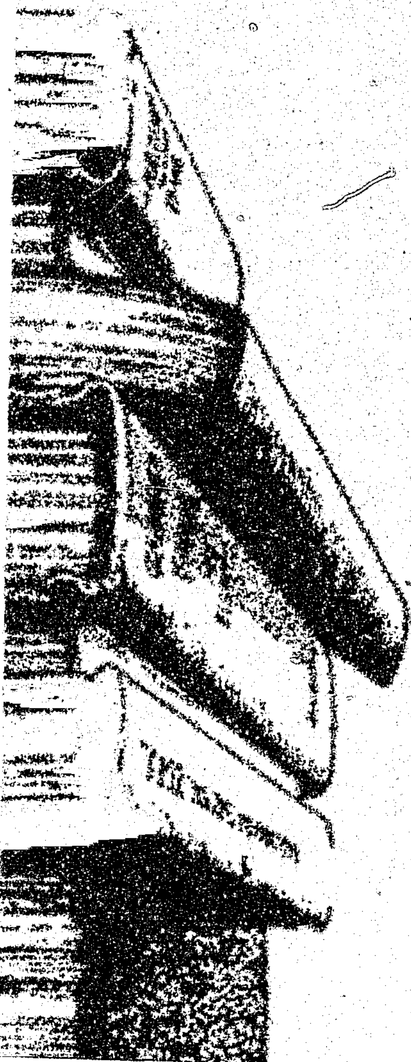

Academically Speaking...

1992

Criminal Justice-Related Research by Florida's Doctoral Candidates

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Academically Speaking... Criminal Justice-Related Research by Florida's Doctoral Candidates, 1992

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Florida Criminal Justice Executive Institute
Florida Department of Law Enforcement
James T. Moore, Commissioner
December 1993

146927

Academically Speaking... Criminal Justice-Related Research by Florida's Doctoral Candidates, 1992

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Foreword

by Chancellor Charles B. Reed
State University System of Florida

The Florida Legislature created the Florida Criminal Justice Executive Institute in 1990 and charged it with educating the State's criminal justice executives. Given the Institute's educational focus, the Legislature also affiliated it with the State University System and called for on-going cooperation between the Institute and Florida's community colleges and universities.

Since 1990, the State University System and the Florida Criminal Justice Executive Institute have identified numerous avenues for cooperation. University faculty and staff often serve as instructors in delivering the Institute's two primary curricula: the Chief Executive Seminar and the Senior Leadership Program. The Florida State University formally supports these programs by granting college credit to participants through its School of Public Administration and Policy. The Director of the School also sits on the Executive Institute's Policy Board as the representative of the Commissioner of Education.

Academically Speaking... is another cooperative venture between the State's universities and the Executive Institute, this time through their doctoral students. The document is important for several reasons. It is a clear, practical demonstration of the return on our investment in higher education in Florida. It offers recent doctoral candidates a unique opportunity to publish, as an essential part of their professional development, because the results of their hard work will be read by such a broad audience. Through this compendium, we hope you will understand the contributions they already have made to criminal justice in Florida, and the contributions they will make to criminal justice here and elsewhere in the future.

One of the most valuable things *Academically Speaking...* will do is to highlight the opportunity we have to advance one another's point of view. Each of us considers our work important. Those of you in law enforcement, corrections, prosecution and other areas make necessary and important contributions to the criminal justice system. Your peers recognize the value of your work. Those of us in academic institutions place great value and emphasis on research and evaluation. Our work provides data and information which other academics indicate is meaningful, but which also has great value for practitioners. Too often each of us fails to understand the other's contribution -- we do not recognize the degree to which research and practice overlap, or how much one supports and directs the other. Fortunately, in Florida we have a unique opportunity to cultivate this overlap through the Florida Criminal Justice Executive Institute.

FCJEI was created to fill Florida's need for an innovative, multifaceted approach to the professional development of criminal justice executives. FCJEI carries out its mission through an integrated program of education, training and research. While the staff of FCJEI and the practitioners of criminal justice in the State might carry out this mission alone, they have elected to take advantage of the knowledge and skills available at Florida's colleges and universities. *Academically Speaking...* is an outstanding example of that effort.

Preface

by A. Lee McGehee, Chair
Florida Criminal Justice Executive Institute Policy Board
Chief, Ocala Police Department

In 1989, a small group of Florida police chiefs and sheriffs met with the Commissioner of the Florida Department of Law Enforcement to discuss the needs of the state's criminal justice executives. Although we might have identified numerous issues, one stood out above the rest -- the need for comprehensive education and training for tomorrow's executives. Our dream was to create a premier institution, one that would offer an integrated program of leadership instruction designed specifically for criminal justice chief executives and senior managers.

This dream became reality in 1990 when the Legislature created the Florida Criminal Justice Executive Institute. The Institute is charged with improving our ability to identify, prepare for and address the emerging issues facing our communities. It fulfills its mission through a comprehensive program that provides:

• training and education for persons working throughout the criminal justice system;

• a curriculum designed to assist participants as they move into leadership and management positions and eventually to chief executive;

• technical and specialized courses that address emerging or contemporary criminal justice issues;

• a single point of contact for executive education and training as well as research; and

• an affiliation between the State University System and practitioners in the criminal justice system.

The Institute's programs encourage criminal justice leaders to develop a "futuristic approach," so that trends and issues are identified and addressed before they become crises. The role that the Executive Institute plays in a leader's ability to maintain this proactive posture is critically important. For example, one of the shortcomings we originally discussed with the Commissioner was the need for better staff reports, the "applied research" of an operational agency.

This failure to adequately "research" a problem is a function of two things. First, we have not been trained in research methods. In many criminal justice agencies the planning and research manager is someone *assigned* to do the research; that assignment does not always consider whether he or she has the education or experience required to meet the demands of the job.

Second, many criminal justice professionals never come into contact with rigorous research. Our agencies do not subscribe to academic journals with any regularity, and we seldom take advantage of the resources available in the State University System. The work of academics seems remote and inconsequential.

The Executive Institute offers the perfect balance for addressing these two issues. Its programs require hands-on experience on the part of participants, an experience that builds the skills needed for innovation, analysis and evaluation of future trends while responding to the needs of day-to-day operations.

A research and publications effort complements the training component. The Institute publishes the results of research completed by its students, its staff, and others interested in solving the problems and issues of the criminal justice community. This way our criminal justice executives regularly come into contact with the research and other information they need to make sound decisions.

Academically Speaking... is one example of this publication program. The volume is more than just a publication, however. In the same way that the Executive Institute seeks out future professional leaders, *Academically Speaking...* allows the Institute to introduce tomorrow's academic leaders. It is an example of the kind of cooperation and collaboration that should happen between professionals and academics every day, and it is our hope that its publication will begin to bridge the gap between them.

Introduction

by Director James D. Sewell, Ph.D.
Florida Criminal Justice Executive Institute

Academically Speaking... is an annual publication of the Florida Criminal Justice Executive Institute. This volume contains six articles on criminal justice-related topics, each based on the dissertation research of a doctoral candidate from Florida's State University System.

We are particularly proud of this publication because it represents the on-going cooperation between the Executive Institute and Florida's universities and community colleges. We hope that bringing academic research to criminal justice professionals will help them to understand the contribution their academic counterparts have to make to the profession.

The works included here were selected after a review of dissertation titles provided by state universities offering advanced degrees. Each candidate with a criminal justice-related title was contacted regarding possible participation in the compendium, and all positive replies were accepted for publication.

The final product includes contributions from three universities in the disciplines of criminology, higher education and history. It covers topics like harassment, punishment and decision-making. It confronts equal representation, equal protection and reasonableness. Its contents, hopefully, bring to light a number of issues we need to address and offer us some suggestions for their resolution. Each article also includes a short biographical statement provided by the author. They are as varied in their careers as they are in their contributions.

With its breadth in disciplines, the compendium points out the complexity of the problems we face in the criminal justice community. Articles like those provided here by William Johnson and Miriam DeLone, for example, show us the myriad inputs which contribute to incarceration and probation decisions. Factors like age, race, socioeconomic status, unemployment and crime rate affect punishment patterns, whether we consciously or unconsciously incorporate them into our decision-making processes.

An historical view of race as a critical variable in the punishment is provided by Eric Rise, who chronicles the case of the Martinsville Seven. Although unsuccessful, this case is an important early example of the NAACP's abandonment of a desegregation strategy in favor of the "separate but equal" doctrine.

Tammy Meredith Poulos and Ann Browning Masters offer us two different looks at the question of power, as they examine female representation in law enforcement, a traditionally male field, and environmental sexual harassment in higher education. Here, race as well as gender come to the forefront as issues the criminal justice executive is forced to confront.

The remaining article in the compendium, by Max Bromley, addresses an often overlooked segment of the criminal justice community -- our state universities. His decision-making model is important not only for the context that it gives to university administrators, but for drawing our attention to the special needs of the broader university communities.

It is our hope that *Academically Speaking...* will demonstrate the value that university research has for the professional criminal justice community. FCJEI was created to provide an integrated program of training, education and research. One of our goals, especially given our statutory affiliation with the State University System, is to integrate the academic and the professional community through a broad range of publications. This compendium serves as one of the vehicles to this necessary integration, and I would like to thank the contributors for their invaluable support in its publication.

146928

A Woman's Place is on Patrol: Female Representation in Municipal Police Departments

by Tammy Meredith Poulos, Ph.D.

INTRODUCTION

Women who choose a career in policing are among the growing number of Americans who work in a world that many people previously considered the exclusive domain of men. Today, women are taking on more economic responsibility in the family, whether by force or by choice. They are seeking similar economic and personal rewards from their work as their male counterparts. Yet, as more women enter a wider range of occupations than in the past, empirical knowledge of their progress within specific careers remains limited.

The 1987 Economic Report of the President, in a special chapter on women, paints an encouraging picture of American women and their plight in the labor force. Along with increases in absolute numbers and real earnings, women today are more likely to enter higher paid occupations than their mothers. The index of occupational segregation, a reflection of the extent of gender segregation in the labor force, has declined steadily during the past twenty years.

Unfortunately, the President's report tells less than the full story (Ferber, 1989). Female labor force participation is higher in Eastern European and Scandinavian countries than in the United States. A decrease in the U.S. earnings gap between men and women reflects more of a decline in men's real earnings over the past two decades, as opposed to gains in women's earnings. While women make up 45% of the U.S. labor force, their representation within traditionally "male-dominated" fields remains low. For example, women comprise only 21% of all lawyers and judges, 19% of all physicians, 6% of all engineers, and 4% of all mechanics and laborers (United States Department of Labor, 1989).

Due to the predominance of males, such career choices come to be labeled as "men's work." This gender label, in turn, reinforces gender typed career choices of young men and women entering the work force (Oppenheimer, 1970). Thus, male ascendancy within policing has deep seated social and historical roots. From childhood, Americans are socialized to accept cultural labels, as well as mass media depictions, of the typical policeman. Although women first gained entrance into this traditionally masculine domain eighty years ago, their progress has lagged.

Historically, women have remained in very traditional or stereotypical "female" law enforcement positions and have participated only minimally in patrol work (Milton, 1972; Grennan, 1987). The President's Commission on Law Enforcement and Administration of Justice (1967) recognized the acute need to attract more women into police work. Unfortunately, the Commission's recommendations met with resistance at the agency level. The 1972 Title VII Amendment to the 1964 Civil Rights Act, known as the equal employment opportunity laws, and subsequent affirmative action policies fostered increased numbers of female police officers during the 1970s. This rapid influx of women generated administrative concern over the conflict between hiring affected classes and maintaining adequate personnel standards. Researchers, in response, focused on the issue of field performance. They concluded that although performance of male and female officers differed somewhat, the overall record of women was favorable (Bloch & Anderson, 1974; Sherman, 1973; Sherman, 1975). Women were adept at defusing potentially violent situations (Sherman, 1973) and public reaction was favorable (Sherman, 1973; Sherman, 1975; Bloch & Anderson, 1974; Koenig, 1978; Koenig & Juni, 1981; Milton, 1972).

Despite evidence that females are capable of doing police work, women today still constitute only 9% of all sworn personnel in the United States (FBI, 1990: 237). Among the 25 largest municipal police departments in the United States, this figure varies from a low of 1% in Newark to a high of 18.9% in Detroit (Reaves, 1989).

The most recent survey of personnel practices in municipal police departments indicates that the proportion of female sworn police officers has increased slowly since 1972 despite efforts of the federal government to weaken affirmative action programs (Martin, 1989). However, growth is not

witnessed across all municipalities. Female officers make up a larger share of the patrol force in large city departments.

One might be tempted to attribute the low level of female representation within police agencies to such related issues as unfair hiring practices, retention problems, or the lack of interest among women to pursue a career in policing. A more important question, though, is whether women choose not to enter the field of policing or if they are excluded systematically from this previously "all male" domain. As police departments face rising crime rates and increased budget constraints, they come under greater pressure to maximize community effectiveness. To law enforcement administrators, women represent a hitherto untapped source of strength in the labor force.

The underrepresentation of social groups in policing is not a new topic of social scientific interest. However, while researchers have examined the underrepresentation of black officers in police departments (Hochstedler & Conley, 1986; Warner et al., 1990), a similar analysis for female police officers does not exist. As a result, the purpose of this paper is to examine the differential distribution of female police officers in local law enforcement agencies throughout the state of Florida. Employment data are collected for all local agencies and jurisdictional comparisons are based upon variables found in the U.S. Census. Variables included in the literature explaining the underrepresentation of minority officers, as well as parallel literature on women in the labor market, serve as the base for building a theoretical model applicable to female police officers.

WOMEN IN LAW ENFORCEMENT

The first regular female law enforcement officers were appointed to the Los Angeles Police Department during 1911. They were assigned to such traditional duties as the juvenile division and social service activities (Milton, 1972). Fifty-six years later, the President's Commission on Law Enforcement and Administration of Justice (1967) reported that the representation of women in policing had remained unchanged. There was a critical need to attract more women to police work and to expand their duties.

Women who pursued law enforcement careers encountered very real barriers...quotas, less pay for equal work, not being allowed to sit for promotional exams, lack of uniforms that fit women, and negative attitudes.

While popular in theory, police administrators considered the Commission's recommendations to be more problematic at implementation. Finding qualified applicants became an issue. Aware of recruitment difficulties, the Commission made further recommendations for the placement of policewomen in nontraditional job roles. A study conducted by the Police Foundation revealed, however, that few departments were attempting to implement the Commission's recommendations (Milton, 1972).

Women who pursued law enforcement careers encountered very real barriers designed to keep them out of the traditional "male" patrol job (Milton, 1972). Some departments set quotas on the number of "female" positions available within the department, usually less than 1% of the total sworn force. Additional obstacles included less pay for equal work, not being allowed to sit for promotional exams, lack of uniforms that fit women, and especially important, the negative attitudes of fellow officers and their wives.

Today, women experiencing job discrimination have recourse under Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. sec. 2000 et seq., as amended). The Act prohibits discrimination "on the basis of race, creed, color, sex or national origin with regard to compensation, terms, and conditions or privileges of employment." The 1972 Amendment extends coverage from the governmental to the private sector, including police departments.

The Equal Employment Opportunity Commission (EEOC), the federal agency created by the 1972 Amendment, investigates complaints of discrimination. Minority and female applicants are protected from employers who rely on gender-specific hiring policies. However, there is an exception known as a "bona fide occupational qualification" (BFOQ). The EEOC will allow gender-specific employment policies only where it is "reasonably necessary to the normal operation of an enterprise."

Whether gender is a valid BFOQ became a critical issue. The purpose of Title VII is to ensure equal opportunity in the competition for jobs and to eliminate unjustified labor practices falling more harshly on one group. According to judicial interpretation, employment restrictions must be related directly to job performance (Griggs v. Duke Power Company, 1971). The U.S. Supreme Court introduced the notion of "prima facie discrimination" in Griggs. A prima facie discrimination case can be filed against an employer who relies upon some condition of employment which disproportionately eliminates a protected group from the applicant pool. Under such allegations, the burden of proof shifts from the plaintiff to the employer. Thus, the employer must establish a connection between the condition of employment and job performance. Departments wishing to ban women from patrol positions would have to prove "all women are incapable of performing the job" (Potts, 1983: 507). The courts clearly state that even if gender is the best predictor of successful job performance, it is not a

valid BFOQ (Diaz v. Pan American World Airlines, 1971).

Researchers addressing the issue of female officer performance consistently rate the work of women as favorable. Female officers are considered more adept at defusing potentially violent situations (Sherman, 1973). They are generally less authoritarian than their male counterparts (Perlstein, 1972). Although women are less likely to resort to the arrest option (Sherman, 1975; Koenig, 1978), their arrests are just as likely to stand up in court as arrests by their male colleagues (Koenig, 1978). As for safety concerns, Johns & Barclay (1979) find that male officers with a female partner make fewer weapon mistakes.

A more controversial issue is the performance of female officers in violent physical confrontations. The research knowledge to date indicates that female officers perform as well as males (Bloch & Anderson, 1974; Sherman, 1975). While males often reject their female partners out of worry about their partner's ability to handle potentially violent encounters (Charles, 1981), numerous studies conclude that the majority of a police officer's work is sedentary in nature, requiring only a minimal level of physical fitness (Cumming et al., 1965; Bittner, 1967; Bercal, 1970; Webster, 1970; Reiss, 1971; Sherman, 1973; Price, et al;, 1978; Charles, 1982). In a recent examination of violent encounters between the public and the police, Bayley and Garofalo (1989) conclude that violence remains a relatively rare occurrence in police work.

Much literature is devoted to the issue of public reaction to female officers (Sherman, 1973; Sherman, 1975; Bloch & Anderson, 1974; Koenig, 1978; Koenig & Juni, 1981; Milton, 1972). The consensus of this literature is overwhelmingly favorable towards women. In spite of public acceptance, female officers face their greatest resistance from male officers (Bloch & Anderson, 1974; Sherman, 1975; Charles, 1981; Milton, 1978; Martin, 1980; Koenig, 1978). Chauvinistic attitudes are a significant stressor for females (Wexler & Logan, 1983).

In examining the unsuccessful integration of female officers in rural departments, Weisheit (1987) finds that male officers do not believe females are competent. Ninety-five percent of the male officers sampled thought females would never get hired were it not for affirmative action policies. However, Weisheit discovers the importance of controlling for age of the officer. Older males most resist female officers, while younger males report more egalitarian attitudes. This implies traditional barriers facing females may be lessening as younger and more educated individuals are attracted into a policing career.

...male officers do not believe females are competent. Ninety-five percent of the male officers sampled thought females would never get hired were it not for affirmative action policies.

More recent literature on the assimilation of women in law enforcement shifts focus from the possible deficiencies of individual female officers to organizational and cultural impediments to their performance (Pendergrass & Ostrove, 1984). Females are excluded from informal training networks and rejected by many male officers, making it difficult for them to perform their jobs adequately (Martin, 1980; Wexler & Logan, 1983; Weisheit, 1987). The organizational response to female officers, in fact, may add to the underrepresentation of females within police agencies.

The above reasoning leads to the "denial versus choice" argument as applied to blacks by Hochstedler and Conley (1986). The denial argument posits that minorities are not permitted equal access to law enforcement employment opportunities as a direct result of discriminatory agency practices. The basis of the choice argument is that minorities simply do not elect to pursue careers in law enforcement. Using the same logic, the low level of female participation in sworn law enforcement positions may result from employment practices that intentionally or unintentionally deny employment to capable female candidates. Or, as a matter of choice, females simply are not attracted to a career in policing in comparison with alternative occupational options. The absence of empirical evidence makes it impossible to distinguish the proper explanatory model.

Hochstedler and Conley (1986) surveyed fifty metropolitan police departments across the country to determine whether the "denial" or "choice" argument best explains the representation of blacks among sworn officers. They found the recruitment pool, defined as the proportion of the population that was black, explained three-fourths of the variance in the level of black representation. This relationship remained strong, controlling for region of the country, population size, percent black families in poverty, size of the poverty population, and whether the agency is under a court order to hire blacks. The authors concluded a "constrained choice" explanation best fit the data.

The constrained choice explanation focuses on the notion of learned antipathy. Recent opinion research portrays black citizens as more critical of and harboring more negative attitudes toward police officers than do white citizens. Such attitudes result from viewing the social control role of the police as well as personal encounters with officers. Blacks also experience more social pressure against developing career interests in law enforcement, partially due to the views toward police expressed by the lower socio-economic class. Viewing the police culture as a career of limited opportunity for advancement, blacks may opt for alternative career choices. Thus, while

a "choice" explanatory model can account for the research findings, it must be tempered with the possibility that social pressures placed on blacks prevent them from truly exercising their choice.

The information available on the representation of females in police departments is even more limited. Hochstedler (1984) examines the effect of affirmative action programs in 15 public police departments across the United States. She reports a severe underrepresentation of females at all levels in the agencies, as females constitute no more than 10% of the sworn personnel in any department. Hochstedler makes the claim that if the goal of affirmative action is to obtain a police department that reflects the general work force, success for females is a long road ahead. Martin (1989), examining the status of women in police agencies serving cities of 50,000 or more, concludes that the representation of females in law enforcement, while improving in recent years, remains minimal.

