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BLACK WOMEN, WHITE JUSTICE

by Kathleen Daly

"Finding" discrimination in the criminal justice system has proved elusive. Social science studies do not yield consistent evidence that members of racial and ethnic minority groups accused of crime are disadvantaged in comparison to majority group members, nor that accused women are disadvantaged in comparison to men.ⁱ But the problem of "finding" discrimination entails more than this: the concept is itself elusive (Hagan 1977).ⁱⁱ It varies in definition, it is not clear what acts are to be included or excluded within each definition, and actions are interpreted differently depending on social context. Hagan (1977: 173) suggests that because "no clear boundar[ies] [can] be drawn around ... events regarded as discriminatory," we may be unable to "determine an empirical content of acts that can be reliably designated as discriminatory" (p. 173). The problem of "finding" discrimination is yet more complicated. Liberal-minded researchers and legal analysts assume that a color-blind and gender-neutral position is possible in law and legal decision-making. Others challenge this assumption, arguing

that law's point of view is middle-class, white-, and male-centered.

In this essay, I work with and cross three boundaries in addressing the problem of "finding" discrimination in the criminal justice system. First, is the boundary between older (1960-1970s) and more recent (1980-1990s) understandings of the term. Second, are the boundaries of raceⁱⁱⁱ and gender divisions. Third, are the boundaries of victims, offenders, and members of "the community." I shall present a study of black women's relations--as crime victims and defendants, as family members of victims and defendants, and as other members of the community--to white justice.^{iv}

Working with these boundaries is not just an academic exercise for me.^v They depict a journey, from the start to the end of a research project in the New Haven felony court. At a critical juncture in that research, I began reading and reflecting on the work of black and multi-ethnic feminist scholars and critical race scholars, and as a consequence, began to interrogate my own racism and ethnocentrism. To give a flavor of that journey, I begin with memories of encounters in the courtroom and with criminology and quantification.

I. THE COURTROOM, CRIMINOLOGY, AND QUANTIFICATION

Scene 1: Sentence Hearing in 1990

It is Friday morning, just before 10 a.m., the day and time of the week when sentence hearings occur in the New Haven felony court. The courtroom is new, built about 20 years ago, and it reminds me of designs used in the Catholic Church: plain and

spare, white walls and blond pews, and a raised alter (the judicial bench) that holds efficiency and mystery. It also reminds me of how I felt as a child in church at early morning mass.

That was many years ago. The memory fades as I realize that this time and place is different. It is a Friday (not Sunday) morning, there are fewer rows of benches than church pews, and there are black, white, and brown folks sitting in them. There were no black people in the churches I went to as a child.

In the row just behind me is a black woman. I am sitting in the second row, the one just behind where the prosecutors and defense attorneys sit. Only lawyers are allowed in the front row. Almost all are white men in suits with brief cases; they act as if they are busy, and they turn their heads around a lot to spot their clients sitting behind them, in the back.

A black man, who looks to be in his early twenties is brought in from side door; that means he has been incarcerated in the pretrial period. He pleaded guilty several months ago to a robbery and is going to be sentenced today. He has wide shoulders and a strong, good-looking face. He turns around and looks in my direction, but his eyes rest on his mother; he says "hi, Mom." She gestures back. To my right, in the row in front of me, sits a prosecutor, who is waiting for one of his cases to be called. He makes a sarcastic comment loud enough that the defendant, Willie, can hear. "My, my, isn't Willie dressed well today." Willie's mother is annoyed and says her son is always well-dressed, and today is no different. The prosecutor disagrees. Their voices get louder. I am sitting

between them and begin wondering if I should move aside just in case it gets physical. I am amazed at the prosecutor's aggression in putting down a defendant to a member of the family, and a mother no less! I remain quiet and don't move; I must witness this exchange. After another trading of put-downs, Willie's mother ends by saying, "I always made sure that Willie dressed well. He always looked good when he went out."

The prosecutor laughs and ends the conversation by turning around to face the front of the courtroom.

Later, after the sentence hearings are over, I talk to the prosecutor. I ask him whether he was concerned that Willie's mother would get angry or hurt with his words. I learn that the exchange was unremarkable to him. He shrugged it off as inconsequential.

