	Sex of victim	1-3,9	0=no victim 1=male 2=female 3=business 9=missing value
102	27	Sex of counsel	1-2,9	1=male 2=female 9=missing value
103	28-29	Prosecuting attorney		name of prosecuting attorney

Fenster, July, 1978

Codebook 15

Variable	Column	Description	Code Range	Code Description
104	30-31	Judge		name of judge
105	32	Sex of judge	1-2	1=male 2=female
106	33	Year of crime committed	2-7	2=1972 3=1973 4=1974 5=1975 6=1976 7=1977
107	34-35	Weighted index for prior arrest severity (by Bernstein, in ASR, Oct. '77)		3=prior felony conviction 2=prior misdemeanor conviction 1=prior violations 00=no prior record
108	36	Race of victim	1-5,9	0=no victim 1=Caucasian 2=Black 3=Chicano or Spanish surname 4=American Indian 5=Other (Oriental, Italian, etc.) 9=missing value
109	37-41	Amount of fine		00000=no fine actual amount in dollars
110	42-43	Number of defendant's children		actual number of children
111	44-46	Counsel		name of counsel
112	47-48	Probation officer		name of probation officer
113	79	Card number	1-6	six cards per docket number (3 per defendant)
114	80	Defendant number	1-6	1=male in M-F 2=female in M-F 3=older male in M-M 4=younger male in M-M 5=older female in F-F 6=younger female in F-F

APPENDIX B

LETTER AND INTERVIEW SCHEDULE



# UNIVERSITY OF DENVER

An Independent University

University Park, Denver, Colorado 80208

Department of Sociology

April 18, 1979

Dear

I am currently involved in a research project on co-defendants, specifically, two people who commit the same crime together. The project, administered through the Department of Sociology at the University of Denver, is supported by a grant from the Law Enforcement Assistance Administration. Since this is the first project to study co-defendants I am interested in learning as much as possible about them (e.g. the types of crimes they commit, their participation in the criminal act, what happens to them after arrest, etc.). Advising me in this project are Professor William M. Beaney of the College of Law, Professor Wilbert E. Moore of the College of Law and the Department of Sociology, and Dr. Anne R. Mahoney and Dr. Thomas E. Drabek, both of the Department of Sociology. We feel that the project results will make an important contribution to our knowledge about criminals by: 1) providing a basis for comparing co-defendants to defendants who commit crimes alone; 2) showing whether co-defendants pose any special problems for law enforcement officials; and 3) providing a foundation for future studies of co-defendants in other jurisdictions.

I am now at a stage in the project where I need to talk to \_\_\_\_\_ about their views concerning co-defendants. I would greatly appreciate it if you and four of your fellow \_\_\_\_\_ would each allow me 30 minutes individually to ask a series of questions on this topic. The interviews can be conducted at your convenience and the results will be treated anonymously and confidentially. Since this study focuses on the period from 1972-77, I am especially interested in talking with those \_\_\_\_\_ who handled cases of criminal co-defendants during that time. I will call you around April 25 to find out if you and your colleagues are willing to participate in the project. If you have questions before that date, please call me at the Department of Sociology, 753-2948 or at my home, 693-2576.

Thank you.

Sincerely,

Carol Fenster

## INTERVIEW QUESTIONS

First, let me tell you about the project. I am studying the legal processing of criminal co-defendants, that is, two people who commit the same crime together. Since this is the first project to study co-defendants, I am interested in learning as much as possible about them. I am going to ask you a series of questions. Your answers will give me a clearer picture of what types of crimes co-defendants commit, how they commit these crimes and what happens to the co-defendants once they are arrested. Your answers will be treated confidentially.

1. So far in the project I have learned that co-defendants are treated alike in some cases and differently in others. Looking back on your experiences with co-defendants, what might be some of the reasons why they might be treated alike or differently. (Respondent discusses reasons). Would you give me an example? (If defendant's role in crime is not mentioned, move to question 2).