WOMEN IN THE WORK PLACE

Gender segregation in the work place is nothing new to this century. Since 1900, between 60% and 70% of both working men and women would have to change occupations in order to equalize this country's occupational distribution by gender (Blau & Hendricks, 1979; England, 1981). Aside from segregation across occupations, Baron and Bielby (1985) argue that occupations themselves are entities that embody gender stratification. Within any given occupation, certain organizational practices ensure the segregation of women into the lowest levels of the organization's career ladder (e.g., the disproportionate employment of waiters in expensive restaurants and waitresses in cheap restaurants).

Kanter's (1977) ethnographic work illustrates organizational means of fostering gender inequality. Her theory, that women are less likely to be segregated when they comprise a larger share of the work force, is supported by subsequent researchers. Baron and Bielby (1985) studied over 400 work organizations in California from 1959 through 1979. These organizations ranged in size from 2 to 8,000 employees. The authors discovered that organizations most segregated were the large, manufacturing or manual task oriented companies. Like Kanter, they found women were less segregated when they made up a larger share of the company's labor pool. Interestingly, Baron and Bielby found fewer than ten percent of the work force they studied were in jobs that employed both men and women. Most of the organizations examined were completely segregated by gender. Occupations that were integrated by gender typically showed men and women performing the job in different locations as opposed to working together.

Baron and Bielby conclude that organizations differ not in how segregated they are, but in how they produce their segregation. Of the 10% of the labor force in jobs containing both men and women, the majority are in entry level positions. However, entry level positions are no less segregated than other jobs. The authors conclude (Baron & Bielby, 1985, p. 241):

[D]istinctions between men's and women's work exist from the time most employees enter organizations. Career ladders embody and exacerbate this segregation, with women's promotion opportunities typically limited to moves one or two steps higher up the organizational ladder, in positions responsible for supervising women exclusively....In contrast, promotion ladders for men are longer.

THE MALE-DOMINATED CAREER OF POLICING

Contrary to popular belief, prior research on women in traditionally male-dominated occupations indicates that these women are very satisfied with their jobs, despite the common experience of sexual harassment and hostile male co-workers. O'Farrell and Harlan (1982) conclude that work satisfaction among females derives primarily from adequate pay and interesting work, not from congenial social environments. The literature on women and work concludes that women are not only capable but willing to embark on a "male-dominated" career for much the same reasons as men (pay, prestige, excitement, etc.).

Men and women generally express the same reasons for entering a career in policing--the opportunity to help people and job security (Meagher & Yentes, 1986). However, selecting a career in policing may have some unique barriers. Studies of the organizational culture of policing indicate that the general milieu of police work offers women some additional challenges.

Criminal justice institutions in general, and police agencies in particular, are described as resistant to change (Feeley, 1983; Guyot, 1979). The literature on police personalities describes policemen as traditional, conservative, suspicious, and defensive (Balkin, 1988), as well as reflecting attitudes of lower middle class America (Regoli & Jerome, 1975). Balkin et al. (1977) describe a "change-threatened" personality in the typical policeman. Even the college experience, which alters the values of most students, has little effect on the values of policemen. Police officers tend to hold on dearly to their traditional values.

It is no surprise that the "police personality" is attracted to the stereotypical "masculine" occupation of law enforcement. In fact, Wexler & Logan (1983) describe police work as the "archetype of the masculine occupation." Police work typifies strength, bravery, and aggression. Thus, the well-documented police subculture, based on similar backgrounds and beliefs, shares a common definition of masculinity. Female police officers undermine this sense of shared identity. Admitting women are competent at the

same job may threaten the policeman's sense of identity. Thus, it is easier for men to collectively reinforce their distorted views of policewomen than to change their values. Hopefully, as cultural values change, new generations of police officers will enter the profession with an understanding that both men and women can perform the job of police officer.

DATA AND METHODS

The goal of the present study is to explain the differential distribution of women in sworn law enforcement positions of Florida municipal police departments. The lack of parity within the law enforcement segment of the labor force will be examined from the perspective of the denial argument posited by Hochstedler and Conley (1986). Capable females may be denied access to law enforcement opportunities as a direct result of discriminatory agency practices. To test this hypothesis on an agency level, an examination of the work force is required in order to determine if female representation reflects the local labor market. If female representation reflects the broader social context, lower female representation is expected in areas where women are more suppressed in the labor market.

Study Group

The state of Florida serves as the research site for this study. Gender breakdowns for each law enforcement agency were obtained from the 1988 Florida Department of Law Enforcement Computerized Law Enforcement Access Retrieval System (CLEARS) database. CLEARS contains two personnel files which, when merged, form a complete employment record for every law enforcement officer within the state. These records allowed the researcher to generate gender tallies for each municipal agency.

Less than two percent of personnel records in the basic database lacked a gender code. For these records, the name of the officer was cross-checked in an effort to determine the officer's gender. For example, if the name of the officer missing a gender code was "Susan," the reconstructed gender code was marked "female." All cases with gender-neutral names (e.g., Dale, Kim) were treated as missing on gender.

Overall, 91% of the agencies had no missing data on the gender of their sworn full time personnel. The Gainesville Police Department reported the highest level of missing data, where five percent of all officers were missing a gender code. Agencies with missing data generally lacked gender codes for less than one percent of the total department. Therefore, missing data are not an issue of concern.

There are a total of 316 municipal police departments in the state of Florida. However, a number of agencies were eliminated from the study for a variety of reasons. Eleven agencies were deleted at the onset because they serve airports, school districts, or Indian reservations. Another 102 agencies were deleted from the study group because they worked areas with less than 2,500 inhabitants and had limited census data available. The final study group consists of 203 agencies representing 96.5% of all sworn police officers and 64.2% of all police departments in Florida.

Dependent Variables

The purpose of the dependent variable is to gauge the relative distribution of female officers within police agencies. The dependent variable is operationalized in two different ways. The first measure is the percent female officers within the agency. This strategy is the most popular among researchers examining the representation of women and blacks in law enforcement.

The second dependent variable measure used in the current study is the officer-to-population index. This index represents the percentage of affected officers employed in a given agency relative to their percentage in the local population. For example, if females comprise 10% of the sworn officers within a particular agency and 50% of the local population, the officer-to-population index for that locality is .20 (or 10/50). The index can range from a low of zero, where there are no females represented on the police force despite a female population, to a high of one, where there is a one-to-one ratio of female officers to population.

Reaves (1989) and Walker (1989) introduce the officer-to-population index measure while examining the representation of black, hispanic, and female officers in law enforcement agencies of large U.S. cities. Reaves (1989) reports a female officer-to-population index for the 25 largest municipal police departments in the U.S. in 1987 ranging from a low of .02 in Newark to a high of .42 in Detroit.

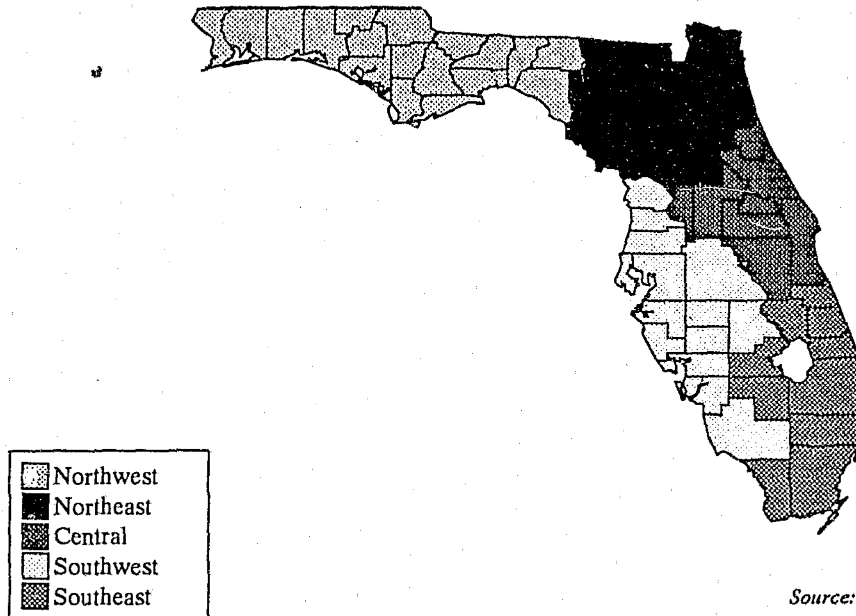
Use of an index measure in the current study will allow for a comparison of female law enforcement representation between localities that differ in female populations. However, the current study improves upon the Reaves (1989) officer-to-population index by defining the population as women in the labor force as opposed to all women in the population. This will more accurately reflect female representation according to the population of concern, women in the labor market.

Independent Variables

The "denial hypothesis" claims minorities are denied access to law enforcement opportunities as a direct result of discriminatory agency practices. To test this hypothesis as it applies to females on an agency level, the independent variables for the current analysis are divided into four general categories. With the exception of agency size, each of the independent variables are collected from the 1980 U.S. Census for the state of Florida.

Agency Size. Agency size reflects the number of full-time sworn law enforcement officers employed by the municipal police department in 1988, collected from the FDLE CLEARS database. Part-time and

Figure 1
Regions of Florida



Source: Florida Statistical Abstract, 1988

civilian officers are not included in the analysis. According to recent examinations of female representation within law enforcement, larger agencies are most likely to employ female officers (Martin, 1989; Reaves, 1989). Baron et al. (1991) also report agency size is a significant predictor of gender integration in California civil service organizations.

While Hochstedler and Conley (1986) note racial minority representation within an agency is a good predictor of female representation, data on the race of officers for the current study group are missing for a substantial portion of all officers. Therefore, racial minority representation is not utilized as an agency measure in the current study.

Applicant Pool. Applicant pool measures describe the type of local citizens eligible for employment from which agency personnel can choose recruits. In applying the Hochstedler and Conley logic, the current study tests the viability of a percent female population measure. However, this measure assumes that all females in the population could be candidates for sworn officer positions.
The applicability of the denial hypothesis to the current problem rests on the notion that law enforcement agencies have a sufficient pool of eligible female applicants from which to draw recruits. Female representation within a police department should reflect the local female work force if women are allowed equal access with men to law enforcement jobs.

To be eligible for a full-time law enforcement position in the state of Florida, a candidate must have a high school diploma or a G.E.D. equivalent. If 25% of the female labor force in a locality has a high school degree, one would expect females to account for 25% of the local law enforcement agency. Therefore, an improved measure of the applicant pool in the current study is the percentage of females in the local population with a high school education. For localities under 10,000 population, county wide statistics were used as local statistics are not available.

Gender Equality. Gender equality measures assess the degree of economic parity between women and men in a locality (Sugarman & Straus, 1988). According to the current hypothesis, localities where men and women have a high level of economic equality will be the same localities with a high level of female representation within their municipal police departments.

Four measures of economic gender equality are used in the current study. The first indicator is the median income of employed women relative to men, a widely used measure of economic gender equality (Sugarman & Strauss, 1988). The second indicator of gender equality is labor force participation, measured as the percent of females sixteen years and older who are in the civilian labor force relative to the percent of males sixteen years and older in the civilian labor force. The third

gender equality indicator is employment, measured as the percentage of women in the labor force who are employed relative to the percentage of men in the labor force who are employed. The final gender equality indicator is households above the poverty level, measured as the percent of female-headed households with incomes above the poverty level relative to the percent of all families above the poverty level.

Size and Region. Two measures are used as control variables in the current study: local population size and region of the state. Hochstedler and Conley (1986) report a positive correlation between locality population and the percent of sworn black officers in city police departments. Martin (1989) reports that city size is directly related to female representation in policing, as women constitute a larger proportion of agencies serving larger municipalities. Population is measured as the total population of the municipality housing the police department.

Martin (1989) reports regional differences in the level of female representation in police departments across the country, with the highest level of female participation in the south. Region is measured as a series of dummy codes for five regions of the state of Florida. The five regions represent the market regions of Florida defined by the Bureau of Economic and Business Research at the University of Florida. These market regions closely mirror the Uniform Crime Reporting regions of the state of Florida, as defined by the Florida Department of Law Enforcement. Figure 1 illustrates the five regions of Florida: northwest, northeast, central, southwest, and southeast.

RESULTS

The initial inspection of the data raises several considerations. First, the most frequent value of each dependent variable measure is zero. Twenty percent of the agencies do not employ a single female officer. These agencies typically serve jurisdictions of less than 10,000 people. When a dependent variable distribution is non-negative and zero is a common value, it is described as a censored distribution (Maddala, 1983). Censored data leads to a violation of the OLS regression assumptions of independent and normally distributed error terms. Thus the multivariate analysis is based on the tobit censored normal regression model (Tobin, 1958), a more sophisticated regression technique which corrects for this bias and produces independently and normally distributed error terms.

Second, a plot of the two dependent variables projects virtually identical forms (r=.99) and identifies the same four outliers. Recalculation of central tendency measures after eliminating the four outliers shows that their omission does not affect the data appreciably. All subsequent analyses are, therefore, based upon the reduced sample size of 199 cases.

Finally, the bivariate relationships between agency size and population size and both dependent variables indicate the presence of nonlinearity. A log transformation of the independent variables proved necessary.

The Florida municipal police departments under study have an average of 7% female officers (s.d.=4.90) and score an average of .16 on the officer-to-population index (s.d.=.11). Table 1 displays the zero-order correlation matrix. The majority of the bivariate relationships among the dependent and independent variables, regardless of the dependent variable measure, are not statistically significant. The strongest predictors of the percent female officers on a bivariate level are

Table 1
Zero-Order Pearson Correlation Coefficients

	AGENCY	EDUC	INCOME	LABOR	EMPLOY	POVERTY	POP	Y1-%FEMALE	Y2-INDEX
AGENCY	1								
EDUC	0.25*	1							
INCOME	0.05	-0.35*	1						
LABOR	0.05	0.01	0.18*	1					
EMPLOY	0.07	0.19*	0	-0.06	1				
POVERTY	0.1	0.44*	-0.11	-0.04	0.23	1			
POP	0.96*	0.19*	0.07	0.14*	0.02	0.06	1		
Y1-%FEMALE	0.37*	0.01	-0.01	-0.02	-0.01	0.02	0.32*	1	
Y2-INDEX	0.35*	0.13	-0.05	-0.08	-0.02	0.05	0.29*	0.99*	1

*p < .05

Table 2 Zero-Order Pearson Correlation Coefficients By Region of State					
	Region 1 Northwest	Region 2 Northeast	Region 3 Central	Region 4 Southwest	Region 5 Southeast
AGENCY	-0.3*	-0.01	-0.02	-0.06	0.22*
EDUC	-0.33*	-0.05	0.22*	-0.08	0.15*
INCOME	0.21*	-0.03	-0.19*	0.07	-0.04
LABOR	0.24*	0.09	-0.05	-0.05	-0.12
EMPLOY	-0.18*	-0.03	0.05	0.1	0.01
POVERTY	-0.34*	-0.24*	0.05	0.08	0.26*
POP	-0.2*	0.02	-0.06	-0.04	0.22*
Y1-%FEMALE	-0.2*	-0.03	0.08	-0.08	0.16*
Y2-INDEX	-0.23*	-0.05	0.09	-0.08	0.18*

*p < .05

Table 3 OLS and Tobit Coefficients with Standard Errors				
	% Female Officers		Officer-to-Pop	
	OLS	TOBIT	OLS	TOBIT
AGENCY s.e.	1.43* 0.326	1.937* 0.394	0.03* 0.007	0.042* 0.009
EDUC s.e.	-0.005 0.044	0.009 0.052	0 0.001	0 0.001
INCOME s.e.	0.006 0.08	0.006 0.096	0 0.002	0 0.002
LABOR s.e.	-0.005 0.032	-0.001 0.042	-0.001 0.001	-0.001 0.001
EMPLOY s.e.	-0.064 0.107	-0.076 0.134	-0.002 0.002	-0.002 0.001
POVERTY s.e.	-0.021 0.028	-0.025 0.035	0 0.001	-0.001 0.001
REGION2 s.e.	0.959 1.535	1.883 1.882	0.021 0.035	0.043 0.043
REGION3 s.e.	2.602* 1.329	3.627* 1.638	0.063* 0.03	0.087* 0.037
REGION4 s.e.	1.295 1.247	2.185 1.548	0.03 0.028	0.051 0.035
REGIONS5 s.e.	2.279 1.286	3.382* 1.587	0.056 0.029	0.082* 0.036
Constant s.e.	8.299 11.456	5.655 14.335	0.278 0.261	0.234 0.328
R^2	0.163		0.163	

*p < .05

the number of sworn full-time officers employed by the agency and population size, with larger agencies and agencies from more populated localities employing a higher percentage of female officers. At the same time, larger localities are more likely to have higher levels of equality between men and women in terms of education and labor force participation. Due to the almost perfect relationship between agency size and population size (r=.96), population size is eliminated from the subsequent multivariate analyses.

Table 2 examines the correlations on a regional basis within Florida. Geographical distinctions appear important, as many of the independent variable measures are significantly correlated with the regional control variables. The northwest Panhandle region (REGION1) is the least populated and encompasses the smallest law enforcement agencies. The northwest region has the lowest level of female representation, while agencies in the southeastern Miami-Dade vicinity have higher scores. The remaining significant coefficients indicate the importance of geographical distinctions.

Table 3 presents the full OLS regression and tobit equations for each dependent variable. REGION1 is omitted as the comparison category for the five dummy regional variables. Even though the OLS regression equation is likely to underestimate the effects of the independent variables, the coefficients are useful as a baseline comparison (Roncek & Maier, 1991). The OLS models also provide a summary measure of the explained variance that is useful in model specification.

The tobit models show that three variables emerge as significant predictors of female representation in policing. They are agency size, and being in the central or southeast regions of the state. The available applicant pool and gender equality contribute very little to the explanatory power of the models. Comparing the OLS and tobit results for the same specification and cases, the OLS coefficients consistently underestimate the effects of the independent variables.

DISCUSSION

The research findings indicate that female representation within law enforcement does not reflect the local labor force. The level of female representation is not affected by the degree women are suppressed in the local labor market in terms of employment, income, poverty, or labor force participation, or by the available female applicant pool. Hochstedler and

Conley (1986) argue that one tenet of the denial hypothesis is that discrimination may exist on a less then overt scale. Minority officers may be subtly denied access to police work unless the agency is large enough to bring in minorities without causing internal repercussions. This hypothesis, when applied to females, would appear to be supported. Despite equal levels of females in the local applicant pool and equal levels of female labor force participation, large agencies are more likely to hire females than small agencies.

The low level of explanatory power suggests that the models exclude important explanatory variables. According to Martin (1989; 1991), female representation in departments serving populations of 50,000 or more is significantly higher among agencies with court-ordered or voluntary affirmative action programs than agencies without such programs. The link between black representation and female representation within law enforcement is also reported in other works (Hochstedler & Conley, 1986; Martin, 1989; 1991; Warner et al., 1990). Higher representation of racial minorities in police departments are generally accompanied by higher representation of females. Unfortunately, neither variable is available on FDLE database utilized in the current study.

THE FUTURE FOR WOMEN IN POLICING

In order to increase the representation of women in policing, local law enforcement agencies must recruit female applicants. Most agencies have recently undergone drastic revisions in their eligibility requirements for new officers. For years, minimum height, weight, and education requirements limited the pool of eligible female applicants. Equal employment opportunity laws and the subsequent adoption of affirmative action policies by many police departments in the past twenty years have resulted in a considerable widening of the female applicant pool. Women now account for 20% of all applicants and the same proportion of accepted officers in municipal police departments serving populations of 50,000 or more (Martin, 1991). This increase could indicate that female representation may climb considerably over the next twenty years.

Agencies that employ females and minorities are significantly more likely to attract new female recruits, controlling for affirmative action policy. This finding reiterates the importance of achieving and maintaining an integrated police department in any future efforts to attract more female recruits.

However, Martin (1991) also reports that the level of female representation among new recruits differs dramatically by agency. Agencies under court-ordered affirmative action plans have higher female application rates. Yet the current composition of the department outperforms affirmative action measures in Martin's (1991) multivariate analysis of percent female applicants. Agencies that employ females and minorities are significantly more likely to attract new female recruits, controlling for affirmative action policy. This finding reiterates the importance of achieving and maintaining an integrated police department in any future efforts to attract more female recruits.

Once females are successfully recruited, law enforcement agencies must make efforts to retain and promote female officers in order to increase female representation. The lack of promotional opportunities afforded minorities and females in policing is well documented (Regoli & Jerome, 1975; Poole & Pogrebin, 1988; Fry, 1983; Guyot, 1979). Today, women account for 3.3% of supervisors in municipal police departments, an increase from 1% since 1978 (Martin, 1991). However, female representation within supervisory ranks is increasing at an even slower pace than representation among patrol officers.

The low proportion of women in supervisory positions may be the result of the lack of seniority among many female officers. Thus, female representation should improve as the current generation of female officers matures into the seniority ranks eligible for promotion. However, promotions are also dependent upon supervisor evaluations. Martin (1989) notes that female promotions are significantly higher in agencies that rely on independent assessment centers as a requirement for promotion rather than sole reliance on subjective evaluation criteria. While the current study does not address female representation among ranks above patrol, future efforts to examine the progress of women in policing should examine organizational barriers to promotion as well as hiring.

Finally, even if females are recruited and promoted, the retention of female officers poses a specific problem for the future of female representation in policing. Officer turnover is considerably higher among females than males (Fry, 1983; Poole & Pogrebin, 1988; Martin, 1991). This may result from the pressures of token status and the difficult work environment encountered by many female officers. Felkenes (1991), in studying the effects of affirmative action policies on the Los Angeles Police Department, notes that female recruits rate their probationary period as more "difficult" than their male counterparts. The organizational structure facing the female recruit must be taken into consideration in any effort to explain problems in the retention of female officers.