That day I notice a portrait of Judge Frank Kinney hanging on the right wall. It is a good likeness. Kinney, a white man, was the presiding judge of the court when he died suddenly of a heart attack in the fall of 1986. He was only 54 years old. Although trim, he smoked a lot of cigarettes. A New Haven local, he graduated from Yale College and Yale Law School. He liked research and was reflective of what he did as a judge. People said he worked too hard.

Scene 2: Sentence Hearing in 1985

I am conducting preliminary research in the court, and Judge Kinney has permitted me to sit near him in the front, near where the clerk sits. This site offers an excellent view of the courtroom and its participants. Today there is a celebrated case. Gwen is going to be sentenced for fatally

stabbing a man who had a history of beating her. She is black, as was her victim. The courtroom is packed. The prosecutor and defense attorney are white women. The prosecutor is known for her competent and inspired work in prosecuting rape cases; the defense attorney identifies as a feminist; she even wrote an article on patriarchy and law.

The prosecutor and defense attorney do not have an agreed sentencing recommendation. Although Gwen has pleaded guilty to first-degree manslaughter, the defense attorney argues that she acted in self-defense and should receive a suspended sentence.

The prosecutor agrees that there was a history of domestic violence, but that the victim was stabbed in his back and on the back of his hands, perhaps as he was fleeing down the stairs.

Judge Kinney seems to understand the "battered woman's syndrome," but he does not think it applies to Gwen. The defense attorney introduces character witnesses to speak on Gwen's behalf. She has worked as a nurse for many years, and several co-workers describe her longstanding service at the hospital. Some members of the victim's family also come forward; a sister says that although Gwen killed her brother, it was not a great loss to the family. There are records to show that he had assaulted her and Gwen before.

Gwen speaks to the judge. She says she is sorry for what happened, but it is time to get on with her life. She wants to remain in her nursing job and to care for her teenage daughter.

I look out to the panorama of people, and I wonder what Judge Kinney will do. The sea of expectant faces, largely brown and

black, raises its eyes toward the bench, Gwen's and her daughter's among them. I am glad I am not a judge. I am glad they are not looking at me, but I am sitting close enough to the judge to feel the fear in this moment of judicial power. These cases are not easy.

Scene 3: Black Women as "Alien Beings"

It is spring 1994. I now live and work in Ann Arbor, Michigan, and I am working with a student on a paper about black feminism and criminology. There is little research on gender, race, and crime, but some say that black women are "uniquely situated as the victim[s] of class, race, and patriarchal power relations."

Others suggest that the "confounding effects" of gender, race, and class "are difficult to tease out ... "^{vi} The student (a black woman) and I are discussing this literature. We wonder, what does it mean to be "uniquely situated"? What exactly is entailed in "teasing out confounding effects"? We laugh as we imagine what "the black woman" of criminology looks like. To the criminological mind, femaleness is associated with decreased criminality and blackness is associated with increased criminality. The image of black women is of an alien being--half woman, half black--one side racing toward conformity, the other toward deviance. Criminology has constructed this alien being.

Scene 4: An Email Message

It is January 1995, and I receive an email message from a colleague, asking if I am interested to participate in a session on race, gender, and crime at a criminology conference.

Other participants will analyze "gender and race effects on

arrest decisions" and "structural covariates of arrest for four population sub-groups (sex by race)." I wonder, how does this language relate to the realities of race and gender in life, on the street, or in the courtroom? What is being contained? What is being denied? What exactly is being theorized?

Scene 5: Race and "Suppressor Variables"

It is May 1994, and I am presenting my research in a job talk.

I am trying to show how race and gender work in the court and the different images one gets by using statistics versus cases.

A question comes from a scholar wedded to quantification, who asks me to identify the "suppressor variables" in multivariate analyses of race and sentencing. I begin by saying that the main problem is race relations in criminal law itself. It goes downhill from there as I give examples of particular cases in which black defendants and their families confront white justice. I take too long to tell the stories right. My questioner looks bored and unhappy. I know I have failed. I learn later that I am described as lacking rigor.