2. Suppose one partner was more responsible or played a more active, dominant part in the commission of the crime. Would that make a difference in:

- a. defense counsel. . . . .the advice you give regarding the motions you file? Would you give me an example? In what other ways might a defendant's role affect your decisions?
- b. prosecutors. . . . .the type of charges you file; your willingness to reduce or dismiss charges? Would you give me an example? In what other ways might a defendant's role affect your decision
- c. probation officers . . . .the recommendation you make to the judge? Would you give me an example? In what other ways might a defendant's role affect your decisions?
- d. judges . . . . .your decision regarding bail; whether you acquit or convict the defendant; if there is a conviction, whether you hand down a sentence or probation term? Would you give me an example? In what other ways might a defendant's role affect your decisions?

3. We've been talking about how you would respond to co-defendants on the basis of their roles in the crime. Now let's focus on the co-defendants themselves. What type of person tends to play the dominant role in a crime partnership composed of two men? Of two women? Of a man and a woman?

4. What are some of the reasons why men and women become involved in crimes together? (Respondent discusses reasons.) Would you give me some examples? Are these partners ever romantically involved with one another? Does one partner ever force the other to participate in the crime? Does one partner "protect" the other?

5. During the past ten years, have you observed any changes in the:

- a. type of crime women commit with men? If so, what were they?
- b. degree of responsibility women have for the crimes they commit with men? If so, what were they?
- c. legal processing of women in comparison to their male partners? If so, what were they?

6. (If respondent notes changes in question 5) What factors might account for these changes?

APPENDIX C

DESCRIPTIVE INFORMATION ON FEMALE-FEMALE CO-DEFENDANTS

## FEMALE-FEMALE CO-DEFENDANTS

As noted at the beginning of Chapter III, this sample of female-female co-defendants was too small to include in the statistical analysis. However, since this is the first study to look solely at co-defendants, it is important to report as much information as possible about all types of co-defendants in order to form a data base to which future studies of co-defendants can be compared. Therefore, a brief description of the characteristics of the female-female co-defendants is presented here, along with the offenses they committed and their treatment in the court. The data are presented in Table 1.

Characteristics of the Defendant

According to Table 1, the average age of these 32 females was 24 with a range of 18 to 35. More than a third were white with the remainder composed of Chicanos (46%) and blacks (18%). The average level of school completed was the 11th grade. These females were overwhelmingly single yet more than a third had minor children to support. Furthermore, those who had children usually had no other adult in the home to care for the children in the mother's absence. The majority of these females were not self-supporting; rather, they were supported either by welfare or friends and relatives. Those who were employed (44%) were concentrated in the domestic and clerical positions of waitresses, maids and secretaries.

The relationship between the co-defendants was usually "friend" but in several cases the friend was also the roommate. In one case the pair were co-workers and stole from their employer. None of the females committed the crime with a relative, either sibling or inlaw.

Turning to the legal status of these females, the table shows that nearly two-thirds of them had prior criminal records but that the majority of these records were juvenile or misdemeanor. Only six percent of the females had cases pending in this court or other jurisdictions. None had ever been previously incarcerated.

#### Characteristics of the Offense

These females were equally likely to commit crimes of burglary and narcotics violations (25%) followed in smaller frequencies of larceny (19%) and forgery (10%). The remaining 20 percent of the crimes fell in the categories of robbery, assault, and receiving stolen property. All of these crimes are classified by statute as either class 4 or 5 felonies (offenses which lie at the less severe end of the severity spectrum and carry possible prison terms not to exceed 10 years). Nine percent of the females used weapons (usually guns or knives) but none were reported to be under the influence of drugs or alcohol during the commission of the crime. All 16 pairs of females co-defendants participated equally in the offense.

#### Organizational Labeling

Before discussing the labels received by these female co-defendants we note some important characteristics about the manner in which they were processed.