The most obvious next step is to control for the type of affirmative action policy of the study group agencies and

whether the agencies are under court order to hire females. Future research efforts should attempt to quantify the organizational barriers to female representation. Agencies employing many young, educated officers may differ dramatically in their response to female officers. The atmosphere within an individual agency, resulting from co-workers and administration, could have a dramatic impact on female representation.

While the present study focuses solely upon police agencies, the criminal justice system in general is traditionally a hostile environment for women. However, some occupations are becoming more fully gender integrated. The situation for women in law is improving at a faster pace than for women in policing. In 1985, while females accounted for only 7% of sworn police officers, they accounted for one half of all admissions to law schools (Weisheit & Mahan, 1988). Women are also making strides in educating criminal justice professionals. McElrath (1990) reports that females comprise 43% of all new faculty members in criminal jusiice and criminology college departments. Perhaps as the numbers of women entering criminal justice occupations increase, their integration will have a profoundly positive effect on the system designed to deliver justice.

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146929

Race, Crime, Economics and Punishment: A Cross-Sectional Analysis of State Level Data

by William Wesley Johnson, Ph.D.

INTRODUCTION

Despite efforts to improve the treatment of minorities in the private and public sectors, blacks are still grossly over-represented in arrest and incarceration statistics (see Figure 1). Mauer (1991) estimated that 25% of black males, 20 - 29 years old, in the United States are held either in jail, prison, probation or parole. Wilbanks (1987: 6) stated that "blacks outnumber whites in prison at a ratio of 8:1, controlling for the fact that blacks make up only 12% of the population." According to Blumstein (1982: 1260), "the group with the highest incarceration rate, young Black males in their twenties, suffer an incarceration rate that is twenty-five times that of the total population."

Empirical studies regarding the influence of race on imprisonment have produced two basic perspectives: race does influence imprisonment sentences, independent of crime (Blalock, 1967; Box and Hale, 1982; Chiricos and Bales, 1991; Georges-Abeyie, 1984; Myers and Sabol, 1987; Spitzer, 1975) and race does not directly affect imprisonment but is an important determinant of what types of crimes are committed (Blumstein, 1982; Kleck, 1981; Wilbanks, 1987). This study focuses on the first perspective re-examining Blalock's power threat thesis and Spitzer's theory regarding the economics of control.

Blalock (1967) proposed a positive correlation between percent non-white, the fear of a loss of power by majority groups, the fear of competition, and the motivation to discriminate. While Blalock failed to provide adequate data to support his claim that increases in the percent non-white lead to changes in the perceptions of the majority favorable toward discrimination he does provide a theoretical framework to explain the relationship between racial distributions and power (punishment) responses. Relative to this analysis, Blalock also theorized a positive relationship between the percent non-white, discrimination, and periods of high unemployment or economic depression.

Spitzer (1975) asserted that the use of formal deviance controls is contingent upon the size and level of threat presented by "problem populations" which is, in turn, determined by economic conditions. Spitzer theorized that two distinct groups, "social junk" and "social dynamite", are produced by official control. "Social junk" refers to those groups that require some level of formal assistance -- the aged, handicapped, mentally ill and mentally retarded. "Social dynamite" is defined as those problem populations that are youthful, alienated, and politically volatile. According to Spitzer, as technology advances workers are displaced by machines, alienated from normative society, become problems for society, and require management by the state.

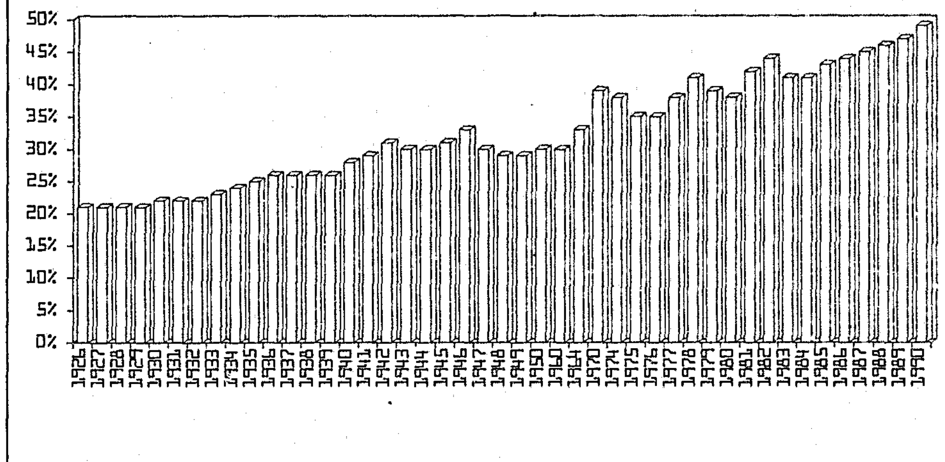
Melossi (1989) asserted that in contemporary societies it is the combination of economic, racial, ethnic, and national traits that is most problematic for the understanding of social control. He theorized that imprisonment "may be in the process of becoming more sensitive to this particular sector of the population than of the general sector of the unemployed" (1989:317). Particularly, the mix of economic pressures and racial compositions of young males in the United States has created an environment where young black males have become "a privileged target group for imprisonment" (Melossi, 1989:317).

Crawford (1991:29) undertook a systematic review of 25 studies that had examined the relationship between race and imprisonment. He asserted that the bivariate race/imprisonment relationship is "essentially positive and very often significant." When extra legal factors such as crime seriousness and prior record were introduced as controls, the "relationship between race and imprisonment became much weaker, which is consistent with previous findings" by Blumstein (1982) and Kleck (1981).

Crawford suggested that it is only through the introduction of economic controls that the true relationship between race and imprisonment can be uncovered. The author asserted that studies that do not control for economic factors are prone to misspecify the relationship between race and crime. The statistical effect results in race becoming a proxy

FIGURE 1

PERCENTAGE OF BLACKS ADMITTED TO STATE PRISONS (1926-1990)



measure for economic variables.

Early studies demonstrated the absence of an independent effect of race on imprisonment suggesting that racial differentials were explained by differential offending and arrest rates. Recent historical time-series, individual level, and meta-analysis studies have suggested that the relationship between race and imprisonment may be much stronger than earlier studies indicated when economic factors are taken into account.

Most previous studies have assumed that all minorities behave similarly or they did not have access to data which further disaggregates race by group. Groupings such as non-white/white do little to clarify the differences among races, especially among the minority groups. Zatz (1984) asserted the need to look beyond black race and culture and pointed to the need to include Hispanics in criminological research.

METHODOLOGY

Research Design

This research has three primary objectives: (1) to determine if there is a relationship between racial distributions and various forms of punishment net of the effect of crime, (2) to determine if that relationship is affected by changes in economic conditions and (3) to determine if there are differential effects of race on punishment once race is disaggregated beyond a non-white/white dichotomy. These objectives are accomplished by an examination of state level data for 1983, a distinct period of economic recession, and 1987, a period of relative economic recovery. A summary of the independent variables, dependent variables and their operational definitions are included in Table 1.

The present research improves on prior race and punishment research by providing age and gender specific data for race. Though the data on race used in this analysis is limited to the last census year, 1980 racial distributions remain relatively constant over time.

Table 1
Operational Definitions

Variable	Definition
INDEPENDENT VARIABLES	
Racial distributions	
BM1529	the percent black male residents between the ages of 15-29
HM1529	the percent hispanic male residents between the ages of 15-29
Control Variables	
VIORT	the violent crime rate
PROPRT	the property crime rate
DSWB	the arrest rate of whites and blacks for the sale of drugs
Economic Marginality	
POVRT	the percentage of individuals with incomes below the poverty line
INCIEQ	the income inequality index that compare the number or residents from the lowest and highest income quintiles (use by Braun, 1988).
UERT	unemployment as traditionally measured; percent of labor force
DEPENDENT VARIABLES	
PADRT	the number of offenders entering prison per 100,000 resident population
PBADRT	the number of offenders entering probation per 100,00 resident population
PRADRT	the number of parole entries per 100,000 resident population
JLRT	the total number of jail inmates per 100,000 resident population

This study is among the first nationwide studies to include Hispanics as well as blacks in the analysis of race and punishment.

In this research, a more comprehensive base for the analysis of the relationship between race, economy, crime, and punishment is accomplished by increasing the number of dependent variables including not only prison admissions but also data on probation admissions, parole admissions, and jail populations. All admission rates are based on year end census data. The operational definitions and codes for these variables are represented in Table 1.

The independent variables were lagged one year to capture their temporal effects on punishment. The use of lagged independent variables also helps reduce causal order concerns. In some cases, the only state level data available is from the last census year. Data for all fifty states are available for all variables except probation admissions and jail populations. In each case where data were missing and states actually administered the particular program, the regional mean was substituted to provide data for all fifty states (see Table 2).

The use of ratios to standardize variables can generate artifactual associations due to the common component in ratio variables. To control for this influence, the variable 1/population is introduced into each equation as suggested by Firebaugh and Gibbs (1985).

Table 2
Missing Data

1983 probation admissions: regional mean substitution was used.

1987 parole admissions: regional mean substitution was used.

1983 and 1988 jail rates: jail rates were left with missing cases because those states did not have local jail systems or did not report local jail statistics. These data were used to interpolate the 1987 jail rate.

1983 juvenile admissions: data from 1984 and 1987 were used to extrapolate 1983 juvenile admissions data.

Table 3
Means and Standard Deviations

	Means 1982-1983	Means 1986-1987	Percent Change
Black males 15-29 years	1.50	1.50	NA
Hispanic males 15-29 years	0.81	0.81	NA
Violent crime rate	433.04	458.28	6%
Property crime rate	4814.96	4542.78	-6%
Drug sales white/black	46.56	47.46	2%
Poverty rate/persons	12.50	12.50	NA
Income inequality rate	6099.46	6099.46	NA
Unemployment rate	9.14	6.97	-24%
Prison admissions	90.16	120.41	34%
Probation admissions	344.10	468.80	36%
Parole admissions	55.99	66.90	19%
Jail population	81.20	112.74	39%
NA=not applicable			

Analysis of the residuals:

Normality was diagnosed utilizing histograms of the residuals. Visual inspection of the histograms indicated that all equations were either normally distributed or were not heavily skewed. Partial plots were examined to determine the presence of non-linearity and no severe violations were detected.

Multicollinearity was diagnosed via an examination of the zero-order relationships (see Table 4) and of the tolerance levels produced for each independent variable. Tolerance levels below .300 were considered as potentially problematic (Hamilton, 1992: 134) and none were detected.

Spatial autocorrelation can be problematic in studies which use geographic regions for the unit of analysis. The states were numerically ordered so that adjacent states had consecutive case numbers and to provide for the diagnosis of autocorrelative effects. Durbin-Watson statistics were produced and compared to the 1% Durbin-Watson tables. The generalized difference method was used to correct for autocorrelative effects in the parole admissions (PRADRT) model.

Heteroscedasticity was diagnosed through the analysis of scatterplots and the application of Modified Glesjer tests. Heteroscedasticity was corrected for by either taking the natural log of the dependent variable, the implementation of the weighted least squares method or through the combination of both.

FINDINGS

Table 3 provides means for the two time periods, 1982/3 and 1986/7. A comparison of the two time periods reveals that the unemployment rate was 9.14% in 1982 and fell to 6.97% in 1986. This represents a 24% decrease in unemployment between 1982 and 1986.

Table 4
Zero Order Correlations, 1983/1987

	X1	X2	X3	X4	X5	X6	X7	X8	X9	X10	X11	X12
X1	1.00	-.09	.39*	-.03	.21	.56*	.46*	.34	.52**	.12	.44*	.60*
X2	-.10	1.00	.40*	.64*	.10	.02	.17	.19	.25	.25	.38*	.60**
X3	.40*	.42*	1.00	.64*	.10	.02	.16	.20	.58**	.25	.38*	.55**
X4	-.03	.50**	.62**	1.00	-.08	-.38*	-.26	.06	.35	.22	.20	.29
X5	.30	.17	.66**	.26	1.00	.15	.09	.05	.11	-.07	.16	.20
X6	.58**	.11	.07	-.18	.07	1.00	.51**	.23	.31	-.17	.10	.37*
X7	.47**	-.09	.14	-.18	.08	.56**	1.00	.11	.03	-.00	.01	.18
X8	.24	.15	.02	.06	-.19	.53**	.32	1.00	.09	-.38*	.00	.22
X9	.39*	.34*	.65**	.53**	.44*	.26	.18	.05	1.00	.19	.46**	.42*
X10	.08	.07	.39*	.38*	.29	.08	.04	-.37*	.27	1.00	.34	.22
X11	.35	.51**	.43*	.22	.31	.35	.04	-.08*	.41*	.14	1.00	.38*
X12	.52**	.39*	.65*	.46*	.40*	.52**	.17	.15	.60**	.23	.55*	1.00
	X1	X2	X3	X4	X5	X6	X7	X8	X9	X10	X11	X12

NOTE: 1987 correlations are on top diagonal; 1983 correlations are on bottom diagonal
Significant at the p≤.05(*) or p≤.001(**) levels.

X1	BM1529	percentage of population that are black males, 15-29 yrs old
X2	HM1529	percentage of population that are Hispanic males, 15-29 yrs
X3	VIORT	violent crime rate
X4	PROPRT	property crime rate
X5	DSWBRT	arrests rates for sale of drugs for whites and blacks
X6	POVRT	percentage of population with incomes below the poverty line
X7	INCIEQ	ratio of state residents in high versus low income group/quintile
X8	UERT	unemployment rate
X9	PADRT	prison admission rate
X10	PBADRT	probation admission rate
X11	PRADRT	parole admission rate
X12	JLRT	jail population rate

During this same period of time, violent crime increased slightly (6%), property crime experienced a decrease (6%) and there was a slight increase in drug arrests for the sale of drugs for whites and blacks (2%). Between 1983 and 1987, each of the formal punishments examined (prison, probation, parole and jail) experienced significant growth. Note that data for certain variables were only available from the 1980 census. These variables indicate zero percent change.

Multivariate regression results for the 1982/3 and 1986/7 models are summarized in Table 5 for prison admissions, probation admissions, parole admissions, and jail populations. These analyses were conducted to assess the independent effects of racial distributions, economy, and crime on these various forms of punishment. All independent variables in the tables are computed per 100,000 population. Note that the variable, 1/pop (INVPOP), is forced into each model to correct the artifactual associations produced by including ratio variables in regression analyses.

A comparison of the 1982/3 and 1986/7 models for prison admissions (PAD) indicates that racial distributions, controlling for crime and economy, explain almost half of the variance in

Table 5
Summary of Regression Results

	PAD83	PAD87	PBAD83	PBAD87	PRAD83	PRAD87	JLRT83	JLRT87
BM1529	.843*	.852*				.348*	.525**	.421**
HM1529						.494**	.319*	.283*
VIORT	.795*	.716*			.309*			.449*
PROPRT			.393**					
DSWBRT								
POVRT								
INCIEQ								
UERT			-.515**	-.530**				
INVPOP	.874	.786	-.224	-.196	-.246	-.241	-.227	.079
ADJ R^2	.45	.47	.20	.41	.17	.43	.48	.60

These results were produced by a stepwise regression strategy and represent the beta coefficients and significance levels of only those variables that were found to be significant at the p≤.05(*) or p≤.001(**) levels.

state prison admissions (Adj-R^2=.45 and .47). These findings suggest that the percentage of young black and Hispanic males in state populations has a strong positive and statistically significant effect on prison admissions, controlling for various forms of crime and selected economic indicators.

An examination of the probation models (PBAD) indicates that the unemployment rate, controlling for crime and other economic influences, has a strong negative statistically significant effect on probation admissions regardless of whether the economy is in a state of recession or recovery. This finding indicates that the use of probation is influenced by the availability of employment. Thus, as employment increases and unemployment decreases the use of probation increases. Most importantly these data suggest that economy does exert influence on probation admissions. This may be explained at least in part by the influence that employment has on the decision to grant probation. The lack of effect of poverty and income inequality on the various forms of punishment may be explained by the gap between the periods of observation (1982/3 and 1986/7) and the available data (1979/80). As data from the 1990 census become available a better specification of the effect of poverty and income inequality may be developed.

While the analyses do not provide support for the effect of racial distributions on the 1983 and 1987 probation models and the 1983 parole model, racial distributions do exert a strong positive statistically significant effect on both prison admissions and jail populations in periods of economic recession and recovery. These findings suggest that while the percent of Hispanic males between 15 and 29 years old effects the different forms of punishment in similar ways as black males between 15 and 29 years old there are also specific differences, especially in regards to prison admissions. This analysis is also important because it provides statistical evidence that enables individual conclusions to be made regarding the specific effect of young black and Hispanic males on crime and punishment.

The results of this analysis provide support for both Blalock's theory regarding the effects of racial distributions on control decisions and Spitzer's theory regarding the economy of control. These findings indicate that the percent non-white does have an independent effect on both jail and prison populations, controlling for crime and economic influences, and that there are significant differences between the effects that young Hispanic males and young black males have on the various control decisions. These data demonstrate that those elements of society that Sptizer (1975) called "social dynamite -- the young, volatile, and alienated, represent a major control dilemma. Most importantly these findings suggest that prison and jail admissions are not the sole product of crime but are strongly influenced by social structural influences.

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The Legal Concept of Environmental Sexual Harassment: Implications for Higher Education Students and Administrators

by Ann Browning Masters, Ph.D.

INTRODUCTION

The documentation of sexual harassment of higher education students by faculty has been an area of concern for higher education administrators (Paludi 1990, Dziech and Weiner 1990). Higher education institutions and professional organizations have established policies prohibiting sexual harassment of students to prevent this civil rights violation (Cole 1990). However, in spite of legal and institutional prohibitions of environmental sexual harassment, students continue to report sexual harassment by faculty (Biaggio et al. 1990, Dozier 1990, Helly 1990, Little 1987, Olson and McKinney 1989).

Researchers have indicated that the theoretical concept of sexual harassment is not understood in the same way by all parties (Fitzgerald 1990, Keller 1988, Schneider 1987). Discrepancies have also been observed in higher education in what faculty and students term sexually harassing (Fitzgerald 1990, Zalk 1990). Behaviors not accompanied by a demand to acquiesce sexually or lose an educational benefit are often viewed differently by faculty and students (Carroll and Ellis 1989, McCormick et al. 1989, Truax 1989). This paper examines the emergence of the legal concept of environmental sexual harassment of higher education students by faculty and presents implications for students and administrators.

REVIEW OF THE LITERATURE

The inclusion of sex as a protected category was a stalling measure in the debate prior to the establishment of Title VII of the Civil Rights Act of 1964, not originally a method proposed to offer a means of eradicating sex discrimination in work settings.[1] However, as a result of litigation brought under Title VII, two categories of sexual harassment defined in Title VII Guidelines (1980) have been found to be legally actionable: quid pro quo and environmental.[2]

The Equal Employment Opportunity Commission (EEOC), the regulatory office charged with enforcement of Title VII, has defined sexual harassment as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment where (1) the submission to such conduct is made either explicitly or implicitly a term or a condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting an individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.[3]

Items (1) and (2) of the EEOC definition of sexual harassment refer to quid pro quo sexual harassment, where a benefit of work is conditioned to submission to sexual demands. Item (3) refers to environmental sexual harassment, where the pervasiveness of the offensive, hostile, or intimidating behavior poisons the work environment for the individual.

The difficulty of understanding and establishing environmental sexual harassment as legally actionable was recognized in the 1970s by law professor Catharine A. MacKinnon, a pioneer in the development of the theory of sexual harassment as sex discrimination (American Law Supplement 1990). The Supreme Court case of Meritor Savings Bank v. Vinson (1986) was a landmark decision in which MacKinnon successfully argued that tangible loss of benefit was not required for Title VII claims by employees.[4] The Meritor court definition and remedy for environmental sexual harassment in work settings, based on the EEOC Guidelines, was recently cited in the First Circuit ruling on the student-employee environmental sexual harassment case of Lipsett v. University of Puerto Rico (1988).

Title IX of the Education Amendments of 1972[5] addressed the problem of sex discrimination against students. It stated:

No person in the United States shall, on the basis of sex, be excluded from the participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving Federal assistance.[6]

The recent Supreme Court case of Franklin v. Gwinnett Co. Public Schools (1992), concerning secondary education, cited Title VII and Title IX principles in ruling for the student who brought a claim of environmental sexual harassment. The Franklin court provided validation for MacKinnon's (1979) theory of sexual harassment as sex discrimination in education settings.

In the development of the legal theory that sexual harassment was sex discrimination, MacKinnon (1979, 173) stated that "sex discrimination is less an issue of right and wrong than an issue of power." The transference of MacKinnon's (1979) concept of sexual harassment as a power issue concerning employees to a power issue concerning students is supported theoretically by an understanding of the concept of sexual harassment. Goleman (1991) cited extensive research indicating that sexual harassment concerns the issue of power and is used as a tactic of control.

MacKinnon (1979, 10) cited the variable of unequal power as critical to understanding sexual harassment. The unequal power relationship has been cited repeatedly in higher education sexual harassment research (Dziech and Weiner 1990, Rabinowitz, 1990, Zalk 1990). Using French and Raven's typology of power, DeFour (1990) has indicated that the types of power manifest in sexual harassment are attributed to expert and legitimate power held by faculty.