II. LEARNING FROM THE ENCOUNTERS

Scene 1 reveals that what is enacted and experienced as white justice is not just the pronouncements of judges, prosecutors, or defense attorneys in court or of police decisions to arrest and charge. It includes the myriad interactions that surround or are nearby the official actions (or inactions). Willie's mother challenged the prosecutor's characterization of her son's appearance; she defended herself as a black woman who took pride in making sure her son was

dressed right. But the prosecutor laughed and ended the conversation by turning away. Scene 1 also reveals that black women play an important, but often invisible role^{vii} in the criminal justice as family members of defendants and victims: as mothers, wives, girlfriends, sisters, aunts, and grandmothers.

In Scene 2, the complexities in "finding" discrimination are evident. Judge Kinney could have responded to the victim's family members, who said that the victim was not "the most upstanding member of the community" and that his death was not a loss to them, by imposing a suspended sentence. (He might also have been persuaded that Gwen's stabbing was in self-defense and legally excusable in light of her previous abuse by the victim.) But to have imposed a suspended sentence could be interpreted to mean that the lives of economically marginalized victims, especially black victims, are not as valuable as the lives of others. Alternatively, Judge Kinney could say (as he did) that he could not discount this victim's life because he was a drug addict or a marginal member of the community. In imposing a sentence of 2-1/2 years to serve, Judge Kinney may be criticized for being too punitive toward Gwen, for not paying sufficient attention to her history of victimization, and for not taking into account the desires of the victim's family.

One could argue, as critical race theorists have, that the central problem is how racial power is effaced by the terms bias and discrimination. Peller (1993) suggests that together with a focus on procedure, the legal emphasis on the

development of color-blind principles in 1960s Supreme Court cases, reinforced the idea of discrimination as irrational reference to racial considerations. Rather than continuing with the "1960s-style" conception of the "social face of racism as discrimination," Peller argues for a conception of the "social face of racial power as subordination" (p. 2249).

One expression of racial power in substantive criminal law is that facially neutral decision-making criteria "embody a culturally particular way of ascribing responsibility and punishment" (Peller 1993: 2253); they embed white norms and "unacknowledged whiteness" (Flagg 1993: 957).

There is more than racial embodiment in criminal law, justice system practices, and criminology. As depicted in Scenes 1, 2, and 3, there is sexual embodiment, as well. Race relations and identities are fractured by sex/gender; and sex/gender, fractured by race. Other salient social relations -- of class, age, sexuality, nation, ethnicity, religion -- matter too, of course. But even if we take a dichotomous black/white reading of race and a male/female reading of sex/gender, we find that anti-discrimination law and criminology cannot visualize the resulting four race/gender groups in intersectional terms.

Intersectional analyses take many forms (see below), but the reach of such analyses is far greater than comparing race/gender subgroups, as some analysts are now doing (Scene 4). Let me be clear on this point. Comparisons of socio-demographic groups are useful in revealing general patterns of lawbreaking and justice system responses. What scholars fail

to notice is that criminological theories of crime or justice system responses are not themselves intersectional. That is, virtually all these theories, like law, work on separate gender and race tracks. When analysts try to interpret gender/racial differences among socio-demographic groups, they are caught in a separate-track bind. They will say that black women are more "masculine" (less feminine?) than white women, but they are "less black" (more white?) than black men in the frequency and forms of their lawbreaking. Because the terms of reference are to separate gender and race constructs, the coherence and meaning of crime for black women (or white women or black men, etc.) is not conceptualized as a wholeness, albeit a variable wholeness.

Recalling Scene 5 makes me angry and ashamed. I had blown a job talk and was unable to communicate what I knew. It made no sense to use the concept of suppressor variables to describe what quantitative analysts overlook in research on justice system practices. What made more sense was to consider the back stage courtroom interactions like that of Willie's mother and the prosecutor, or cases like Gwen's that were double bind decisions, both for the judge and members of the black community. How does one contain the history of criminal law and its enforcement in the US with suppressor variables? How can one talk about race without also seeing its gendered face?