Private attorneys were retained by nearly two-thirds of these co-defendants; the remainder were represented by public defenders. None of the pairs were tried by a jury. Almost one-third of the cases were disposed of in less than three months; 90 percent in less than

six months. Furthermore, less than one-third of the defendants entered into plea-bargaining (charge reduction) negotiations.

Turning to the first stage of bail, we find that over half of the females were released on PR bonds. Those who were required to post bond posted average amounts of \$2,823. Female co-defendants received identical bail in 69 percent of the cases. They were incarcerated for short periods of time before being released on bond. The average length of pre-trial detention was just five days.

Moving on to the next stage, we find that more than three-fourths of the females were diverted out of the system with a deferred disposition. These pairs received identical deferred dispositions in 63 percent of the cases.

Of those who were not filtered out with deferred dispositions (N=10) but were fully adjudicated instead, seven defendants were placed on probation, one was sentenced to a prison term not to exceed three years and two were acquitted. The recommendations made for these females by probation officers were favorable. Of those receiving recommendations only one defendant was denied probation and the judge sentenced that defendant. Those partners who were eligible for sentencing received identical dispositions in only 19 percent of the cases.

Table 1

Characteristics of the Defendant, Characteristics  
of the Offense and Organizational Labeling of  
Female-Female Co-Defendants

Variable	Frequency
Age	$\bar{X}=24$
Educational Level	Range=18-35 $\bar{X}=11$ years
Race	
Caucasian	36%
Chicano	46%
Black	18%
Marital Status	
Not married	97%
Married	03%
Relationship to co-defendant	
Friend	100%
Spouse	00%
Relative	00%
Source of Support	
Other	59%
Self	41%
Prior Criminal Record	
None	40.6%
Juvenile/Misdemeanor	34.4%
Felony, no incarceration	25.0%
Two Felonies, incarceration	00.0%
Defendant has case pending	
No	94%
Yes	06%
Type of Crime Charged	
Murder	00%
Rape	00%
Robbery	6.3%
Aggravated Assault	6.3%
Burglary	25.0%
Larceny	19.0%
Forgery	9.4%
Fraud	0.0%
Stolen Property	6.3%
Narcotics	25.0%

Table 1 (continued)

Variable	Frequency
Severity of crime charged	
Class 1	0%
Class 2	0%
Class 3	6.3%
Class 4	38.0%
Class 5	31.0%
Narcotics	15.6%
Role	
Equal	100%
Unequal	1%
Type of Counsel	
Public Defender	32.4%
Private Attorney	67.6%
Time elapsed from arrest disposition	
1 to 90 days	30%
91 to 120 days	23%
121 to 150 days	23%
151 to 180 days	14%
181 to 240 days	10%
241 to 365 days	00%
366 + days	00%
Length of Pre-Trial Detention	$\bar{X}$ =5 days
Defendant in Plea-Bargaining Negotiations	
No	69.5%
Yes	30.0%
As Result of Plea-Bargaining, Charge Reduced to:	
No Reduction	68.8%
Felony	6.2%
Misdemeanor	25.0%
Bail	
No PR bond	44%
PR bond	56%
Bail Amount	$\bar{X}$ =\$2823
Deferred Disposition	
No	26%
Yes	74%
Final Disposition	
Probation	90%
Sentence	10%
	N=10

Table 1 (continued)

Variable	Frequency
Trial Format	
Bench	100%
Jury	00%
Recommendation of Probation Officer	
Probation	93%
Probation Denied	7%
Sentence by Statute	00%
	N=15

PARTNERS IN CRIME: A STUDY OF THE LEGAL PROCESSING  
OF MALE-FEMALE CRIMINAL CO-DEFENDANTS

---

An Abstract of a Dissertation  
Presented to  
the Faculty of the Graduate School of Arts and Sciences  
University of Denver

---

In Partial Fulfillment  
of the Requirements for the Degree  
Doctor of Philosophy

---

by  
Carol Lee Fenster  
December 1979

## ABSTRACT

There have been many studies which compare the court's treatment of male and female offenders but none which look at males and females who commit the same crime together. This study focuses on the court's treatment of male-female co-defendants at three sequential stages in the adjudication process--bail, deferred disposition and final disposition--and the variables affecting these adjudication decisions. Two purposes guide the research: 1) to provide descriptive information about male-female co-defendants to which future studies can be compared, and 2) to test the assertion that offense variables, particularly role in the crime, will have more effect on the court's treatment of co-defendants than their characteristics, especially sex.