Support for the transference of a power theory concerning sexual harassment in work settings to education settings has also been provided by Mango (1991, 357-358): "Using this formula [sexual harassment as an issue of power], anywhere the structures of unequal power exist, so, too, exists the potential for harassment." Mango (1991) argued that students and employees can both be victims of a legitimately occurring power imbalance that has the potential for abuse to each in the form of sexual harassment.

Prior to MacKinnon's development of the legal theory of sexual harassment as sex discrimination, "there was absolutely no judicial precedent for allowing a sex discrimination suit for sexual harassment" (1987, 116). The denial that sexual harassment was harmful or caused injury was explained away by defenses that called the behavior "personal, biological, not a policy and thus (implicitly) not employment discrimination" (MacKinnon, 1979, 7).

> *...prior to a change in employment law, the message of the law to women was that women were not valuable enough to be considered harmed by sexual harassment, or that they were unreasonable to consider sexual harassment harmful.*

That the defenses were accepted by the courts indicated that persons who called themselves victims had no power to define the harm and no recourse for their perception that harm was done to them. MacKinnon reasoned that prior to a change in employment law, the message of the law to women was that women were not valuable enough to be considered harmed by sexual harassment, or that they were unreasonable to consider sexual harassment harmful (MacKinnon, 1987, 108, 110).

At the beginning of MacKinnon's theory development, discrimination was defined as existing only when two equivalent groups were treated differently. The concept of civil rights unaffected by gender was relatively novel in the mid to late 1970s. MacKinnon's development of this legal theory can be credited with changing inequities in employment law. Her development of a scholarly legal understanding of sexual harassment as a violation of civil rights based on sex has contributed to case law enforcing Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

METHODOLOGY

The traditional methodology of legal research provides the organizing framework for this study (McMillan and Schumacher, 1989, 383). The first requirement was a search for federal legislation concerning faculty sexual harassment of higher education students. Second, an analysis of legal principles and reasoning used in decisions concerning faculty sexual harassment of higher education students was conducted for the time frame of the first twenty years after the passage of the Education Amendments of 1972, ending with the 1990-1991 Supreme Court session. The third step of research constituted a review of critical legal commentary concerning faculty sexual harassment of higher education students during the period under review. External readers, attorneys and education law professors, were obtained for clarification and corroboration.

DATA AND ANALYSIS

Primary and secondary data sources were used. The primary data sources were federal court decisions and legislation concerning environmental sexual harassment of higher education students by faculty. Secondary sources of critical legal commentary were provided through the finding tools of the Index to Legal Periodicals, the legal encyclopedias of Corpus Juris Secundum, and all appropriate digests. Additional secondary sources included the computerized data basis finding tools of ERIC, WESTLAW, and Dissertation Abstracts.

A search for appropriate federal

decisions was conducted through a number of research procedures, including the descriptive word method, the topic method, and the table of cases method (McMillan and Schumacher, 1989, 458-459). Relevant cases were most often located in the United States Reports and all volumes containing federal cases in the National Reporter System. Shepard's Citations was used to determine the current validity and case history of relevant cases. Federal legislation was found in the United States Code (U.S.C.), the United States Code Annotated (U.S.C.A.), and the United States Code Service (U.S.C.S.).

Federal legislation was then reviewed to identify the existing legal provisions contributing to the emergence of the legal concept of environmental sexual harassment concerning higher education students. Each federal court decision was individually analyzed to identify the legal principles and precedents established concerning environmental sexual harassment of higher education students by faculty. Critical legal commentary was reviewed for clarification of legal principles and reasoning. Additional relevant material indicated by data sources was also reviewed.

RESULTS

Research to identify the emergence of the legal concept of environmental sexual harassment concerning higher education students produced four relevant federal cases that resulted in fourteen reported court opinions. Each case involved allegations based on Title IX, in which the student claimed to experience sexual discrimination from sexual harassment in the educational environment.

The complexity of the cases provided atypical case histories in some instances. For example, a motion for a Supervisory Writ of Mandamus to the appellate court and the Supreme Court, prior to the district ruling in Bougher v. University of Pittsburgh (1989), resulted in a Supreme Court denial of certiorari

Table 1
Table of Federal Cases Alleging Environmental Sexual Harassment of Higher Education Students by Faculty

Case Histories

Alexander v. Yale University, 459 F. Supp. 1 (D. Conn. 1977), aff'd, 631 F.2d 178 (2d Cir. 1980).

Bougher v. University of Pittsburgh, cert. denied, 108 S. Ct. 460 (1987); 713 F. Supp. 139 (W.D. Pa. 1989), aff'd, 882 F.2d 74 (3d Cir. 1989).

Lipsett v. University of Puerto Rico, 576 F. Supp. 1217 (D.P.R. 1983) (motion to dismiss denied); 637 F. Supp. 789 (D.P.R. 1986) (summary judgment for defendants); and (this case only) sub nom. Lipsett v. Rive-Mora, 669 F. Supp. 1188 (D.P.R. 1987) (summary judgment for defendant); rev'd 864 F.2d 881 (1st Cir. 1988); 740 F. Supp. 921 (D.P.R. 1990) (expert witness certification denied); 745 F. Supp. 793 (D.P.R. 1990) (University granted sovereign immunity); 759 F. Supp. 40 (D.P.R. 1991) (motion denied for judgment n.o.v.).

Moire v. Temple University School of Medicine, 613 F. Supp. 1360 (E.D. Pa. 1985), aff'd, 800 F.2d 1136 (3d Cir. 1986).

Table 2
A Chronology of Federal Cases Alleging Environmental Sexual Harassment of Higher Education Students by Faculty

Year	Cases
1977	Alexander v. Yale University, 459 F. Supp. 1 (D. Conn. 1977)
1980	Alexander v. Yale University, 631 F.2d 178 (2d Cir. 1980)
1983	Lipsett v. University of Puerto Rico, 576 F. Supp. 1217 (D.P.R. 1983)
1985	Moire v. Temple University School of Medicine, 613 F. Supp. 1360 (E.D. Pa. 1985)
1986	Moire v. Temple University School of Medicine, aff'd, 800 F. 2d 1136 (3d Cir. 1986) Lipsett v. University of Puerto Rico, 637 F. Supp. 789 (D.P.R. 1986)
1987	Bougher v. University of Pittsburgh, cert. denied, 108 S. Ct. 460 (1987) Lipsett v. Rive-Mora 669 F. Supp. 1118 (D.P.R. 1987)
1988	Lipsett v. University of Puerto Rico, 864 F.2d 881 (1st Cir. 1988)
1989	Bougher v. University of Pittsburgh, 713 F. Supp. 139 (W.D. Pa. 1989) Bougher v. University of Pittsburgh, 882 F.2d 74 (3d Cir. 1989)
1990	Lipsett v. University of Puerto Rico, 740 F. Supp. 921 (D.P.R. 1990) Lipsett v. University of Puerto Rico, 745 F. Supp. 793 (D.P.R. 1990)
1991	Lipsett v. University of Puerto Rico, 759 F. Supp. 40 (D.P.R. 1991)

before the district and appellate court cases were heard. To assist in the analysis of cases, the case histories are presented in Table 1, and a chronology of the cases is presented in Table 2.

Although the passage of Title IX of the Education Amendments occurred in 1972, not until 1977 did a federal case emerge where sexual discrimination was claimed by a student from sexual harassment in a higher education setting. The analysis of this case and those that followed has resulted in an identification of four historic legal periods in the evolution of this legal concept.

The first period began in 1972 with the passage of Title IX of the Education Amendments, which prohibited sex discrimination in education settings. During this period, opinions provided in the Alexander case established that freedom from environmental sexual harassment for higher education students was not a legally cognizable Title IX right. This period endured for almost half the time of the cases under review in this study.

The emergence of the reasonable woman standard indicates a legal recognition that what constitutes hostile, offensive or intimidating behavior may differ in perception by gender.

An openness to considering that environmental sexual harassment might be a violation of Title IX characterized the second period. This period began in 1983 with the first Lipsett ruling, which did not dismiss a claim concerning environmental sexual harassment brought under Title IX. The court's request for additional facts before providing a ruling indicated that, in the reasoning of that particular court, the possibility existed that environmental sexual harassment of higher education students by faculty might be a violation of a cognizable Title IX right.

In 1985 the third period began with the opinion of the Moire district court, establishing that environmental sexual harassment of students was a violation of Title IX through the transfer of Title VII principles. The reasoning of this period was shortly challenged by decisions of the next period.

Beginning in 1986, two standards emerged in the fourth period of the evolution of this legal concept. In the Third circuit, a return to the holding that environmental sexual harassment was not a violation of a cognizable Title IX right was provided in the opinions of Bougher. In the concluding opinions of Lipsett, the First circuit held that environmental sexual harassment of higher education students was a violation of Title IX in the context of student employment discrimination claims. This period covered the last five years of the period under review in this study. Therefore, during the last period a clear ruling was not provided for the status of environmental sexual harassment claims by the student not employed by the higher education institution.

CONCLUSIONS

The emergence of the legal concept of environmental sexual harassment of higher education students by faculty was not a smooth legal progression marked by ever continuing agreement in judicial interpretations of student civil rights. The four identified periods of judicial reasoning reflected marked differences in the determination of the actionability of environmental sexual harassment as a civil rights violation. It should be noted that in each of the cases reviewed, students asserted their civil right to freedom from environmental sexual harassment, even those students who brought action in Alexander, which was heard before MacKinnon's legal theory was completely developed.

However, the evolution of this legal concept can be characterized by a shift in the focus of judicial interpretation of Title IX of the Education Amendments of 1972. Initial judicial interpretations of sex discrimination directed toward higher education students focused on the first two prongs of Title IX, concerning discriminatory behavior that precluded access to or participation in the benefits of higher education. The quid pro quo concept of sexual harassment was developed from this interpretation.

Later judicial interpretations of sex discrimination under the third prong of Title IX focused on discriminatory behavior not precluding access to admission or participation in the benefits of higher education. The environmental sexual harassment concept was developed from this interpretation.

RECOMMENDATIONS

Higher education institutions and administrators should note the continued development of this legal concept. Legal reasoning used to limit the scope and application of liability has expanded since these cases were reported, most recently with the landmark Supreme Court case of Franklin (1992) that provided the opportunity to seek damages for Title IX violations. Repeated references throughout the cases reviewed tied liability and enforcement to reliance on legislation concerning handicap discrimination and Title VII legislation about sex discrimination in work settings. Such reasoning did not anticipate that stronger Congressional language would emerge concerning discrimination in the 1991 Americans with Disabilities Act. Likewise, the Civil Rights Act of 1991 now provides an opportunity for a different judicial interpretation concerning punitive damages from sex discrimination in work settings.

Title VII sexual harassment law has also evolved to include the "reasonable woman" standard (Ellison v. Brady 1991) that was not considered in the higher education cases. Traditionally, the courts have deferred to the perception of the "reasonable man"

in determining harm and actionability. The emergence of the reasonable woman standard indicates a legal recognition that what constitutes hostile, offensive or intimidating behavior may differ in perception by gender. Women alleging harm from hostile, offensive or intimidating behavior may now prevail in court if the court holds that such behavior could be construed as discriminatory by a reasonable woman. It is likely that the courts will consider the perception of the "reasonable woman student" in future higher education cases.

Therefore, it is recommended that educators, administrators, and students become knowledgeable about the "common civil rights enforcement scheme" suggested in the Lipsett (1987, 1188) case. Such an enforcement requirement for civil rights seems to be emerging, although not without challenge, through the Civil Rights Act of 1987, the above mentioned Civil Rights of 1991, the 1991 Americans With Disabilities Act, and the landmark Franklin case. Effective and nondiscriminatory higher education institutions would benefit by requiring educators and administrators to understand the laws under which they are liable.

ENDNOTES

1. "The prohibition against discrimination based on sex was added to Title VII at the last minute on the floor of the House of Representatives. 110 Cong. Rec. 2577-2584 (1964)...[T]he bill quickly passed as amended, and we are left with legislative history to guide us in interpreting the Act's prohibition based on 'sex'." Meritor Savings Bank FSB v. Vinson, 477 U.S. 62 (1986). See also Mango, K.A. "Students Against Professors: Combatting Sexual Harassment Under Title IX of the Education Amendments of 1972." Connecticut Law Review 23 (Winter 1991): 363.

2. See Meritor, 477 U.S. 57; Katz v. Dole, 709 F.2d 251 (4th Cir. 1983); Barnes v. Costle, 561 F.2d 983 (D.C. Cir. 1977); Williams v. Saxbe 413 F. Supp. 654 (D.C. Cir. 1976).

3. 29 C.F.R. §1604.11(a) 1980.

4. "A violation of Title VII may be predicated on either of two types of sexual harassment--(1) harassment that involves the conditioning of employment benefits on sexual favors, and (2) harassment that, while not affecting economic benefits, creates a hostile or offensive work environment." 477 U.S. 58.

5. 20 U.S.C. § 1681(a).

6. 20 U.S.C. § 1681(a).

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Equal Protection and the Death Penalty in Historical Perspective: The Case of the Martinsville Seven

by Eric W. Rise, Ph.D.

INTRODUCTION

Critics of capital punishment have long noted the relationship between racial discrimination and the application of the death penalty. In the first half of the twentieth century, as the lynching of African Americans declined, Southern jurisdictions increasingly relied on death sentences to punish blacks who violated racial mores. Many criminal due process rights first emerged in the 1930s from capital cases that involved the erroneous conviction of black defendants.[1] Most scholars have assumed, however, that the use of equal protection arguments to challenge the discriminatory application of the death penalty did not emerge until the 1960s, when both the NAACP Legal Defense and Educational Fund and the American Civil Liberties Union launched campaigns against capital punishment.[2] In fact, the equal protection clause of the Fourteenth Amendment became a weapon in the fight against capital punishment as early as the 1940s, when civil rights attorneys began invoking the clause to combat a number of problems that faced African Americans in a segregated society.

One of the earliest cases to explore the relation between equal protection and the death penalty illustrates the changing circumstances after World War II that contributed to the development of this new strategy. On January 8, 1949, a thirty-two-year-old white housewife in Martinsville, Virginia, a small industrial town located in the southwestern part of the state, accused seven young black men of violently raping her. Within two days state and local police had arrested and obtained confessions from each of the suspects. In a rapid succession of brief trials held over the course of eleven days, six separate juries convicted the defendants of rape and sentenced them to death. Nine days later, the Virginia State Conference of the National Association for the Advancement of Colored People (NAACP) announced that it would represent the "Martinsville Seven," as the condemned men came to be known, on appeal.[3]

The NAACP's participation in the case reflected its long-standing commitment to protect the constitutional rights of African-American defendants. Since its inception, the organization had attempted to prevent "legal lynchings," the summary convictions of innocent blacks, by challenging traditional Southern legal practices on the grounds that they violated the Fourteenth Amendment's guarantee of due process. In *Moore v. Dempsey* (1923), the U. S. Supreme Court ratified the NAACP's arguments that federal courts could intervene to protect the procedural rights of defendants who were tried in state proceedings that labored under the threat of mob violence. In the years after *Moore*, civil rights attorneys had achieved considerable success in convincing federal courts to declare unconstitutional such practices as coerced confessions, all-white juries, and the lack of adequate counsel in capital cases.[4]

Ironically, the success of the NAACP's due process campaign made it more difficult to save defendants such as the Martinsville Seven from execution. As the Supreme Court's rulings gained national acceptance, Southern courts recognized that adherence to minimal due process requirements immunized them from appellate censure and granted them wide latitude to enforce local standards of orderly behavior. Therefore, the Martinsville trial judge diligently adhered to procedural requirements and made a concerted effort to mute the racial overtones of the trials. Although white juries decided each case, blacks appeared in every jury pool. Race-baiting by prosecutors and witnesses, notably evident at similar trials, was absent in the Martinsville proceedings. Finally, unlike classic "legal lynchings," the evidence presented at trial clearly indicated that the defendants were guilty. Thus, the juries that heard the Martinsville cases delivered death sentences that reinforced the racial mores of a Southern community within the legal constraints mandated by federal law.[5]

These distinguishing characteristics forced attorneys for the NAACP to modify their traditional approach to criminal cases. Because the perceived injustice in the Martinsville case appeared in the severity of the sentences rather than the conduct of the trials, the attorneys abandoned narrow

procedural challenges in favor of a direct attack on the discriminatory application of the death penalty. In fact, the Martinsville case was one of the earliest instances in which lawyers marshaled statistical evidence to prove systematic discrimination against blacks in capital cases, rather than focusing on procedural errors within a particular case. The shift from due process to equal protection arguments also represented an attempt to link the NAACP's criminal litigation program to the broader goals of the civil rights movement.[6] This tactic, however, struck at the heart of the power of local juries to prescribe punishment for those who disrupted community stability or transgressed codes of acceptable conduct. Thus, the state and federal courts that heard the Martinsville Seven's legal appeals refused to invoke the equal protection clause to limit the sentencing discretion of local juries.

"A FAIR AND IMPARTIAL TRIAL": THE FAILURE OF DUE PROCESS APPEALS

On May 12, 1949, nine days after the Martinsville Seven were sentenced to death, the Virginia State Conference of the NAACP announced that it would "actively enter" the post-trial proceedings for the seven condemned men. The organization had not represented the men at trial because NAACP rules prohibited its attorneys from representing criminal defendants unless they were clearly innocent. As Thurgood Marshall, special counsel for the NAACP's national office, explained, the NAACP was "not a legal aid society" and its limited resources had to be expended where they would do the most good. Exonerating innocent African-Americans at trial, he believed, would be the most effective way to expose the racial injustices of the Southern legal system. Upon appeal, however, the standard for representation became whether the case could establish any important legal precedents "for the benefit of due process and equal protection in general and the protection of Negroes' rights in particular." As W. Lester Banks, executive secretary of the Virginia State Conference, explained, the issue was not the guilt or innocence of the defendants but whether they had received a fair trial. The NAACP, he said, had a "solemn duty and obligation to expose and focus attention on a society that by its customs, practices, policies, and traditions [made] possible the whole unfortunate Martinsville affair."[7]

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The Virginia State Conference did not maintain a full-time legal staff, relying instead on the volunteer efforts of attorneys throughout the state with occasional assistance from the NAACP's national office. The leading civil rights law firm of Hill, Martin and Robinson, located in Richmond, agreed to represent the defendants and Martin A. Martin, the firm's specialist in criminal law, assumed primary responsibility for preparing the Martinsville appeals. In 1938 Martin had graduated from Howard University Law School, the nation's leading training ground for civil rights attorneys, where he studied statistical, historical, and sociological methods of legal argument. Before moving to Richmond in 1943, Martin practiced law in Danville, Virginia, where he became president of the local branch of the NAACP. In that capacity he witnessed first-hand the treatment of black defendants in southside Virginia.[8]

Assisted by two other Virginia lawyers, Samuel W. Tucker and Roland D. Ealey, Martin spent the autumn of 1949 searching the trial records for procedural violations. Although Martin recognized that traditional due process arguments offered little promise of success in this case, he decided to approach the appeals conservatively before directly attacking Virginia's administration of justice to African Americans. On January 9, 1950, Martin, Tucker, and Ealey presented oral arguments before the Virginia Supreme Court of Appeals. The attorneys relied on conventional due process arguments that addressed three main issues: the refusal of the court to grant a change of venue or venire, the rapid succession of the trials, and the questioning of jurors regarding their attitudes toward capital punishment. They argued that the lower court had erred in refusing to grant a change of venue because the local press had published articles that fostered a "practically universal feeling in the community that the accused were guilty and a fairly general feeling that they should be put to death." The prejudice created by the newspapers could only have been overcome, the lawyers contended, by either moving the trial or selecting a jury from outside the region.[9]

The petitioners also argued that the lower court erred by holding trials on "practically successive days" because when six proceedings were held over the course of eight working days, "mounting public approval of previous verdicts made it increasingly difficult for any to dissent." Analogizing to the holding in *Moore v. Dempsey*, the attorneys contended that the rapid pace of the trials created a cumulative presumption of guilt that differed little from convictions obtained by hurrying defendants to trial under pressure from a mob. Thus the trial court had denied due process to the petitioners with practices that ensured that all defendants "were railroaded to the electric chair in assembly line procedure."[10]

Finally, the attorneys challenged the trial court's questioning of prospective jurors regarding their attitudes toward the death penalty. At each trial Judge Kennon C. Whittle had

asked prospective jury members whether they had conscientious scruples against capital punishment and excused all those who answered affirmatively. This practice, Martin argued, was intended to reinforce the traditional Southern belief that black rapists deserved harsh punishment. Whittle's inquiries about capital punishment, he asserted, were "well calculated to mislead other members of each jury that the judge concurred with the prevailing sentiment that all found guilty should be put to death." Therefore, the death sentences in the Martinsville case violated due process guarantees because they did not reflect the strength of the evidence against the defendants but rather perpetuated the customary treatment of black rapists.[11]

On March 13 the Court of Appeals unanimously upheld the convictions of the Martinsville Seven. Chief Justice Edward W. Hudgins delivered the opinion of the court. No change of venue had been warranted in these cases, he ruled, because the "fairly accurate accounts" of the press had been published "in as mild and temperate language as could be expected from the nature of the crimes." The court also found no evidence that the rapid succession of the trials had impaired the jurors' abilities to render impartial verdicts. In reaching this conclusion, the court placed great faith in the jurors' abilities to recognize and admit their own biases. All of the jurors, he remarked, after being thoroughly examined by both sides, stated under oath "that they had no prejudice for or against the defendants, and that they would go into the jury box and give them a fair and impartial trial."[12]