III. WORKING WITH AND CROSSING BOUNDARIES

To address the problem of "finding" discrimination in the

criminal justice system, I work with three boundaries. The first is a temporal and theoretical boundary between older and more recent understandings of the term. The second is a race-gender boundary that feminist scholars are challenging with work on intersectionality, class-race-gender, and images of black women. The third is the boundary between victim-offender and offender-community, which feminist and critical race scholars are challenging.

Older and More Recent Understandings of Discrimination

The research literature on the exercise of discretionary power by criminal justice officials is vast. There are two related, though distinctive, foci of inquiry: (1) how justice "gets done" and (2) evaluating how justice "gets done." Although the latter body of work centers more explicitly on "finding" discrimination, it cannot be read without reference to the former. My review will focus primarily on sites related to criminal justice; however, studies of justice in other locales (e.g., welfare and small claims courts) are relevant.

How justice "gets done." For older studies (1965 to the mid 1980s) scholars analyzed policework and police-citizen interactions (e.g., Manning 1977; Reiss 1971), the logic of plea bargaining and the sanctioning process (e.g., Eisenstein and Jacob 1977; Feeley 1979; Mather 1979; Maynard 1982; Stanko 1982; Sudnow 1965), and judicial logics in sentencing (e.g., Hogarth 1971; Mann, Wheeler, and Sarat 1980). Studies of courts showed that while outsiders might view processes as chaotic and disorganized, they were orderly and predictable.

Officials' decisions were based on courthouse norms concerning how much a case was "worth," the "going rates" for punishment, and whether cases were "solid" or "weak."

In the more recent studies (mid 1980s to the present), scholars gave more attention to justice system "outsiders" (such as complainants, victims, defendants, other community people) and their relationships to "insiders." Interest in outsiders was not absent in the early phase, but it became a more popular focus of inquiry in the 1980s. In tandem with this focus on outsiders came attention to non criminal justice sites (White 1990).

In the mid 1980s, researchers' interests in outsiders began to take an even more personalized form: they became more self-conscious and more open about their social locations, and they began to use their experiences as a source for "outsider knowledge." Feminist and critical race scholars made links between domination and injustice in their lives with that of the people and situations they researched. Power relations were not something out there to be studied and theorized, they existed in law and socio-legal scholarship itself. The obdurateness of law and social science to hear or register the claims of minority and majority group women, members of racial and ethnic minority groups, and other subordinated groups was all too real (Bell 1987; Delgado 1989; MacKinnon 1987; Minow 1990; Smart 1989; Williams 1991). How could these voices, experiences, and knowledges be brought more fully into socio-legal scholarly frame? Story-telling approaches, including autobiographies, fables, and admixtures,

were introduced as a challenge to normal social science and legal commentary (see, e.g., Abrams 1991; Michigan Law Review 1989; Farber and Sherry 1993).

Evaluating how justice "gets done". Comparatively less research has been carried out on evaluating criminal justice practices (or those in other sites such as welfare offices and small claims courts). It can be misleading to draw too sharp a distinction between describing and evaluating justice practices because when describing, researchers make moral judgments about what they see. Thus, while evaluation may have been implicit in studies that described justice practices, it was not the focus of inquiry.

In evaluating decision-making, one asks whether procedures were followed and whether discretionary power was exercised in acceptable ways. In the criminal justice system, that question produces many others, for example, are police, court, or prison officials overly punitive toward some people but not others? Are some officials consistently more punitive than others? Do some officials bend the rules more than others, or in particular cases? This work is broadly interested in the problem of "finding" discrimination in the state's response to lawbreakers.

Beginning in the 1930s, a statistical genre emerged that focused on race- and gender-based disparities in the handling of criminal court defendants. This genre became sophisticated by the early 1980s with the tools of multiple regression analysis. Reviews of this literature revealed patterns contrary to conventional wisdom: little evidence of racial

disparities favoring whites in non-capital sentencing and a good deal more evidence of gender disparities favoring women (Daly and Bordt 1995; Hagan and Bumiller 1983; Kleck 1981; Myers 1994; Nagel and Hagan 1983; Sheley 1993; Zatz 1987).