To test this assertion, five hypotheses were advanced using societal reaction or labeling theory as a theoretical foundation. In labeling terminology, the court's treatment constitutes a label which classifies the defendant as a fit subject for official management. Using this terminology, the five hypotheses were: 1) Defendants who play equal roles receive equal labels; 2) Defendants who play dominant roles receive harsher labels, regardless of sex, than their minor partners; 3) Females play minor roles with males in crime partnerships; 4) Females receive milder labels than their male co-defendants, regardless of their roles; and 5) Variables associated with the offense explain more variation in labeling than either organizational variables or the characteristics of the defendant.

Hypotheses 2 and 4 were tested with a t-test; Hypotheses 1 and 3 were tested with a chi-square test of significance. In addition, an analysis of variance was used to test for any interaction effects between sex and role upon labeling. Hypotheses 5 was tested with a multiple stepwise regression.

These hypotheses were tested with a sample of 105 pairs of male-female co-defendants and a comparison group of male-male co-defendants whose felony cases were filed in Denver District Court from January, 1972, through December, 1977. The sample of male-male co-defendants was used as a comparison group for the testing of Hypotheses 1 and 2. Data were collected from court records, interviews with legal officials and observations of court proceedings.

The results do not support the prediction that role as well as other offense variables would significantly affect the labeling of male-female co-defendants at all stages of adjudication. That is, role is not consistently related to the equality or severity of labeling at all stages and neither role nor other offense variables explain the most variation. However, role did have some effect on the deferred disposition stage.

Overall, the data suggest that sex has a stronger influence on the labeling process than role. Females received the milder labels regardless of whether they played dominant, equal or minor roles. Likewise, males received harsher labels regardless of whether they played dominant, equal or minor roles. Even when prior criminal record was introduced as control variable, the females continued to receive the milder labels although these differences were statistically significant for those in unequal roles but not for those in equal roles.

Furthermore, the significant predictors of labeling differed between males and females and from stage to stage suggesting that sex provides a different context in which to apply legal norms and that the major determinative factors vary with the decision being made and the point in the adjudication process at which the decision occurs.

These results suggest that future research using societal reaction theory should: 1) address sex as a relevant determinative factor in the labeling process and continue to address role to see if its weak influence is replicated; 2) study adjudication in a sequential analysis in order to develop research questions more amenable to specific stages; and 3) pay closer attention to the effects of organizational variables upon legal decision-making.

DEPARTMENT OF JUSTICE  
 1  
 INTERNAL ROUTING-ACTION SLIP

6/4/80

TO	ROUTING SYMBOL OR		NAME-TITLE-ORGANIZATION
	BLDG.	ROOM	
			NCJRS
			for your reference file

- |   |                                  |   |
|---|----------------------------------|---|
| <input type="checkbox"/> RECOMMENDATION-COMMENT | <input type="checkbox"/> LOG     | <input type="checkbox"/> NECESSARY ACTION |
| <input type="checkbox"/> SEE REMARKS ON REVERSE | <input type="checkbox"/> FILE    | <input type="checkbox"/> COORDINATE       |
| <input type="checkbox"/> MAKE COPIES (NO. )     | <input type="checkbox"/> SEE ME  | <input type="checkbox"/> AS REQUESTED     |
| <input type="checkbox"/> RETURN (BY )           | <input type="checkbox"/> CALL ME | <input type="checkbox"/> INFORMATION      |

FROM	BLDG.	ROOM
	EWT	
OCJET / LE MA	PHONE	DATE
	492-9144	2-7-80

**END**