Hudgins struck particularly harshly at the charge that racial prejudice had influenced the jury to sentence the defendants to death. The court could not find "a scintilla of evidence" to support the allegation that Virginia juries reserved the death penalty for blacks. The jury had rendered the harsh sentences only because of the brutality of the crime and the overwhelming evidence against the defendants. "One can hardly conceive of a more atrocious, a more beastly crime," Hudgins wrote. "Each defendant's participation in the criminal acts charged was established beyond the shadow of a doubt." This argument by the attorneys, he concluded, was "an abortive attempt to inject into the proceedings racial prejudice, which the trial court was extremely careful to avoid."[13]

In May 1950, the NAACP asked the United States Supreme Court to review the judgment of the Virginia Supreme Court of Appeals. The petition for a writ of certiorari submitted by Martin argued only that the trial court erred in failing to grant a change of venue. The "undue attention from the public press," Martin asserted, created an "atmosphere of prejudice and hostility" against the accused that demanded the movement of the trials to another venue. The petition did not mention the confessions or the death-qualified jury because the petitioners wanted to focus the Court's attention on what they considered their strongest argument. However, Martin noted that the interracial character of the crime was "not without significance. Such circumstances tend to arouse the most violent emotional reactions."[14]

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On June 5 the Supreme Court announced that it would not review the Martinsville case. Because judicial conferences are held in secret and the Court does not publish its reasons for denying certiorari it is difficult to determine why the Court rejected the case. However, a memorandum circulated to all the justices may shed some light on the Court's reasoning. The memorandum, prepared by one of the law clerks for the justices to distill the main arguments of Martin's brief, noted that Martin had not challenged the conduct of the defense attorneys or the trial judge as unfair, only the atmosphere of the community. "While there is indication that popular sentiment [against the defendants] was crystallizing as the trials progressed," the writer explained, "petitioners fall somewhat short of demonstrating that a fair trial, under minimum 14th Amendment standards, was impossible." Because "it seems clear that any jury would have found petitioners guilty," the memorandum concluded that the failure to grant a change of venue did not violate the constitutional rights of the defendants.[15]

"A NOVEL, INNOVATIVE STRATEGY": THE DEVELOPMENT OF THE EQUAL PROTECTION ARGUMENT

Their legal efforts stalled by intransigent judges, Martin and his colleagues began planning their next course of action. During the 1940s, they knew, several researchers had undertaken systematic studies of racial disparities in capital sentencing. Guy Johnson and Harold Garfinkel, an ethnographer and criminologist, respectively, at the University of North Carolina's Institute for Research in Social Sciences, had independently concluded that blacks convicted of the murder of whites in North Carolina were more likely to be sentenced to death and to have that sentence carried out than blacks who killed other blacks or whites who murdered members of either race. The Southern Conference Educational Fund (SCEF), a social welfare organization based in New Orleans, used data from the U. S. Census Bureau to determine that 93

percent of the men executed for rape in thirteen Southern states between 1938 and 1948 were black.[16]

The lawyers undoubtedly knew of these findings because in their first appeal to the Supreme Court of Appeals they had alluded to the custom of Virginia juries to reserve the death penalty for rape for blacks. They had not, however, provided any concrete evidence of this practice. Perhaps, the attorneys reasoned, a systematic survey of rape convictions in Virginia might yield some evidence upon which a new argument could be built. Consequently Samuel Tucker and Roland Ealey asked the superintendent of the Virginia State Penitentiary to supply them with the names and races of all death row prisoners who had been convicted of rape and the names and races of those who had actually been executed. As the attorneys analyzed this information, it struck them "like a bolt of lightning" that since at least 1908, when the state took over executions from local jurisdictions, forty-five black men had been executed for rape in Virginia while no white man had ever suffered a similar penalty for that crime.[17]

Striking as this evidence was, Martin hesitated to present it in a judicial forum after the courts had already rejected his more traditional due process claims. On the other hand, he reasoned, the revelations might be persuasive enough to convince the governor to commute the sentences to life imprisonment. Therefore, the attorneys decided to seek executive clemency for the seven from Governor John S. Battle. In the meantime, Tucker and Ealey could tabulate and analyze the data from the penitentiary so that they could make a more sophisticated legal argument should the clemency plea fail. On July 24, however, the governor denied the petition for clemency, deferring to the determination of the Supreme Court of Appeals that the trial court had adhered to due process requirements.[18]

Frustrated by the governor's reception, Martin and his colleagues again turned to the courts to seek redress for their clients. Recognizing that they needed a "more novel, innovative" strategy "to get any relief," they rejected oblique procedural challenges in favor of a direct attack on the discriminatory application of the death penalty. Armed with the statistical evidence of racial discrimination in the application of the death penalty gathered by Tucker and Ealey, Martin petitioned the Hustings Court of the City of Richmond for a writ of habeas corpus, arguing that the defendants had been denied equal protection under the Fourteenth Amendment to the U.S. Constitution.[19]

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That the attorneys waited so long to advance the racial disparity argument in the courts should not be surprising. The purpose of the initial appeals had been to correct any procedural errors that the trial court had made. Therefore, the lawyers had been limited to raising issues that appeared in the formal record of the trial court. Since Judge Whittle never had an opportunity to rule on the equal protection issue, the attorneys could not have legitimately raised the issue on direct appeal. A habeas proceeding, by contrast, is not a direct appeal of a trial court's judgment but rather a separate civil action challenging the legality of a prisoner's detention. Thus, Martin, Tucker, and Ealey could broaden the basis of their arguments to allege racial discrimination in capital sentencing.[20]

In addition, midcentury conventions of constitutional argument discouraged Martin and the other lawyers from adopting a strategy based on equal protection. Hailed as a bulwark of liberty for African Americans upon the passage of the Fourteenth Amendment, the equal protection clause had fared poorly since the end of Reconstruction. Cases such as *Plessy v. Ferguson* (1896) rendered the clause impotent because they gave states tremendous authority to regulate the conduct of black citizens. As late as 1927, Justice Oliver Wendell Holmes derided the clause as the "usual last resort of constitutional arguments." Almost all of the NAACP's successes in the field of criminal procedure had been achieved by invoking the constitutional guarantees of due process, not equal protection. Only since the end of World War II had state and federal courts begun to consider arguments grounded in equal protection analysis.[21]

Nevertheless, Martin decided to pursue the racial disparity argument for a couple of reasons. As a practical matter, Martin knew that an adverse ruling of the Hustings Court could be appealed to the supreme courts of Virginia and the United States. If either of those tribunals agreed to review the cases a final ruling might be delayed for as long as two years. In the meantime the attorneys could amass additional evidence to convince others of the validity of their new argument and at the same time prolong the lives of their clients.[22]

Furthermore, the new approach provided an opportunity to link the NAACP's criminal litigation efforts to the equal protection strategy of the organization's desegregation campaign. In July 1950, after winning a number of suits equalizing teacher salaries and physical plants at black schools, Thurgood Marshall had announced that the NAACP would abandon equalization suits in favor of a direct assault on the "separate but equal" doctrine. Thus, at the same time that Martin and Tucker were developing their broad attack on the death penalty, Martin's law partners, Oliver Hill and Spottswood Robinson, began laying the groundwork to end segregated education in Virginia. Both instances represented a new strategy of using broad equal protection arguments to challenge directly systemic racism and discrimination in American

society.[23]

"WITH AN EVIL EYE AND AN UNEQUAL HAND": THE EQUAL PROTECTION STRATEGY IN THE COURTS

On the last day of September Martin Martin and Samuel Tucker presented their arguments before Judge M. Ray Doubles. Martin began by summarizing the statutory history of rape in Virginia. Prior to the Civil War, white men convicted of assaulting white women could receive no more than twenty years in prison, while free blacks could be sentenced to death. Following the adoption of the Fourteenth Amendment, the legislature eliminated the racial distinctions but the prescribed punishment for rape remained either a maximum of twenty years in prison or the death penalty. Martin contended that this provision "either required, or authorized and permitted, the courts to make distinctions in the punishment between white and Negro persons convicted of rape." Although the legislature increased the permissible prison term to life imprisonment in 1924, Martin charged that the courts and juries in Virginia had "without exception continued in force the immunity of white men" from the death penalty.[24]

To bolster these arguments Tucker produced statistics gathered from state penitentiary records to demonstrate that forty-five blacks had been electrocuted for rape since 1908, while no white Virginian had ever been executed for the crime. One white rapist had been sentenced to death in 1939, but his subsequent commutation and pardon further supported the theory that capital punishment was reserved exclusively for African-Americans. The fact that almost twice as many blacks as whites were sentenced to life imprisonment further indicated that heavier punishments were reserved for black defendants. Black defendants were entitled to the same protection of the law as whites, Tucker concluded, and "if you can't equalize upward [by executing more whites], we must equalize downward."[25]

Martin admitted that this particular charge had "never been presented to a court anywhere." To support his novel argument he referred the court to a line of Supreme Court decisions holding that the exclusion of African-Americans from jury service, even in the absence of specific proof of purposeful discrimination, violated the equal protection clause. These cases, he argued, demonstrated an emerging judicial consensus that long-term patterns of racial discrimination at any stage of the criminal process were sufficient to prove that a defendant's rights had been violated, even without evidence of specific discrimination in his individual case.[26]

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The difficulty with this argument, Martin recognized, was to overcome the state action requirement of the Fourteenth Amendment. Since the *Civil Rights Cases* (1883), the Supreme Court had held that the Fourteenth Amendment only prohibited discriminatory state legislation or discriminatory actions taken by state agencies or officials acting "under the color of state laws," not discrimination by private citizens. It was unclear whether the decisions of individual jurors, who were generally regarded as reflecting the conscience of the community, not the official policies of the state, constituted state action. Martin contended that because Virginia law gave juries sole discretion in sentencing, they performed an essentially judicial function and had, as organs of the state, systematically discriminated against blacks convicted of rape. Recalling the language of *Yick Wo v. Hopkins* (1886), one of the Supreme Court's earliest interpretations of the equal protection clause, Martin concluded that although the Virginia rape statute might be fair on its face, it had "been applied and administered with an evil eye and an unequal hand."[27]

On October 5, Judge Doubles denied the petition. Turning first to the performance of the juries in the Martinsville cases, he found "no evidence of any discrimination in fact." The trial records revealed a careful effort by the court to examine and exclude any juror who harbored prejudicial attitudes against the defendants. Doubles commended Judge Whittle for the "exemplary manner in which [he] presided over and supervised the conduct of the cases," adding that his behavior "could well serve as a model for trial judges throughout the Commonwealth."[28]

Because the juries in the instant cases had not engaged in discriminatory conduct, Doubles had to address the petitioners' "abstract" notion that "because of alleged discriminations in the past, no Negro can be lawfully sentenced to death in Virginia for rape at the present time."[29] The key issue was whether this historical pattern of jury conduct constituted state action. The jury exclusion cases cited by the defendants were inapposite, Doubles reasoned, because in those cases the agency or official "responsible for the selection of jury lists [was] directly under and subject to the control of the court." By contrast, a jury, "while an arm of the court in a very necessary sense, nevertheless is not an agency of the government in the sense that a jury commissioner is." Even assuming that the juries that had issued death sentences for rape had been motivated by racial factors, the petitioners could not demonstrate that an official policy of discrimination, rather than the

independent actions of separate juries, accounted for the death verdicts. "Certainly 54 different juries sitting over a period of 42 years in localities from all over the state," he asserted, "cannot be said to be acting under any concerted action, policy or system for which the state is responsible."[30]

Doubles also questioned whether a judicial forum was the proper arena in which to raise the issues argued by the defendants. To establish the principle that patterns of past discrimination barred the state from sentencing blacks to death, every judge presiding over the trial of a black defendant for rape would, when instructing the jury, either have to omit any reference to the death penalty or overturn any verdict that fixed the penalty at death. "This would result," Doubles reasoned, "in partial repeal of a statute admittedly fair on its face." In addition, to ensure equal protection, trials of white defendants would be subject to the same restrictions. This would be tantamount to repealing the death penalty clause of the rape statute, a function that properly belonged to the legislature. Therefore, the only remedy for the situation described by the defendants was to seek modification of the statute through the legislative process, because Doubles was not aware of "any judicial device whereby the courts could lawfully achieve such results."[31]

Martin Martin immediately petitioned the Virginia Supreme Court of Appeals for a writ of error. At a special session of the court on November 3, the court refused to accept his contention that the state of Virginia "never did repeal the pre-Civil War immunity of white men." Although the court did not formally state its reasons for denying the writ, the justices remarked during oral arguments that no other crime in memory evidenced the brutality of the "mass rape at Martinsville." They also echoed Judge Doubles's concern that if the petitioners' request were heeded, "no Negroes could be executed unless a certain number of white people" were killed as well.[32]

During the last week of November, attorneys for the seven, aided by Thurgood Marshall, submitted a new petition for certiorari to the U. S. Supreme Court. They continued the argument originally developed in the Hustings Court that in cases of rape involving white women, Virginia courts and juries had always reserved the death penalty for blacks while white men had always been immune from such a penalty. Although the Virginia statute was not unconstitutional on its face, they admitted, they argued that "it should also be made clear that customs, practices and usages having the same prohibited result are likewise contrary to the supreme law of the land." Reviewing the execution statistics of the Commonwealth, they warned the Court that the pattern of executions

> *According to a Supreme Court official at the time, this case marked the first time that equal protection arguments had been used to challenge racial disparity in criminal sentencing.*

"constitutes a serious challenge to an essential principle of our democratic government: Equal and exact justice to all men of whatever race, creed or persuasion." According to a Supreme Court official at the time, this case marked the first time that equal protection arguments had been used to challenge racial disparity in criminal sentencing.[33]

On January 2, 1951, the Court denied the writ. The Court did not comment upon its reasons, but a memorandum circulated to the justices revealed some concerns that might have been raised in conference. One difficulty, the memorandum noted, "lies in making a finding of discriminatory punishment upon the basis of action taken by widely separated juries over a long period of years," especially when "no contention is made that the statute itself is discriminatory . . . or that the trial judges have discriminated in their charges to the jury." Based on the NAACP's statistics and "common knowledge," the memorandum's author admitted that "Virginia juries might well be more prone to give the death penalty to Negroes convicted of raping white women." But even if the action of those juries constituted state action, "the principal difficulty lies in the unavailability of a practical remedy." If the petitioners were to have any relief, then "all negroes given the death penalty in Virginia for rape of a white woman will be entitled to a reversal until enough white men are executed to bring the figures into balance." In a handwritten notation Justice Harold Burton added that requiring black representation on juries, a practice that was already being enforced by the Court, was "the only effective way to get at this type of discrimination."[34]

The Supreme Court's denial of certiorari, for all practical purposes, ended the Martinsville Seven's chances for legal redress. Martin applied for a writ of habeas corpus in the federal district court in Richmond but on January 30 Judge Sterling Hutcheson rejected Martin's plea for federal intervention, noting that the highest state and federal courts had already spoken twice. Judges John J. Parker and Armistead M. Dobie of the Fourth Circuit Court of Appeals also refused to intervene, and U.S. Supreme Court justices Fred Vinson and Harold Burton declined to grant stays of execution to the seven. On February 1, Governor Battle announced that he would not grant any further stays of execution. The following morning, four of the prisoners died in the electric chair. Three days later the execution of the three remaining men closed the case of the Martinsville Seven.[35]

CONCLUSION

The NAACP's efforts on behalf of the Martinsville Seven represented a clear shift in the organization's strategy regarding capital cases. During the direct appeals, the attorneys relied on traditional due process arguments rather

than broad attacks on the prevailing legal order. Even when challenging the disproportionate sentencing of African-Americans, Martin Martin framed the issue in terms of the trial judge's authority to question prospective jurors about capital punishment rather than mounting a frontal attack on the application of the death penalty. During the collateral appeals, however, the attorneys directly attacked the discriminatory application of capital punishment, presenting historical and empirical evidence that only African-Americans received the death penalty in cases of rape.

The NAACP's new strategy, however, failed in the Martinsville case for several reasons. Obviously, racism played a major role as most of the jurists who heard the appeals shared the racial prejudices of white Southerners. For example, between 1900 and 1949 the Virginia Supreme Court of Appeals upheld the death sentences of seven men convicted of rape or attempted rape, denied petitions for writs of error in five other cases, and reversed the death penalty in only one case involving capital punishment for rape. All of the cases involved African-American defendants. In each case the justices refused to acknowledge the presence of discrimination even though the evidence was strong enough that four of the defendants later had their sentences commuted to life imprisonment by the governor. As Roland Ealey later explained, the justices "knew the wishes and desires of the community and . . . the policies of the state, so they performed them."[36]

Yet the case cannot be understood exclusively in terms of race because other considerations shaped racial concerns. First, the judges who heard the appeals were influenced by the apparent guilt of the defendants. Every jurist who wrote an opinion in the case emphasized the heinous nature of the crime and the evidence linking the defendants to the attack. Given the brutality of the offense and the obvious guilt of the defendants, the courts were reluctant to invade the sanctity of the jury room and impute racially discriminatory motives for the death sentences. Second, the prevailing attitude at all levels of the state and federal judiciary at midcentury emphasized the preservation of social order over the values of due process and equal protection.[37] In criminal cases especially, the Vinson Court rarely intervened unless evidence clearly suggested that the defendants might "have been unjustly convicted rather than unfairly tried." In cases involving coerced confessions, for example, the justices tended to overlook all but the most blatant abuses, perceiving the

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widespread incidence of crime to be a greater threat than strong-arm police tactics. The Court's refusal to hear the Martinsville appeal was consonant with its policy during a period of rapid social and political change of avoiding cases that involved problematic constitutional issues.[38]

Finally, the NAACP's efforts failed because they did not conform to the judiciary's conception of the proper method of legal argument or the proper scope of judicial review. Martin and Tucker had amassed compelling evidence of sentencing disparity based on race in rape cases. To transform that evidence into a legal remedy, however, required courts willing to consider empirical, historical, and other extralegal methods of proof. The type of evidence that the attorneys produced to support their allegations appealed mainly to jurists who wanted to accomplish social reform through legal means, a mantle that neither the Virginia courts nor the Supreme Court under Chief Justice Vinson wanted to assume.[39] Throughout the twentieth century, and especially during this period, the Virginia Supreme Court of Appeals was rarely persuaded by the types of sociological arguments employed by the NAACP in its brief. The Vinson Court also preferred arguments based on legal precedent to more innovative approaches to legal change. In addition, since the courts viewed the abolition of the death penalty as an exclusively legislative prerogative, the only remedy for the disparity appeared to be a suspension of executions of African-Americans until a proportionate number of whites had been executed. Such an approach would not only upset a system of social control based upon racial difference, it would also violate accepted standards of judicial power.[40]

Despite the inability of the attorneys in the Martinsville case to save their clients from the electric chair, civil rights lawyers seized on the equal protection strategy in capital cases as the next logical step in the pursuit of equal justice for African Americans. After the executions, attorneys from around the country sought advice from Martin A. Martin on collecting, organizing, and presenting statistical data related to executions. Martin shared his files with attorneys from the Civil Rights Congress, a radical civil rights organization that undertook similar studies of sentencing disparity in Mississippi and Louisiana. Frank Donner, counsel for the CIO, publicized Martin and Tucker's findings in his Civil Liberties Reporter. Attorneys continued to raise the disparity argument in Virginia courts, albeit unsuccessfully, throughout the 1960s.[41] In 1969, Jack Greenberg, director of the NAACP Legal Defense and Educational Fund (LDF), identified the Martinsville case as one of the precursors to the LDF's organized attack on the constitutionality of the death penalty. Throughout the 1970s and 1980s researchers conducted increasingly sophisticated quantitative analyses of racial discrimination in capital sentencing, culminating in David Baldus's monumental study of Georgia homicide sentencing that was commissioned by the LDF.[42]

In 1987, the United States Supreme Court directly addressed for the first time the issue of racial discrimination in capital sentencing. In *McClesky v. Kemp*, a case involving a black man sentenced to death in Georgia for the murder of a white person, the Court dismissed the relevance of Baldus's evidence of biased sentencing patterns. Although the majority presumed the statistical validity of the Baldus study and conceded that it "indicates a discrepancy that appears to correlate with race," the Court held that a condemned person had to show overt bias either by the Georgia legislature or by the jury in his or her particular case.[43] Justice Lewis Powell's majority opinion, like the rulings of the judges in the Martinsville case, betrayed a skepticism of the role of statistical methods in legal analysis and emphasized the primacy of state legislatures in formulating death penalty policy.

The apparent demise of statistical attacks on the death penalty after forty years of only limited success should not be interpreted, however, as a complete failure of the NAACP's equal protection strategy. Early efforts such as the Martinsville case represented an attempt to link the NAACP's criminal litigation efforts to the more conventional aspects of the civil rights movement, such as the desegregation of schools, transportation, and public facilities. At the same time that Martin Martin was developing his broad attack on the application of the death penalty, his partners, Oliver Hill and Spottswood Robinson, were abandoning the traditional desegregation strategy in favor of a direct attack on the "separate but equal" doctrine. Both instances represented the beginning of a campaign to use equal protection arguments, founded upon empirical and sociological data, to directly challenge systemic racism and discrimination in the American legal system.