Disillusionment with not "finding" discrimination (especially that linked to race) set in by the early and mid 1980s. With the exception of death penalty research, the subject of racial discrimination toward those accused and convicted of crime seemed to have grown out of fashion. Gender emerged in the 1980s when feminist scholars addressed particular areas of criminal law (the law of rape and homicide, especially) and the treatment of women as victims of rape and domestic violence. However, feminist scholars were hard pressed to explain why accused women were apparently advantaged in the criminal courts (but see Daly 1994a; Daly and Bordt 1995; Steffensmeier, Kramer, and Streifel 1993).

Re-framing discrimination. Research on evaluating justice has been stuck on the question of differential treatment of defendants (or victims) by race or gender (and less often, by race and gender together). One reason for being stuck is that 1960s legal reforms assumed that discrimination arose when "noticing" race or gender. One way to "not notice" race or gender is to apply a "neutral norm of equal treatment" (Peller 1993: 2249) with color-blind and gender-neutral terms and practices. This understanding of discrimination (and how it could be overcome), although seemingly progressive to reformers in the 1960s, became subject to intensive critique by feminist and critical race

scholars in the mid-1980s. By the end of the 1980s, three ways of conceptualizing race/gender in criminal law and justice system practices emerged: (1) as racist and sexist, (2) as white and male, and (3) as racialized and gendered (Daly 1994b).^{viii}

The first, reflected in 1960s legal reforms, focuses on ways of exposing different treatment and on eradicating it. Race or gender differences -- and noticing such differences -- are seen to be synonymous with discrimination. The second assumes that the point of view of criminal law and justice system practices is white, middle-class, and male. Neutral and objective standards and policies are shown to be systematically skewed against the economically marginalized, minority group members, and women. The third assumes that race and gender relations structure criminal law and justice system practices so profoundly that legal subjects are saturated with racializing and gendered qualities. Majority group members do not always benefit nor are minority group members always subordinated.

Virtually all those endeavoring to "find" discrimination have worked within the racist-sexist framework. Within its terms, for example, all the litigation-driven research on the death penalty was conducted. Feminist and critical race scholars are more often likely to use a white-male or racialized-gendered framework. In so doing, they conceptualize the problem discrimination differently. Discrimination (or oppression) cannot be eradicated by an unseeing legal mind, guided by norms of neutrality. Social

relations, including those within law, are not neutral nor without a point of view; and it is not possible to not notice race and sex/gender.

There are differences between these two frameworks: white-male emphasizes relations of power, whereas racialized-gendered emphasizes the active constructions and unravelings of race and gender categories and identities. Bell's (1987) and MacKinnon's (1987) respective analyses of race and gender in law use a white-male framework. Both argue that law has a point of view that reproduces and amplifies white and male privilege and power. Scholars using a racialized-gendered framework have a more contingent and contested picture of the power of law and the expression of gender and race in the criminal process. For example, Lubiano's (1992: 348-49) analysis of the Clarence Thomas confirmation hearings challenges the stability of black and white racial categories. These categories slip and slide, changing color:

... [Anita] Hill's race bec[ame] both hypervisible and invisible at the same time. That it "disappeared" and "reappeared" is important, but more important is how it disappeared and reappeared at the same time.

With no check on Thomas's evocation of his blackness ... Hill got whiter.

Race and Gender

Literary and legal scholars have analyzed black women as a marked (if invisible) category at the intersection of racial and gender classification (e.g., Carby 1987; Crenshaw 1989, 1991). In the social sciences, the construct of class-race-

gender has emerged in analyzing interlocking systems of oppression (Collins 1990, 1993; Daly 1993). Intersectional and class-race-gender analyses take varied forms. For example, Crenshaw (1991) distinguishes structural, political, and representational intersectionalities for women of color; Collins (1993) contrasts institutional, symbolic, and individual dimensions of class-race-gender oppression; and Coombs (1996) considers intersectionality one of four aspects of identity construction. There is increasing interest to examine intersections within intersections (e.g., black and white within black; see Scales-Trent 1995) as way to problematize racial-ethnic categories and address multiracial identities (see, e.g., Grillo 1995).