ENDNOTES

1. An excellent analysis of the transformation from mob violence to the use of criminal sanctions as a means of racial control is George C. Wright, Racial Violence in Kentucky, 1865-1940: Lynchings, Mob Rule, and "Legal Lynchings" (Baton Rouge and London, 1990). On the decline of lynching see Robert L. Zangrando, The NAACP Crusade Against Lynching, 1909-1950 (Philadelphia, 1980) and Jacquelyn Dowd Hall, Revolt Against Chivalry: Jessie Daniel Ames and the Women's Campaign Against Lynching (New York, 1979). The emergence of due process protections for criminal defendants is discussed in David J. Bodenhamer, Fair Trial: Rights of the Accused in American History (New York and Oxford, 1992), Chap. 5. Data for executions in each state can be found in William J. Bowers, Legal Homicide: Death as Punishment in America, 1864-1982 (Boston, 1984), Appendix A, 395-523.

2. See Michael Meltsner, Cruel and Unusual: The Supreme Court and Capital Punishment (New York, 1973), 15-19; James R. Acker, "Social Science in Supreme Court Death Penalty Cases: Citation Practices and Their Implications," Justice Quarterly 8 (1991): 421-22.

3. For a thorough discussion of the arrest and trial of the defendants, see Eric W. Rise, "Race, Rape, and Radicalism: The Case of the Martinsville Seven, 1949-1951," The Journal of Southern History 63 (August 1992): 465-473.

4. *Moore v. Dempsey*, 261 U.S. 86 (1923). See also *Powell v. Alabama*, 287 U.S. 45 (1932) (requiring counsel in capital cases); *Norris v. Alabama*, 294 U.S. 587 (1935) (prohibiting the systematic exclusion of black jurors); *Brown v. Mississippi*, 297 U.S. 278 (1936) (holding coerced confessions inadmissible because they violated due process); and *Chambers v. Florida*, 309 U.S. 227 (1940) (coerced confessions inadmissible).

5. Martinsville Bulletin, 19 April 1949, p. 1; Motion for Change of Venue, Transcript of Testimony, *Commonwealth v. Joe Henry Hampton*, 47-58, 88. All transcripts are located in the Martinsville Circuit Court, Martinsville City Hall, Martinsville, Virginia.

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7. Richmond News Leader, 13 May 1949, 36; Richmond Afro-American, 14 May 1949, sec. 1, 1; sec. 2, 1; Memorandum, Thurgood Marshall to Legal Staff, 16 February 1949, Box B99, Papers of the National Association for the Advancement of Colored People, Library of Congress, Washington, D.C. (hereinafter cited as NAACP Papers); Roland D. Ealey, attorney, interview with author, 13 August 1991, Richmond, Virginia.

8. Roland D. Ealey, attorney, interview with author, Richmond, Virginia, 13 August 1991; Oliver W. Hill, attorney, interview with author, Richmond, Virginia, 13 August 1991; Richard B. Sherman, The Case of Odell Waller and Virginia Justice, 1940-1942 (Knoxville, 1992), 53, 90-92, 174; Geraldine R. Segal, Blacks in the Law: Philadelphia and the Nation (Philadelphia, 1983), 188. On the intellectual climate of Howard University in the 1930s, see Genna Rae McNeil, Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights (Philadelphia, 1983), 82-85.

9. Brief for Appellant, *Hampton v. Commonwealth*, No. 3635, pp. 6, 10; Reply Brief for Appellant, *Hampton v. Commonwealth*, No. 3635, p. 4. All briefs are located in the Virginia State Law Library, Richmond, Virginia.

10. Brief for Appellant, 15; Reply Brief, 10, 12.

11. Brief for Appellant, 18-19.

12. *Hampton v. Commonwealth*, 190 Va. 531, 544-45, 557-58, 561-62 (1950).

13. Ibid., 554-57.

14. Cert. Memorandum, No. 538 Misc., 1949 Term, Box 207, Papers of Harold Hitz Burton, Library of Congress, Washington, D.C. (hereinafter cited as Burton Papers); Richmond Times-Dispatch, 20 May 1950, p. 4; interview with Roland Ealey, 13 August 1991.

15. *Hampton et al. v. Commonwealth*, 339 U.S. 989, No. 538 Misc., cert. denied; Cert. Memorandum, Box 207, Burton Papers.

16. Bowers, Legal Homicide, 22; David C. Baldus, George Woodworth, and Charles A. Pulaski, Jr., Equal Justice and the Death Penalty: A Legal and Empirical Analysis (Boston, 1990), 248-50; Guy Johnson, "The Negro and Crime," Annals of the American Academy of Political and Social Science 217 (September 1941): 93-104; Harold Garfinkel, "Research Notes on Inter- and Intra-racial Homicides," Social Forces 27 (May 1949): 369-81; Guy Benton Johnson and Guion Griffis Johnson, Research in Service to Society: The First Fifty Years of the Institute for Research in Social Sciences at the University of North Carolina (Chapel Hill, 1980), 140-41; Civil Rights Congress, We Charge Genocide (New York, 1951), 160.

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19. Interview with Roland Ealey, 13 August 1991; Petition for Writ of Habeas Corpus, *Hampton v. Smyth*, Hustings Court of the City of Richmond, Part II, 26 July 1950, copy located in File a230, Box 11, Papers of the Civil Rights Congress, Schomburg Center for Research in Black Culture, New York Public Library (hereinafter cited as CRC Papers).

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25. Joint Brief, 4-7; Supplement to Joint Brief on Behalf of the Petitioners, *Hampton v. Smyth*, Appendix, copy in File a230, Box 11, CRC Papers; Richmond Afro-American, 16 September 1950, p. 6; Richmond Times-Dispatch, 1 October 1950, sec. 1, p. 1.

26. Supplement to Joint Brief, 2-5. Representative jury exclusion cases include *Strauder v. West Virginia*, 100 U.S. 303 (1879); *Neal v. Delaware*, 103 U.S. 370 (1881); *Norris v. Alabama*, 294 U.S. 587 (1935); and *Cassell v. Texas*, 339 U.S. 282 (1950). On the development of constitutional doctrine on jury exclusion see Dan T. Carter, Scottsboro: A Tragedy of the American South (Baton Rouge, 1969), 320-24.

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Development of a Campus Security Decision-Making Profile Within the State University System of Florida

by Max L. Bromley, Ed.D.

INTRODUCTION

Crime is not new to the college environment. Evidence of crime associated with universities dates back to the Middle Ages in Bologna, Italy, and Paris, France (Baldwin, 1971). Concern for criminal activity and how to provide protection for students and faculty has been present for two centuries in American higher education, according to Gelber (1972). While criminal acts committed on college campuses have been a part of the history of higher education in America, it appears that the frequency and seriousness of crime at some institutions today is of greater magnitude than in earlier times.

Some authorities have suggested that today's college campus problems are a reflection of the problems of their surrounding communities. For example, Smith (1986) used sources from the fields of law, criminal justice, and education to study the impact of campus crime on institutions. His results revealed that many of today's college campuses faced problems similar to those of society at large, including criminal incidents. Dealing with those crime problems is frequently the responsibility of on-campus police department. According to Atwell (1988), "We should be alert to the public's expectation that campus police will treat crime of all types in ways very nearly identical to municipal law enforcement agencies" (p. 2).

Today, numerous legal issues have evolved as a result of the existence of campus crime. Throughout the early history of post-secondary education, decision-makers were not significantly affected by legal factors such as new statutes being enacted or by court decisions. Colleges and universities felt little intrusion from the courts or lawmakers after being initially established by statute or legal charter. Those days of non-intrusion by various legal systems have long since passed, according to Kaplan (1990).

In the 1990s, it is becoming apparent that legislation and liability lawsuits now provide the basic legal framework for campus crime issues. For example, new federal and state statutes have been enacted relative to campus crime reporting and security policy formulation. Likewise, there is currently the potential for both personal and institutional liability for failing to provide an adequate level of on-campus security.

STATEMENT OF THE PROBLEM

The problem addressed in this study was that Florida's State University System (SUS) did not have accurate and comprehensive information on crime statistics for the universities in the system and their surrounding communities. Prior to this study being conducted, it was difficult to fully develop proactive crime prevention or public education programming which would reduce opportunities for crimes on campuses. It was also difficult to combat negative publicity associated with campus crime.

Campus crime is an important issue within the State University System of Florida, the fifth largest in the nation, serving over 155,000 students (DOE, 1989). In 1989, the Florida Legislature passed a law requiring public universities to prepare an annual report of raw data regarding on-campus crimes. While the publication of campus crime data at Florida universities has taken place for almost twenty years, there will be an increase in public attention to this area, due primarily to media attention.

It was determined that given the national, state, and local interests in the campus crime issue, decision-makers needed relevant data upon which to develop proactive security programs. Therefore, the purpose of this study was to develop a campus security decision-making profile for use in the State University System of Florida that would include recommendations to enhance the overall security at Florida's universities.

PRIOR RELEVANT STUDIES

McPheters (1978) studied campus crime rates in the University of California system. Two variables were found to influence the rate of crime on these campuses: the percentage of students living in on-campus dormitories, and the campus' proximity to urban areas with high unemployment. Specifically, campuses with higher crime rates were located closest to urban areas with high unemployment rates.

Lunden (1983) conducted a descriptive study of rates of crime on eighteen university campuses between 1971 and 1980. He found that reported crimes rose eighty-nine percent on those campuses during that particular period of time. One surprising finding was that one of the smaller universities in the study had a higher crime rate than seven of the larger schools. Also, one of the largest institutions in his study had a lower crime rate than many of its smaller counterparts. No explanation of these findings was given.

An empirical study conducted by Fox and Helman (1985) explored the characteristics of campuses which seemed to contribute to high levels of campus crime. Their sample included 252 colleges and universities throughout the United States. One of their major findings was that campus location, that is, urban versus rural, had no impact on the actual level of crimes committed. Campuses with higher levels of police enforcement were associated with higher campus crime rates. However, a higher percentage of violent crimes was found on campuses in the more populated metropolitan areas.

In conducting similar research, Lizotte (1985) examined information regarding the crime rates of 150 college campuses and the cities in which they were located. In addition, he analyzed variables such as the number of campus police officers and demographics relating to the socio-economic conditions of students and the cities. This researcher found a relationship between higher campus crime rates and higher city crime rates, higher tuition rates paid by students and cities with higher rates of violent crimes.

Smith (1986) studied campus crime from legal, criminal justice, and educational sources. Smith observed that college and university campuses reflect the diversity existing in today's society including a wide range of criminal incidents which represent a constant challenge to campus administrators. His analysis led to specific recommendations for higher education administrators to consider relative to campus crime issues.

Bruce found the nature of the legal relationship between students and institutions of higher education is flexible and still evolving as it relates to the issue of foreseeability in lawsuits resulting from assaults against students.

Bruce (1989) conducted research regarding the liability implications for higher education as a result of personal injury assaults in college and university residence halls. Legal research was the methodology used to analyze the role of foreseeability in suits brought against universities in assault cases. Specifically, three liability suit cases were reviewed and analyzed in this study. Bruce found the nature of the legal relationship between students and institutions of higher education is flexible and still evolving as it relates to the issue of foreseeability in lawsuits resulting from assaults against students.

METHODOLOGY

The following Research Questions served to guide this study.

1. What are the crime rates at individual state university main campuses in Florida and what is the overall rate of crime within the State University System?

2. Is there a significant difference between individual state university main campuses and the overall State University System and are there any differences among the individual main campuses regarding the following:

a. ratio of university police officers to students

b. ratio of university police officers to university acreage

c. ratio of university police officers to the number of university buildings

d. ratio of university police officers to the total university square footage

e. ratio of students to the allocated university police budget

3. Are crime rates on individual state university main campuses significantly different from the overall State University System crime rate?

4. Are crime rates at individual state university main campuses in Florida significantly different than the corresponding rates for the communities in which they are located?

5. Based on an analysis of information gathered in Research Question One, Two, Three, and Four, what recommendations can be made regarding crime prevention or public education programs for universities within the State University System?

After developing the Research Questions and appropriate null hypotheses, the following procedures

were used to collect, treat, and analyze data.

For the purposes of this study, the research population included the main campus of each of the nine universities in the State University System of Florida. Also included were the nine cities adjacent to the universities and the nine counties surrounding the campuses.

This study involved the analysis of previously collected crime data and other demographic information. Information sources included the following: the Florida Board of Regents, the Florida Department of Law Enforcement, and a survey of university police chiefs conducted by Stevens in 1990. Many authorities refer to this methodology as secondary analysis. The analysis of archival data is an accepted method of research that has certain advantages, as noted by Mackenzie, Layton and Baunach (1990).

The data collected in response to Research Question Number One were analyzed in descriptive fashion without the use of a statistical test for significance.

Given the fact that the data gathered in response to Research Questions Two, Three, and Four were expressed in proportions, statistical comparisons were made using the z-test for the difference between proportions (Welkowitz, Ewen and Cohen, 1982). This test was used for each of the comparisons as noted in Research Questions Two, Three, and Four in order to determine if there were statistically significant differences. The level of significance was set at .05. In analyzing the data obtained for this study, the CSS statistical software package was used. This software package provides multiple statistical procedures and is useful in a variety of ways.

RESULTS

Research Question Number One

In reviewing the data presented in response to Research Question Number One, several general trends emerged. Universities within the Florida State University System experienced the full range of criminal activity on their main campuses during 1989 and 1990. Examples involved all the classifications of Index crime from murder to larceny. The averaged combined total was 3,879 Index crimes. The majority of crimes committed on campuses were property

Table 1
University Ratios Compared to SUS for Each Variable, with z-Scores

University	Police/Student z-Score	Police/Acre z-Score	Police/Bldg. z-Score	Police/Sq.Ft. z-Score	Dollars/Students z-Score	Police/Index z-Score
UF	1.7 .157108	1/34 .250684	*1/14 -6.525759	*1/224,454 -5.031512	*$6,660 -44.731391	*1/23 -3.748893
FSU	1.5 -.535898	1/27 1.705070	1/8 -1.427687	1/144,052 -1.248237	*$3,450 83.518853	1/18 -1.568243
FAMU	*3.1 3.189203	*1/17 3.850202	1/5 1.710314	*1/73,974 2.404532	*$9,530 -57.494499	*1/8 3.253533
USF	1.6 -.322620	1/38 -.464911	*1/5 2.319795	1/112,195 .383398	*$4,820 19.750500	1/18 -1.504576
FAU	1.7 .080197	1/45 -1.220679	*1/3 4.441618	*1/63,636 2.988929	*$2,550 96.492451	*1/7 3.455236
UWF	2.0 .819678	*1/73 -3.015625	1/6 .648644	1/76,723 1.773848	*$9,280 54.021244	*1/8 2.585972
UCF	1.3 -1.435345	1/45 -1.351115	*1/2 6.538272	*1/61,407 3.506187	*$6,310 -25.831069	*1/9 2.279622
FIU	1.4 -.955648	*1/11 6.926374	*1/4 3.736984	*1/71,169 *2.899490	*$3,560 68.935943	1/10 1.842709
UNF	2.2 1.087265	*1/59 -2.193865	*1/2 6.419606	*1/51,941 3.521251	*$7,510 -32.768455	*1/6 3.570321
SUS Ratios	1.7	1/35	1/7	1/119,117	$5,380	1/14

* Statistically significant at .05 alpha level

Table 2
University Index, Violent and Property Crime Rates Compared to SUS Crime Rates, with z-Scores

University by Student Population	Index Rate/1,000 z-Scores	Violent Rate/1,000 z-Scores	Property Rate/1,000 z-Scores
UF	36.3* 16.226883	.88 .225261	35.6* 16.477696
FSU	27.0* 4.054301	1.2 1.546653	25.9* 3.824864
USF	28.7* 5.711278	1.4* 2.872356	27.4 5.252130
FIU	14.5* -8.450036	.19* -3.257310	14.3* -7.965220
UCF	11.5* -11.254302	.07* -3.828393	11.4* -10.708530
FAU	11.7* -8.585270	.20* -2.452028	11.4* -8.260743
UWF	14.2* -.530827	1.2 .963769	13.1* 5.593660
UNF	*14.1* -5.372632	.83 -.003052	13.2* -5.469694
FAMU	24.8 .840850	2.6* 5.159136	22.3 -.155027
SUS	23.5	.84	22.6

* Statistically significant at .05 alpha level.

crimes.

During the two years averaged, the crime of larceny was the most frequently committed property offense (3,268); however, burglaries (305.5) represented almost eight percent of all crimes reported. While not as numerous, motor vehicles (165) were also selected as targets for thieves on a majority of campuses. Given the cost of most motor vehicles today, thefts in this category are important both to the public and university law enforcement officials.

An analysis of violent crimes was also conducted. The systemwide proportion of violent crimes was 3.6 percent (140.5 of 3,268). The data revealed that this was a relatively low proportion when compared to the proportion of property crime.

Research Question Number Two

The data presented in response to Research Question Number Two revealed the University of Florida reported significantly less police resources than the State University System ratio in the following three categories: number of police officers per number of buildings, number of public officers per building square footage, and number of police officers per number of Index offenses. The University of Florida had significantly less police officers per building and per building square footage than all other institutions, and less police officers per number of Index offenses than six other institutions.

Florida State University reported utilizing significantly less police resources than the State University System ratio in the category of security budget expenditure per 1,000 students. Florida State University also had significantly less police officers per number of buildings than all other institutions, less police officers per building square footage than six institutions, and had less police officers per number of Index offenses than six other universities.

No police resource categories were identified wherein Florida A & M University reported significantly less police resources than the State University System ratio. However, Florida A & M University did have significant less police resources than three other institutions in the category of number of police officers per number of buildings.

The University of South Florida reported significantly less police resources than the State University System ratio in the category of security budget expenditure per 1,000 students. The University of South Florida also reported significantly less police resources than five other institutions in the categories of number of police officers per building square footage, and budget expenditure per student as well as less police resources than six universities in the number of police officers per number of Index offenses.

Florida Atlantic University reported significantly less police resources than the State University System ratio in the category of security budget expenditure per 1,000 students. Florida Atlantic University had significantly less police officers per acre than three universities and spent less dollars per 1,000 students on security than all of the other institutions in the system.

When compared to the State University System ratio in each police resource category, the University of West Florida had significantly less police officers per acre. The University of West Florida also had less police officers per acre than five universities and less police officers per number of buildings than four other institutions.

No cases were found wherein the University of Central Florida had

significantly less police resources than the State University System ratio. The University of Central Florida did report significantly less police officers per acre than three other universities and spent significantly less per 1,000 students on security than four other institutions.

Florida International University reported significantly less police officers per 1,000 students than the systemwide ratio. Florida International University also spent less per 1,000 students on security than six other universities within the system.

The University of North Florida reported significantly less police officers per number of acres than the State University System ratio. The University of North Florida reported significantly less police officers per acre than four other institutions. A comparison of each university's ratio and the overall SUS ratio is shown in Table 1.

Research Question Number Three

A review of the data presented in response to Research Question Number Three revealed a general trend. Each of the three largest universities (the University of Florida, Florida State University, and the University of South Florida) had Index and property crime rates that were significantly higher than the State University System rate in these categories. Of special interest, the rate of violent crime at the University of South Florida was also significantly higher than the State University System violent crime rate. The medium sized universities (University of Central Florida and Florida International University) and the smaller sized universities (Florida A & M University, Florida Atlantic University, University of West Florida, and University of North Florida) had crime rates in each category that were significantly lower than the State University System's Index, violent, and property crime rates. There was one additional noticeable exception. Florida A & M University had a violent rate of crime that was the highest in the system and was significantly higher than the State University System's rate of violent crime. A comparison of each university's rate and the overall SUS rate is shown in Table 2.

Table 3
Two-Year Averaged University, City and County Index Crime Rates and z-Scores

University by Student Pop Index Crime Rate	City Index Crime Rate z-Score	County Index Crime Rate z-Score
UF 36.3	Gainesville *112.5 -45.6666	Alachua *63.6 -21.2217
FSU 27.0	Tallahassee *112.6 -48.6124	Leon *47.3 -15.9470
USF 28.7	Tampa *146.1 -53.2094	Hillsborough *70.2 -25.9858
FIU 14.5	Miami *191.8 -65.1634	Dade *123.4 -47.9139
UCF 11.5	Orlando *133.4 -51.5986	Orange *79.2 -36.0638
FAU 11.7	Boca Raton *59.9 -22.5760	Palm Beach *78.7 -27.6408
UWF 14.2	Pensacola *80.6 -21.4573	Escambia *78.7 -21.0615
UNF 14.1	Jacksonville *102.6 -25.6012	Duval *102.6 -27.6012
FAMU 24.8	Tallahassee *112.6 -26.0079	Leon *47.3 9.24821

* Statistically significant at .05 alpha level.

Research Question Number Four

The data derived from the comparisons made in Research Question Number Four revealed the same result in every instance. Specifically, the rate of Index, violent, and property crimes on each campus was significantly lower than the rate of Index, violent, and property crimes at each adjacent city and each surrounding county (see Table 3).

Research Question Number Five

The data derived in response to Research Question Number Five was a composite of the data gathered in response to the other four research questions. This information was used to develop the campus security decision-making profile as shown in Table 4. In this matrix, one point was assigned for each time a university met one of the following criteria: had significantly less police resources than the State University System ratio, had significantly less police resources than

Table 4 — Rank Ordered Profile of University Police Resource Levels and Crime Rates						
University Rank Order by Total Sworn	Less Resources than SUS	Less Resources than Other Universities	Higher Index Crime Rate Than SUS Rate	Higher Violent Crime Rate Than SUS Rate	Higher Property Crime Rate Than SUS Rate	Combined Total
UF	3	28	1	0	1	33
FSU	1	28	1	0	1	31
USF	1	23	1	1	1	27
FAU	1	13	0	0	0	14
FIU	2	10	0	0	0	12
UWF	1	10	0	0	0	11
UCF	0	9	0	0	0	9
UNF	1	6	0	0	0	7
FAMU	0	4	0	1	0	5

another university, had an Index crime rate higher than the State University System rate, had a violent crime rate higher than the State University System rate, and had a property crime rate higher than the State University System rate. The points were then totalled for each university so that decision-makers could evaluate their own campus security profile.

The matrix depicted in Table 4 was developed to provide a snapshot of university police resource levels and crime rates at each institution within the State University System of Florida. The rank ordered totals as listed in the final column of the table provide decision-makers with a relative indication of their own campus security needs.

CONCLUSIONS AND IMPLICATIONS

Based upon results obtained from this study, a number of conclusions can be drawn. For example, universities within the Florida State University System have experienced and probably will continue to experience a full range of criminal activities on their main campuses. Property crimes occur more frequently than crimes of violence. The crime of larceny is by far the most frequently committed crime on Florida's university campuses. Systemwide, violent crimes comprise a relatively small proportion of overall crimes. However, crimes of violence must be given very serious attention by campus security decision-makers within the Florida State University System.

A second conclusion derived from this study is that significant differences do exist between individual State university main campuses and the overall State University System and between individual main campuses regarding the following variables expressed as ratios: police officers to students; police officers to university acreage; police officers to number of buildings; police officers to university building square footage; students to allocated university police budgets; and police officers to total number of Index crimes. Decision-makers at each university can now examine their level of police resources relative to all other universities and to the State System.

A third conclusion that may be drawn from the study relates to university main campus crime rates as compared to the State University System crime rate. Specifically, it may be concluded from the study that there are significant differences between the rate of crime on some university main campuses when compared to the University System overall crime rate. Decision-makers at the three largest

universities have data that clearly demonstrate their Index and property crime rates are significantly higher than the State University System rate. In addition, recognizing the fact that their violent crime rates are significantly higher than the State University System violent crime rate will be of assistance to decision-makers at two campuses in evaluating their current crime prevention efforts.

A fourth conclusion of the study is that the crime rate at each individual State university main campuses is lower than the corresponding crime rate for the communities in which they are located. This conclusion was reached for all campuses when crime rates were compared to the crime rates of adjacent cities and surrounding counties and has implications for decision-makers at all institutions.

Finally, it is concluded that it is possible to develop a campus security decision-making profile. As a result of this study, such a profile now exists for decision-makers within Florida's State University System. This profile may be used to thoroughly review and analyze information relating to campus crime, police resource levels, and the overall security of individual campuses and the System.

The conclusions derived from this study lead to several implications. First, a periodic review of crime trends on all State University System campuses is important. It appears that it will be worthwhile for decision-makers to focus continued attention on the prevention of property crimes, specifically larceny. However, given the nature and seriousness of violent crimes and the high profile associated with such crimes, campus decision-makers must continue to seek ways to enhance programs of personal safety awareness and crime prevention.

A second implication is that decision-makers on all campuses may now examine their level of police resources as compared to the other institutions and the overall State University System ratio. It would seem reasonable for decision-makers to use the information available from this study as a baseline to aid them in developing strategies to enhance existing police resources on their campuses. It would also seem that objectives can now be established to seek new or additional sources of funding to support an increase in the level of resources wherein significant police resource deficiencies were noted.

A third implication may be derived from the stated conclusions. Decision-makers at each institution now have comparative crime rate data for the entire State University System. They may find it useful to use these data as base-line information for future comparisons or to conduct an internal review of their own security and crime prevention efforts.

> *[G]iven the nature and seriousness of violent crimes...campus decision-makers must continue...to enhance programs of personal safety awareness and crime prevention.*

The next implication is derived from the conclusion that the State University System main campuses have crime rates lower than their adjacent cities and surrounding counties. This information may be useful to security decision-makers in their attempt to objectively review and describe to others issues related to crime on their campuses. The rate of Index, violent, and property crimes committed on State University System campuses can now be described in a manner relative to their local communities. Crime rate comparisons may now be described that are favorable to all universities within the State University System.

A final implication resulting from this study relates to the current availability of a campus security decision-making profile. The collective data regarding crime trends, crime rates, and police resource ratios could be used by decision-makers to review the current status of campus security as well as to plan for the enhancement and expansion of future programs on their campuses. As a result of the availability of the profile, decision-makers can do the following: review the relative safety of their campuses, provide accurate and comprehensive information on campus crime to a variety of concerned constituents, and develop objectives that establish proactive campus security programs.

Issues relating to campus crime will continue to be important to decision-makers within the State University System of Florida. Within the context of this study, decision-makers should include managers within university police departments, university vice-presidents who share responsibilities for campus security, Board of Regents' officials and others who might have legitimate responsibility and authority at the respective universities. Based upon the information obtained and analyzed in this exploratory study, the following recommendations are offered:

1. Campus security decision-makers should continue to monitor crime trends on their universities. Attention should be focused on the development of programs that involve the police and the campus community in the prevention of violent and property crimes.

2. Campus security decision-makers should examine their current level of police resources as compared to other Florida institutions and the overall system. Based upon this examination, objectives can be established to seek new resources when appropriate.

3. Campus security decision-makers should review the State University System comparative crime rate data. This review should lead to each university examining its own security and crime prevention efforts.

4. Campus security decision-makers should objectively review the rate of crimes committed at their institutions as compared to their adjacent cities and counties. This comparative crime rate information should be made available to campus community members, the media, parents

of students, and other interested parties.

5. Campus security decision-makers should carefully review the information now available in the decision-making profile developed in this study. As a result, objectives should be established to enhance future security programs consistent with documented institutional needs.

6. Campus security decision-makers at the three largest universities should collectively lobby for additional resources given the fact that their crime rates are generally higher than the SUS rates and that, in many instances, their level of resources are less than their smaller counterparts.

7. Campus security decision-makers should explore new technological advances in equipment such as closed-circuit television, alarms, and solar powered emergency telephone systems. These types of equipment may be more practical on some campuses than adding police staff.

8. Campus security decision-makers should review the feasibility of "contracting out" some of the property security services now provided that do not require a certified law enforcement officer. Taking these steps would ensure more appropriate use of highly trained university police officers.

9. Consideration should be given to replicating this study within the State University System no later than 1995. Consideration should also be given to conducting a similar study for Florida's Community College System.

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Marginal Labor and County Level Punishment Patterns in Florida During the 1980s

by Miriam A. DeLone, Ph.D.

INTRODUCTION

The area of research referred to as "punishment and social structure" is grounded in the works of Rusche (originally published in 1933) and later Rusche and Kirchheimer (originally published in 1939). The central concern of this research is the relationship between labor surplus and criminal punishment. Essentially, the linkage between these two central concepts is made in the following terms: as labor surplus increases, the reliance on the use of criminal punishment increases, independent of the effects of crime. In empirical analysis this thesis has been operationalized primarily in terms of the relationship between unemployment rates and imprisonment rates.

Recently, new theoretical dimensions have been added to Rusche and Kirchheimer's argument that labor market conditions affect the application of criminal punishment, expanding the scope of explanation. This theoretical activity has been accompanied by active empirical analysis at the aggregate level and the individual level. The present analysis contributes to this theoretical and empirical agenda.

PUNISHMENT PATTERNS IN THE UNITED STATES AND FLORIDA IN THE 1980s

Practical considerations which justify the interest in this research project include evidence of an increasing reliance on the use of incarceration in the United States (Bureau of Justice Statistics, 1989) and in the state of Florida (Florida Department of Corrections, 1990). Also relevant is evidence of a concurrent increase in the use of non-prison supervisory punishments, such as probation (Bureau of Justice Statistics, 1989; Florida Department of Corrections, 1990). Neither of these trends is fully explained by a corresponding increase in crime rates.

For the past three years the Bureau of Justice Statistics' summary of correctional populations in the United States has been introduced with the following phrase: "A growing proportion of all persons in the United States are under some form of correctional supervision -- on probation, in jail, in prison, or on parole" (Bureau of Justice Statistics, 1987, 1988, and 1989, iii).

The rate of sentenced offenders committed to state and federal institutions has increased every year from 1980 to 1988. The 1980s began with 139 per 100,000 resident population sentenced to a state or federal institution and by 1988 this had grown to 244 per 100,000 resident population (Bureau of Justice Statistics, 1989). Florida data reveal a similar trend, with the incarceration rate increasing from 208 per 100,000 population in 1980 to 265 per 100,000 in 1988 (Bureau of Justice Statistics, 1989). National probation information offers similar results, with a 1981 rate of 740 for probation increasing to 1,200 by 1988. The trend in Florida shows an even greater increase in probation rates--from 740 in 1981 to 1,608 in 1988. In addition, the Criminal Justice Estimating Conference in Florida projects that admissions and status populations will continue to increase, with commitments to prison more than doubling from 1990-91 to 1993-94 (Florida Department of Corrections, 1990). Similar increases are projected for community supervision.

Closer examination of Florida prison admissions and probation commitment data reveals increases over and above that expected from rising crime rates.(1) This suggests that something other than crime is fueling commitments to these supervisory sanctions. While general unemployment rates declined over this time period, the marginalization of the work force has increased and that may be a contributing factor to the social control.

LABOR SURPLUS IN THE 1980s

A trend concurrent with this increasing rise in the reliance on criminal punishment in the decade of the 1980s is the declining value of work. The crises of overproduction characteristic of "late capitalism" (Mandel, 1975) were reinforced in the 1980s by technological displacement,

the increasing mobility of capital (Reich, 1983; Harrison and Bluestone, 1988) and the Reagan-era restructuring of the tax base (Phillips, 1989). Reich (1988) argues that the current preservationist strategies to combat increasing international competition and crises of overproduction are resulting in a proliferation of dead-end jobs and increasing underemployment (or subemployment) and unemployment.

Harrison and Bluestone (1988), and Phillips (1989) point out that official unemployment data reveal only part of the picture of the marginalization of the American work force.(2) The period between 1973 and 1987 was characterized by the creation of 26 million new jobs, but "they were created at lower wages, with more family members in the work force and stagnating real incomes" (Harrison & Bluestone, 1988, pp. 111-112). The overall effect has been one of a deterioration in the quality of jobs and in the declining standard of living of a growing proportion of Americans (Harrison & Bluestone, 1988, p. 113). Phillips elaborates on these job trends by noting that,

by the mid 1980s a new two-tier wage system had arisen in troubled industries...At the same time, more people could find only part-time jobs as employers spread work and costs more carefully. This 'contingent work force'"...doubled between 1980 and 1987, expanding to include roughly one quarter of the total work force, while the percentage of the working poor with short periods of unemployment rose...Emphasis on the low official unemployment rate was deceptive to the extent that it ignored these offsets (1989, p. 21).

In sum, the American labor market and the American punishment apparatus have gone through important qualitative and quantitative changes in the last decade. Coincident with these changes has been a resurgence of interest in the relationship between the value of labor and the harshness of punishment.(3) In the last 15 years Rusche and Kirchheimer's (1968) original formulation of the labor surplus and punishment relationship has seen increasingly sophisticated elaborations of the intermediate theoretical linkages.

This project was designed to explore the factors which influence commitment rates at the level of the sentencing court, by incorporating diverse elements of the sentencing context, including economic, legal and demographic dimensions. To this end, the commitment rates of 67 Florida counties are examined for several years of the 1980s, with primary focus on the link between labor surplus and criminal punishment.

Closer examination of Florida prison admissions...reveals increases over and above that expected from rising crime rates. This suggests that something other than crime is fueling commitments...

Before examining the methodology and findings of the current project, a brief consideration of the status of the theoretical tradition giving direction to this research is warranted. This review will be supplemented by a summary of the relevant prior research.

THEORETICAL TRADITION

At the most general level, the basic labor surplus and punishment thesis (hereafter refereed to as the L-P thesis) states that "surplus" people will be more readily brutalized (Rusche & Kirchheimer, 1968, p. 20). Recently, researchers have attempted to clarify important intermediate linkages between crime and punishment, these theories can be grouped into three main types, emphasizing, respectively: the value of labor, the systemic needs of the state and judicial agency/moral panic (Chiricos & DeLone, 1992).

Initially, theorists argued that the diminished value of labor could lead to harsher punishment through increased criminal motivation (Rusche & Kirchheimer, 1968; Jankovic, 1977; Greenberg, 1977; Box, 1987 and Hale, 1989), decreased profitability of prison labor (Rusche & Kirchheimer, 1968; Adamson, 1984), and/or the need to keep prison conditions lower than the standard of living of wage laborers (the principle of less eligibility) (Rusche & Kirchheimer, 1968).

A second (and more recent) area of theorization about labor surplus and punishment can be considered an attempt to more explicitly clarify the interaction of the state and the economy, emphasizing the role of the former as an agent of class control. The two predominant themes which arise in this context are the systemic needs for control of surplus populations (Quinney 1977 and Lynch, 1988) and the corresponding problems of legitimation (Wallace, 1981; Adamson, 1984; Sabol, 1989).

An additional focus of this second approach is the idea of "privileged target groups" of surplus population that call into question the legitimation of the current relations of production and are subject to control. Spitzer (1975) refers to such a surplus as "social dynamite." Melossi elaborates the changing features of such "dangerous populations,"

(i)n the 'classic' version presented by Rusche, the lowest strata of indigenous working class was seen as the 'dangerous' class, and the 'natural' candidate for imprisonment, for which it is consistent to hypothesize therefore a relationship between its size and the degree of usage of prisons. In contemporary 'advanced' societies, however, the bottom, i.e. the 'dangerous' classes, are defined by a mix of economic and racial, ethnic and national references...black, young males...are therefore, becoming a privileged target group for imprisonment,...well overrepresented in the prison population relative to their quota in the general population (1989, 317).

Most recently, a third level of theoretical interpretation has emerged

which attempts to characterize the link between punishment and labor surplus through the elements of judicial agency and ideology. Three versions of this argument have emphasized judicial anxiety (Box & Hale, 1982, 1985; Hale, 1989; Sabol, 1989), moral panic (Melossi, 1985, 1989) and community intolerance (Greenberg, 1977). The common feature of these arguments is the recognition of an element of agency, or purposive action in decision making. Typically, such an argument gives historical grounding to empirical analysis by offering a concrete social context for decision-making. For example, Box and Hale describe a moral panic in England and Wales that details how the deepening economic crisis affected how "problem populations" were treated by the state.(4)

LITERATURE REVIEW

Prior research has found general support for the L-P relationship over a variety of methodologies and levels of analysis (Chiricos & DeLone, 1992). However, several important limitations characterize the approach of previous studies, most important is the fact that few of the theoretical issues discussed above have been explored beyond the hypothesis that unemployment rates impact imprisonment rates, independent of the influence of crime rates. Generally, structural needs are not empirically measured, social dynamite is only occasionally addressed and judicial anxiety/moral panic are commonly inferred from information describing the sentencing context.(5) Further, previous studies are inadequate in their narrow focus in operationalizing labor surplus (6) and punishment (7), and their use of theoretically inappropriate levels of analysis.(8)

The few studies which do address "social dynamite," have results that are generally more supportive findings for the L-P relationship (see Chiricos & DeLone, 1992). Analysis of social dynamite has been done by stratifying the punishment variable to reflect young male and young, black male populations (Box & Hale 1982, 1985; Myers & Sabol, 1987), by making unemployment rates specific to these populations, and by the use of race and age specific control variables (Michalowski & Pearson, 1990).

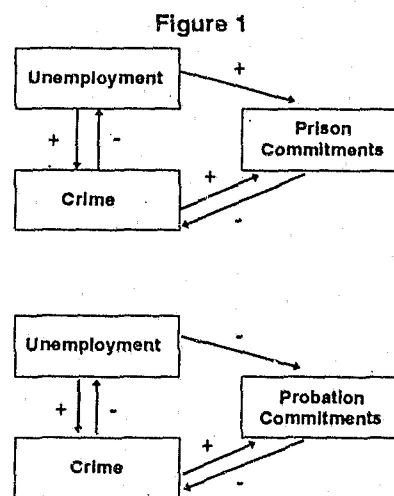
The "bottom line" of the accumulated research is that little has been done to capture the implications of the issues implied by the newest theoretical traditions: structural needs and moral panic. And what has been done is inadequate in a variety of ways noted above. The present research will address many of these issues by widening the focus of labor surplus to include subemployment, adding probation as a supplemental measure of punishment, and using county level data.

While "punishment and social structure" has become a fruitful area of empirical research in recent years, key theoretical innovations need to be more effectively incorporated into contemporary research strategies. This study addresses many of these unsettled issues.

RESEARCH AGENDA

The present research tries to improve on previous L-P research in several specific ways. First, it goes beyond the traditional formulation of unemployment and imprisonment to include two measures of marginal labor (unemployment and subemployment) and an additional two measures of punishment (prison and probation). Second, this study disaggregates the L-P relationship to the most theoretically appropriate level of analysis: the county. Third, social dynamite is operationalized both in terms of punishment rates for young, black males; race and gender specific unemployment rates and racial distributions in the population. Fourth, this analysis explores the "tradeoff hypothesis" between formal measures of social control. Finally, this study assesses several dimensions of urbanization, by including control variables for density and location of

Figure 1



SMSAs, as well as comparing slow vs. fast growth counties.

While Figure 1 indicates three endogenous variables: unemployment, crime and punishment, the results reported here will focus only on the coefficients from the punishment equations: rates of court commitment to prison and rates of court commitment to probation. All variables are measured at the county level. Structural equation models are estimated for each punishment variable taking into consideration several reciprocal relationships. As Figure 1 outlines, a rise in unemployment will lead to a rise in imprisonment, while a rise in unemployment will lead to a decrease in probation.

In addition, the punishment variables are measured to reflect an important indicator of "dangerous" populations: young, black male admissions to prison and probation. Note, that while the general unemployment rate is used for the total punishment rates, a race and gender specific rate is used for young black male punishment variables. This tests the social dynamite hypothesis described earlier.

The various control variables used in this study are specified by theory and prior research (see Table 1). Subemployment is incorporated as an additional labor market indicator. Drug arrest rate is included in the crime rate and punishment rate equations, in order

Table 1
Variables in Analysis

Variable	Interpretation	Mean	s.d.
PRSN	Prison commitment rate	139.70	142.64
PRSNYBM	Prison commitment rate for young, black males	25.38	21.27
PROB	Probation commitment rate	30.37	15.06
PROBYBM	Probation commitment rate	3.42	3.02
UPL	Official unemployment rate	7.04	2.31
BMUPL	Black male unemployment rate	10.95	28.05
SUB	Percent subemployment (estimated non-managerial service, wholesale and retail sales)	41.9	8.72
CRT	Index crime rate	5039.10	2770.70
VCRT	Violent index crime rate	254.92	206.24
DRUG	Drug arrest rate (possession and sale)	330.40	795.92
YBMALE	Percent of population under 25, black and male	3.98	3.14
DENSITY	Population density	199.10	389.27
SMSA	Dummy variable: 1 = county located in a standard metropolitan statistical area	.44	.50
POV1	Percent of individuals in poverty	13.86	5.19
POV2	Percent of households in poverty	17.55	5.94
INCOME	Per capita income	2440.30	4143.30
AFDC	Average monthly AFDC cases	1394.00	2621.50
MHADM	Number of mental hospital admissions	66.03	117.58
YEAR	Dummy variable: 1 = year of sentencing guidelines	.44	.50
POP	Inverse of population		

Note: Means and standard deviations are for the full sample of counties and full six years. Some variables are dropped from the analysis during the estimation procedure.

to control for the effects of the "drug war" on levels of crime and rates of punishment.

Variables are also included to reflect a variety of demographic conditions and additional measures of social control. First, the demographic variables will include: percent of population black, male 14-25, family poverty levels, individual poverty levels, percent of female, population density and location in a standard metropolitan statistical area (SMSA). The inverse of population is used to correct for the common component of population in the calculation of rates for the dependent variables and several of the independent variables (Firebaugh & Gibbs, 1985). In addition, McCarthy (1990) has documented substantial differences in her county level analysis of the L-P relationship based on the dimension of urbanization. Her results indicate noticeable difference in support for the L-P relationship when urbanization is considered.

Second, alternate social control indicators for this study are county AFDC caseload and county mental hospital admissions. Several studies (Brenner, 1976; Grabosky, 1980; Inverarity & Grattet, 1989) have addressed the possible existence of tradeoffs between criminal punishment and other social control indicators. While their results fail to support the existence of a relationship, this hypothesis has not been tested at the county level.

RESEARCH METHODOLOGY

This analysis evaluates labor market and punishment data from 67 Florida counties for the years 1980, 1981, 1982, 1985, 1986, and 1987. This data set was chosen to explore county level punishment rates in the context of local labor markets during a time of increasing incarceration and changing economic climate. This level of decision-making, linked with local labor market activity will fulfill a recent research agenda to disaggregate the L-P analysis to levels lower than the state (Michalowski & Pearson, 1990; Myers & Talarico, 1987; Chiricos & Bales, 1991; McCarthy, 1990).