Intersectionality and class-race-gender were ideas coined by black women to clear a discursive space for naming experience and oppression, but they have a wider, more general application. Everyone -- of varied classes, races, genders, ages, sexualities, religions, nations, etc. -- is at multiple intersections. Because of the ways in which differences are marked or unmarked, however, it is those in the marked (or subordinate) side of the categories whose difference is noted or problematized. Intersectional and class-race-gender analyses differ from previous theorizations of inequality in conceiving domination, oppression, and identities in less fixed, more contingent terms. That means taking a "both/and" approach to oppression (one can be both oppressor and oppressed), challenging the possibility of ranking oppressions, and seeing identities as socially and

historically constructed and contingent on context (Collins 1993).

The "intersectionality critique" (Grillo 1995: 17) was first developed by Crenshaw in her analysis of anti-discrimination law as being on separate race and gender tracks. The same critique can be applied to criminology, which has produced black women as "alien beings," part black and part female, not as a wholeness. (The same might be said for many other groups we might wish to define and name.) Wholeness does not mean seeing a group in essentialist ways: feminist and critical race scholars have emphasized instability and divisions within terms such as the black community or black experience (Austin 1992; Hall 1992; Higginbotham 1992; hooks 1990; West 1992).

The intersectionality critique highlights the inability of legal and criminological discourse to apprehend black women in feminist and anti-racist terms. A related argument highlights the "controlling images" of black women in the criminal justice system.^{ix} Young (1986) identifies four images: within the category of Matriarch is Amazon and Sinister Sapphire, and from contradictory constructions of women's sexuality is Mammy and Seductress. Paraphrasing Young (1986: 323): as Amazon, a woman is domineering, assertive, and masculine; as Sinister Sapphire, she is treacherous toward and contemptuous of black men; as Mammy, she is a long-suffering paragon of patience; and as Seductress, she is loose and immoral. Young suggests that these images influence the ways in which black women are treated as victims and offenders

in the criminal justice system, and they "may account for the discriminatory treatment" toward black women.

Collins (1990: 70-82) identifies similar images of Matriarch, Mammy, and Jezebel, but she adds another, Welfare Mother.^x Collins suggests that while "the Mammy typifies the black mother figure in white homes, the Matriarch symbolizes the mother figure in black homes" (p. 73). The controlling image of black women as Welfare Mother is a blend of the Matriarch and Mammy images: "like the Matriarch, the Welfare Mother is labelled a bad mother. But unlike the Matriarch, she is not ... aggressive enough." The Welfare Mother "represents another failed Mammy ... (p. 77). Collins suggests that the image of Jezebel (a blend of Young's Sapphire and Seductress categories) is "the foundation underlying elite white male images of Mammy, Matriarch, and Welfare [M]other" because of the way in which sexuality is threaded through these images. Collins outlines the varied reactions black women may have toward negative controlling images. They include internalizing them and being destroyed; escaping them through drugs, alcohol, excessive religion, and mental illness; denying them by saying "I am not like the rest of black women;" and rejecting them. The last is a process that may entail an "emerging sense of power," pursuing one's own "self-definition" free of external definitions, and securing one's freedom. Although escape and denial may be seen as types of rejection, Collins defines rejection as the ability of black women to reject objectification as Other.

Victims, Offenders, and "The Community"

The categories of victim and offender, though often separated in theories of crime and victimology, overlap in the lives of those accused of crime. This is dramatically revealed when women, who have been victimized by intimates, fight back; in the process they become criminal offenders. It is ubiquitous for common crime. The profile of those most likely to be victimized by and arrested for interpersonal violence is the same: young, male, and black (Gibbs and Merighi 1994; Maguire, Pastore, and Flanagan 1993: 264). Feminist scholars have been especially interested in how women's pathways to the street reflect a developmental process of victimization and criminalization (Daly 1992; Gilfus 1992).

This interest has emerged from interviews of women in jail and prisons, for whom a common experience growing up and in their adult lives is physical and sexual abuse.