This analysis utilizes structural equation modeling with the two stage least squares method (2SLSQ) to address the existence of endogenous variables and reciprocal relationships (Madalla, 1988). Pooled time series/cross sectional analysis was chosen to provide for a larger sample and more stable estimates. The pooled time series/cross sectional data array will be set up to reflect a matrix for each variable. The columns will reflect time points (years) and the rows will

Table 2
Structural Equation Models
for Prison Commitments in Florida Counties
for the Full Six Year Period,
1980-82 and 1985-87

	PRSN (6 yrs)	PRSN (1980-82)	PRSN (1985-87)
UPL	1.3322**	.1503*	.1670**
	(2.21)	(1.38)	(1.78)
CRT	.0047**	.0034	.0098**
	(2.84)	(.95)	(2.99)
MHADM	-.0944**		
	(-2.65)		
AFDC		-.1835	-178.9200**
		(-.34)	(-1.91)
DRUG	.0875**	.0202	.1067**
	(3.16)	(.41)	(3.52)
INCOME	.0040**		
	(3.30)		
YBMALE	3.7185**	3.5460*	6.9660**
	(3.16)	(1.57)	(2.88)
POP	197910**	121636	-185.9200**
	(2.27)	(.87)	(-3.36)
CONSTANT	12.0041	108.040*	89.8770**
	(.70)	(1.32)	(2.29)
Sample size	402	201	201
Adjusted R^2	.057	.010	.281

$^{*}p<.10$ $^{**}p<.05$

reflect counties (67 units).

The main advantage of the pooled method is that more cases are used, thus reducing the effects of multicollinearity. The disadvantages include the presence of heteroscedasticity (residuals which vary in magnitude among counties and years) and autocorrelation (residuals which covary from one county to the next or one year to the next). However, these problems can be handled with the GLS estimator with the AR1 option in the LIMDEP computer package (Greene, 1989). As Inverarity and Tedrow (1988) note the GLS estimator relaxes the assumption of independence among the residuals and is replaced by the requirement of specifying how the errors are interrelated.

The full six year period for each punishment variable is analyzed, as well as two subsamples. First, a division on the basis of time, with 1980 to 1982 reflecting a time of national recession and 1985 to 1987 representing a period of economic recovery. An additional consideration in assessing the social and legal influences on punishment in Florida during the 1980s is the implementation of sentencing guidelines for felony offenders. These guidelines became mandatory in 1984. Thus, the earlier period reflects sentencing with no such guidelines and the later period reflects mandatory sentencing guidelines. One of the purposes of these guidelines is to ensure that sentencing of offenders is not influenced by gender, race or socio-economic status. This project will indicate if the economic or racial context of the sentencing court is influencing sentencing outcomes. Second, the counties are divided on a dimension of urbanization, into slow growth and fast growth counties according to their changes in population during the previous decade. This facet of urbanization was found to impact the relationship between unemployment and crime in Florida counties during the 1970s (Chiricos & True, 1986).

FINDINGS

Table 2 gives the coefficients for the structural equation model for prison admission rates in the full six year period and the two three year periods. The results indicate that as unemployment rates increase so do prison commitment rates, for the full six year period. The earlier time period reflects moderate support for the L-P relationship and the latter period indicates a strongly significant relationship in the predicted positive direction. The impact of index crime rate on prison commitment is generally positive and significant, supporting what Melossi refers to as the "legal syllogism" (1985). In sum, these results uphold the fundamental Rusche and Kirchheimer thesis that unemployment effects punishment, independent of the effects of crime.

This study's use of subemployment to go beyond unemployment rate as an additional measure of marginal labor reveals no supportive results. Subemployment coefficients were consistently non-significant and eliminated from the analysis. In short, subemployment rate as measured here apparently has no effect on prison commitment rates. Some alternative measures of underemployment or nonemployment may offer more meaningful results in future research.

As expected, drug arrest rates generally drive imprisonment rates, with the exception of the early 1980s, when the legal and social variables of the analysis explain little of the variance in the prison commitment rate. The social control tradeoff hypothesis that as prison commitments increase, other forms of formal social control will decrease, receives limited support. The mental health admission coefficient is only

Table 3
Structural Equation Models
for Young, Black Male Prison Commitments
in Florida Counties for the Full Six Year Period,
1980-82 and 1985-87

	YBMPRSN (6 yrs)	YBMPRSN (1980-82)	YBMPRSN (1985-87)
BMUPL	.0132	-.0145	.0099
	(.32)	(-.68)	(.57)
CRT	.0014	.0018**	.0029**
	(.90)	(2.39)	(4.11)
DRUG		-.01723*	.0183**
		(-1.54)	(2.50)
INCOME		.0017**	.0183**
		(1.94)	(2.50)
SMSA	-11.7840**		
	(-1.70)		
YBMALE	3.1873**	3.3870**	6.1467**
	(3.14)	(6.62)	(10.75)
POP	-246791**	-34120.6	-87.2510**
	(-3.50)	(-1.11)	(-4.57)
CONSTANT	21.1000*	-10.8540	-87.2510**
	(1.60)	(-1.04)	(-2.05)
Sample size	402	201	201
Adjusted R^2	.044	.362	.523

*p<.10 **p<.05

significant and in the predicted direction for the full six year period, while the coefficient for the welfare variable is negative significant only in the later period.

Table 2 also reveals that the percent of young, black males, which is seen to represent a dimension of social dynamite, does directly influence the rate of prison commitments. That is, as the percent of young, black males in the populations increases, so does the imprisonment rate, controlling for crime rate. Note, that this measure of "social dynamite" does not appear to predict crime rates (results not included). These findings are consistent with the state level analyses of Michalowski and Pearson (1990).

Table 3 summarizes the L-P analysis for the social dynamite dependent variable: young, black male prison commitment rate. These findings fail to offer support for the premise that an increase in the unemployment rate will increase the incarceration of specific "dangerous populations." Neither the general unemployment rate (results not reported here) nor the race and gender specific unemployment rate, nor the subemployment rate predict this measure of punishment. Also, the legal variables (crime rate and drug arrest rate) do not predict punishment rates in the full six year period.

Generally, the as the legal variables increase they produce the expected rise in young, black male commitment rates, with one exception. As with prison commitment rates, drug arrests do not appear to influence commitment rates until the mid 1980s. Seemingly, these results are consistent with the emergence of the moral panic around drugs in the mid 1980s (the war on drugs) and the increasing attention given to drug related offenses by all facets of the criminal justice system.

The urbanization variables offer limited explanatory power for young, black male commitment rates. Density fails to achieve significance and is eliminated form the model. The

Table 4
Structural Equation Models for
Prison Commitments and Young, Black Male Prison
Commitments in Slow and Fast Growth Counties for
the Full Six Year Period

	PRSN		YBMPRSN	
	Slow	Fast	Slow	Fast
UPL	1.0050**	-.1929**		
	(2.06)	(-2.62)		
BMUPL			.0238	.1353*
			(.30)	(1.62)
CRT	.0090**	.0064**	.0069**	-.0021**
	(3.56)	(2.18)	(2.80)	(-2.44)
DRUG	.4723 **	.0584**	-.004*	.0016**
	(1.65)	(2.36)	(-1.60)	(2.16)
SMSA	-42.3790**	-7.6530**	-5.2260	-1.4980*
	(3.22)	(-2.14)	(-.51)	(-1.50)
YBMALE	.0853*	.6100	.3041	2.9010*
	(.16)	(.61)	(.74)	(1.50)
POP	63.3320	73.0360	43.9740	31.5250
	(.76)	(.64)	(.57)	(1.06)
CONSTANT	[illegible]300**	84.8890**	34.2100	12.8190**
	(8.86)	(5.16)	(1.26)	(2.01)
Sample size	234	168	234	168
Adjusted R^2	.020	.223	.022	.151

*p<.10 **p<.05

coefficient for SMSA indicates that, at least for the full time period, the more rural counties have significantly higher commitment rates for young, black males.

As noted, the two measures of urbanization incorporated as control variables reveal little impact on the total prison commitment rate or the young, black male prison commitment rate. Table 4, however, examines a third dimension of urbanization: county population growth. The major difference between the two groups of counties for the total prison commitment rate is evident for unemployment rate. The expected L-P relationship is present only in the slower growth counties. The unemployment coefficient for the fast growth counties actually indicates that as unemployment increases the reliance on prison commitments decreases. Perhaps unemployment rate is a proxy for general fiscal scarcity in fast growth counties, rather than simply surplus population. Thus, as the fiscal climate becomes tighter, judges are more selective in using incarceration resources.

Two meaningful differences emerge from the population growth analysis of young, black male prison commitment rates (see Table 4). First, the L-P relationship is moderately strong in the fast growth counties, offering the only support to this point for the social dynamite hypothesis. Second, the influence of drug arrest rate differs between the two groups of counties. In the slow growth counties, an increase in the drug arrest rate operated to decrease young, black male imprisonment rates, however, in the fast growth counties an increase in drug arrest rates led to an increase in prison commitments for young, black males. A logical explanation for this difference may be that drug activity is more likely to be associated with young, black males in the fast growth counties which are predominantly in south Florida. Note, these counties have been more affected by the drug crisis than the typical slow growth county in the Florida panhandle.

Probation is included in this analysis as a counterpoint to the analysis of imprisonment. The probation results in Table 5 offer limited support for the L-P relationship. This analysis reveals that, as expected, an increase in the rate of unemployment decreases the probation rate for the full six year model and for the early 1980s. This relationship supports the premise that punishment may regulate labor surplus by keeping offenders out of the community in times of labor surplus and the opposite in times of labor scarcity. The later period offers no significant support for the influence of unemployment rates on probation rates.

Table 5
Structural Equation Models
for Probation Commitments in Florida Counties
for the Full Six Year Period, 1980-82 and 1985-87

	PROB (six yrs)	PROB (1980-82)	PROB (1985-87)
UPL	-.000010**	-.0000004**	.000002
	(-2.94)	(1.999)	(1.17)
CRT	.00000007**	.00000003	.0000001**
	(2.01)	(.21)	(2.26)
DRUG	.0000028**	-.0000002	.000003**
	(6.81)	(-1.16)	(5.09)
INCOME	.00000005**	.00000005**	.0000002**
	(1.77)	(3.39)	(3.04)
YBMALE	-.0000003**	.00007**	-.0000004**
	(-2.73)	(9.02)	(-3.03)
POP	5.7769**	-.0682	
	(3.32)	(-.14)	
CONSTANT	.00124**	-.0003**	.0037**
	(3.54)	(-.263)	(4.43)
Sample size	402	201	201
Adjusted R^2	.267	.451	.272

* p<.10 ** p<.05

As expected, legal variables have a direct influence on probation rates in all of the equations. That is, an increase in crime rate and drug arrest rate both lead to higher rates of probation. The population of young, black males appears to have a consistent inverse relationship to probation which is not surprising given the strong positive link of young, black men to prison admissions. Thus, as the percent of young black males in the population increases the use of probation sentences will decrease. This is consistent with the prison equations which indicate that as the percent of young black males in the population increases, so will prison commitment rates.

Table 6 indicates that for the full six year period and the early 1980s, as black male unemployment rates increase, young, black male probation rates also increase. Thus, at the most general level this indicates a different constellation of influences on young, black male probation rates than on general probation rates. These results may suggest that young, black males are "dangerous populations" in a number of ways, not just a threat to the relations of production, but also to the more basic fears about the safety of person and property. Thus, fear of the typical criminal (the young, black male) may outweigh the need to control surplus populations by eliminating them from the labor force. Probation generally requires keeping a job, which also can be seen as a form of social control.

Again, the legal variables are more consistent predictors of young, black male probation rates than young, black male imprisonment rates. Note an

Table 6
Structural Equation Models for Young, Black Male Probation Commitments in Florida Counties for the Full Six Year Period, 1980-82 and 1985-87

	YBMPROB (six yrs)	YBMPROB (1980-82)	YBMPROB (1985-87)
BMUPL	.000002**	.000003**	.0000002
	(3.69)	(2.09)	(.76)
CRT	.00000005**	.0000001**	.00000003**
	(9.39)	(2.00)	(3.45)
DRUG	.0000003**	.000003**	.0000003**
	(3.39)	(3.66)	(2.43)
INCOME		-.0000001**	.00000006
		(-2.56)	(.75)
YBMALE	.00004**	.00007**	.0010**
	(11.93)	(9.02)	(12.22)
POP	1.7205**	-1.9693	-.0015**
	(6.10)	(.82)	(-5.00)
CONSTANT	-.00027**	.00297**	.0030**
	(-5.68)	(3.67)	(2.33)
Samplesize	402	201	201
Adjusted R^2	403	.452	.537

*p<.10 **p<.05

Table 7
Structural Equation Models for Probation Commitments and Young, Black Male Probation Commitments in Slow and Fast Growth Counties for the Full Six Year Period

	PROB		YBMPROB	
	Slow	Fast	Slow	Fast
UPL	-.00002**	-.000008**		
	(-2.70)	(-2.37)		
BMUPL			-.0002**	-.000002*
			(-2.73)	(-1.56)
CRT	.0000002**	.000001**	-.00005**	-.00000002*
	(4.24)	(1.80)	(-4.93)	(-1.65)
DRUG	.000001**	.2031	.00006	.0000001
	(2.66)	(.49)	(.45)	(1.21)
SMSA	-.0006**	.0007	.5150**	-.000007*
	(-3.84)	(1.09)	(8.65)	(-1.46)
YBMALE	-.000009	-.0004	.0140**	.0000012
	(-.83)	(-1.18)	(4.80)	(.33)
POP	.00028	-.0269	-1.4553**	.0001
	(.17)	(-1.09)	(-4.02)	(.25)
CONSTANT	.0025**	.0029	.0409	.00041**
	(9.40)	(1.30)	(.83)	(5.61)
Sample size	234	168	234	168
Adjusted R^2	.203	.006	.784	.021

*p <.10 **p <.05

increase in the percent of young, black males in the population is again predictive of increasing punishment rates. Perhaps this is due to the perception that the presence of young black males in the population is an indication of lawlessness in the community.

The slow vs. fast growth analyses (Table 7) show no directional differences across the unemployment variables or the main legal variables, as they did in the prison equations. The effect of SMSA on probation rates and young, black male probation rates appears to be opposite. While rural slow growth counties have higher general probation rates, rural fast growth counties have higher young, black male probation rates. Perhaps this inconsistency speaks to unique judicial ideologies which differentiate the slow growth counties (generally in north Florida), from the fast growth counties (generally in south Florida). Such qualitative details are not available in this analysis.

IMPLICATIONS

The proliferation of research in the area of punishment and social structure is fueled by two important trends: the rapid increase in commitments to prison and probation, and the declining value of work. Empirical examination of the L-P relationship is essential at the level of the sentencing court. Thus, while this analysis is limited to the counties of one state for six years in the 1980s, the results are meaningful for the refinement of future empirical analysis.

In short, qualified support for the L-P hypothesis is consistent with the review of aggregate level studies from Chiricos and DeLone (1992). The direct effect of unemployment on imprisonment, independent of its effects on crime, is evident for prison commitment rates. For probation, the unemployment rate generally showed the expected inverse relationship. More equivocal support is found for this relationship across the various subsamples and conditions.

The results for the prison time samples show a difference in support for the L-P relationship that doesn't appear related to the recession/recovery dimension. Specifically, the period with no sentencing guidelines offers guarded, but supportive results and the sentencing guidelines period offers strongly supportive results for the L-P relationship. One of the startling findings in the prison time analysis is the failure of legal variables to predict commitment rates in the early 1980s. In contrast, the legal variables do account for a large portion of the variance in prison commitment rates. This finding may be explained by the regularization of sentencing decisions intended by the implementation of formalized sentencing rules. Thus, if decisions in the first period were essentially haphazard and idiosyncratic, they may not be related to the county level attributes analyzed here. Perhaps with the regularization of

decision-making under guidelines a judicial ideology emerges which does appear responsive to county level attributes.

As noted earlier, the contradictory evidence for the L-P hypothesis across the full probation and the young black male probation variables defies simple explanation. The inverse relationship present in the total probation equation seems to indicate the operation of state policies to regulate the labor supply. However, the direct effect of unemployment on young black male probation rates indicates an increased level of supervision, in contrast to the need to regulate the labor supply. Thus, while the increase in probation for the dangerous populations is inconsistent with the regulation of the labor force, this seems to imply a preference to keep these populations under some form of supervision.

These results suggest an expansion of social control over "dangerous" populations more consistent with a netwidening argument than a labor regulation argument. Since the netwidening argument for young, black male probation is contrary to the surplus population regulation argument for full probation, this may indicate competing agendas for state punishment policies in response to competing structural needs for alleviation from the crisis tendencies of surplus population and social dynamite populations. This issue can not be resolved with the present research.

Considering the secondary research question about social dynamite, the race specific prison variable fails to show supportive results for the argument that unemployed young, black male populations will receive harsher punishment. However, the lack of support for the social dynamite hypothesis does not necessarily suggest an abandonment of these propositions, but indicates a need for refinement. This study contained limited measures of the labor force status of many young, black males. The race specific unemployment measure used does not address the issue Wilson (1987) brings up concerning these populations abandoning the labor force.

The consistent influence of percent young, black male in the population for increasing prison and probation commitments does offer support for the assertion that the presence of "dangerous populations" may increase general punishment rates (Box and Hale, 1985). These results suggest a need for qualitative analysis to determine the formation of judicial ideologies. Specifically, how does the perception of the crime prone population as young, black and male influence aggregate sentencing behavior?

For the issue of urbanization, the findings of this study encourage further assessment of the impact of these aspects of the social context. Important differences are noted above with SMSA. These results are often contrary to the increased imprisonment risk for more urban areas found by Myers and Talarico (1986). Continued attention to the pace of population growth is also indicated.

Also, continued exploration of county level data is certainly warranted by the results of this analysis. In particular the judicial agency theories relying on the concepts of judicial ideology and moral panic are issues that must be grounded in the social context of the decision-making court. This context is both ideological and bureaucratic, both micro and macro-level.

One limitation that may hinder this agenda is the lack of county level measures for key variables. Several of the proven predictors of punishment rate have no county level equivalent, for example prison capacity, release rate, and budget (or fiscal capacity). Also many of the county level measures of social context are available for census years only. In this analysis, many of these variables failed to be significant and were dropped from the equation (POV1, POV2, FEMHH). If such measures were available on a yearly basis, their inclusion might have substantially altered the findings. In addition, qualitative analysis will be required to explore the character of judicial ideologies between different social contexts.

In sum, the need to continue with-in state research on the L-P relationship is warranted. This analysis reveals differences across several features of the legal and social context. The present results suggest that population patterns and legal requirements peculiar to individual states and counties are important elements to take into consideration in social control research.

ENDNOTES

1. Prison admissions over the period of this study displayed a 160% increase, while the index crime rate totals increased by 42% (Florida Department of Corrections, Annual Report 1986-87).

2. The other side of the surplus population issue is the people who have dropped out of the search for employment as defined by official statistics and are therefore not represented in official measures of unemployment. These measures appear to underestimate the amount of surplus labor by one-half or more (Levitan, et al., 1979; Sorrentino, 1979).

3. The labor surplus and punishment thesis will be referred to as the L-P relationship for the remainder of the paper.

4. These populations are described as "that group of people 'unrequired' by the productive process and who become a 'nuisance' eligible for state intervention" (Box & Hale, 1985, p.21).

5. The linkages to moral panic and implications for judicial agency are discussed in the works of Box and Hale (1982, 1985a) and others (Hale, 1989a, 1989b; Sabol, 1989). These arguments have been inferred based on the social contexts of judicial decision making rather than empirically explored in their statistical analyses. While these authors do offer some compelling linkages between punishment ideology and judicial behavior, most of the focus has been on England and Wales (Box and Hale, 1983, 1985a) and Italy (Melossi, 1981), rather than the United States.

6. Of the 32 studies identified by Chiricos and DeLone (1992) as testing the L-P relationship, only 4 have used anything other than unemployment rates. Wallace (1980) used a labor force participation rate. Berk, et al. (1981, 1983) used a depression measure. Lynch (1988) incorporated a measure of surplus value.
Laffargue and Godefroy (1989) utilized a labor market tension variable reflecting the supply of and demand for jobs.

7. This criticism centers around the issue that punishment needs to operationalized in broader terms than prison. Jankovic (1976) and McCarthy (1990) added the element of jail admission rates to the traditional choice of prison admission rates. Laffargue and Godefroy (1989) included detention rates in their analysis of French punishment patterns.

8. The most recent trend in the L-P relationship has been the need for disaggregation below the national level (Marenin, et al., 1983) and even below the level of state (McCarthy, 1990; Michalowski and Pearson, 1990; Chiricos and DeLone, 1992).

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Criminal Justice-Related Dissertations Completed by Doctoral Candidates in the State University System, 1992

Abrams, Julie Marie, Counseling Psychology, University of Florida, Spring 1992: Effects of a date rape intervention on rape proclivity and acceptance of rape-supportive attitudes among male college students: A social learning approach. (C. Tucker, major professor)

Coble, Richard J., Architecture, University of Florida, Spring 1992: An empirical investigation of factors related to the drug-free workplace for general contractors. (W. Chang, R. Crosland, major professors)

[*]Delone, Miriam Anne, Criminology, Florida State University, Summer 1992: Marginal labor and county level punishment patterns in Florida during the 1980s. (T. Chiricos, major professor)

Emery, Eileen Marie, Public Health, University of South Florida, Fall 1992: Sixth grade student perceptions of essential components of a substance use prevention program. (R.J. McDermott, major professor)

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[*] A paper based on the dissertation is included in this volume.

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