In addition to victims and offenders, there are many others affected by crime. Austin (1992) discusses the varied relationships between black lawbreakers and members of "the black community."^{x1} She finds diverse views within the community on black lawbreakers: they may be "... pitied, praised, protected ... [and] criticized, ostracized, scorned ..." depending on the impact of the criminal behavior "on the overall progress of the race" (p. 1772). She argues for a "politics of identification ... that work[s] the line between the legal and the illegal, ... the socially (within 'the community') acceptable and the socially despised ..." (p. 1816-17). This politics of identification is likely to take varied forms for black women in their relationships with

victims and defendants, or as victims and defendants themselves.

"Finding" Discrimination Differently

Rather than trying to "find" discrimination in the older sense of that term, I will examine the relational dynamics of black women to white justice. How do black women -- as crime victims and defendants, and as family members and friends of victims and defendants -- negotiate with or challenge white justice? I use the concept white justice to refer to criminal law and justice system practices as having a "white" and "male" point of view, but white justice need not be anchored to bodies that are classified as white or male. Rather, it refers to institutionalized and historically particular forms of "ascribing responsibility" (Peller 1993: 2252), which can be independent from the intentions of individual actors (Carrington 1990).^{xii} I do not assume that white justice is monolithic, coherent, or generally in the service of benefiting white men. Black women's relationship to white justice is not symmetrical, but one in which white justice is already invested with power to define crime and punishment. Assuming asymmetry, I am interested to examine each side of the relationship: how black women orient themselves to and negotiate with white justice, and how white justice categorizes and defines black women.^{xiii} I do not expect to find an unrelenting imposition of white justice, i.e., one routinely operating to discriminate against black women or to contain black women as Other. Such a view does not allow for moments of challenge by black women, nor of positive images of

black womanhood.

IV. RESEARCH MATERIALS AND SPEECH CONTEXTS

The materials analyzed here were originally gathered with other purposes in mind: to determine whether men and women accused and convicted of statutorily "like crimes" were sentenced differently (see Daly 1994a).^{xiv} In this paper, I am reanalyzing these research materials and asking different questions. I re-read two documents, the pre-sentence investigation reports (PSI)^{xv} and transcripts of sentence hearings,^{xvi} to identify all the black women associated with the cases^{xvii} (see Table 1a). For the male defendant cases, there were 40 black women, 70 percent of whom were the defendants' mothers and girlfriends or spouses. For the female defendants, there were 54 black women, 77 percent of whom were defendants and or their mothers.^{xviii} Based on these cases and the available documents, I can estimate the likely role of black women in relating to white justice (Table 1b).^{xix} Their presence (i.e., described in court documents, speaking to probation officers or judges) was most frequent as mothers of offenders (43 percent); next was girlfriends and spouses of offenders (22 percent), followed by victims or family members of victims (17 percent), defendants or accomplices (8 percent), and others such as siblings, daughters and community people (10 percent). There was no black woman associated with these cases as a prosecutor, defense attorney, or judge. Of all the probation officers writing the PSI's, one was a black woman. In this court, white justice was figuratively and

literally white.

The PSI's and transcripts of sentence hearings do not permit an optimal depiction of black women's relationships to white justice. The documents that survive, especially the transcripts of sentencings, are incomplete. With some exceptions, the creation and context of the documents do not put black women in the center of the action. In the distinctive "speech contexts" of the PSI's and sentence hearings, white justice typically frames, edits, and packages black women's speech. Moreover, to gauge whether controlling images of black womanhood are evident in the criminal process and how these images are resisted, we may prefer to see and hear the interactions or to witness backstage behavior (Scott 1991). All my materials are written records, assembled by others or in contexts where I was not present.

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I coded the materials along these dimensions: the way that a black woman was present in the PSI or the sentencing hearing transcript, her relationship to the case, how she was characterized, how she related to white justice, and the controlling images used. Although these categories may seem tidy, it was not a simple matter to code and classify what was said in the documents.^{xx} I turn first to those black women who were connected to the female defendants' cases.^{xxi}

Black Women in Female Defendants' Cases

The 54 women were composed of 24 offenders and 18 mothers or caretakers of the offenders, 8 victims or members of the

victim's family, and a sibling, daughter, friend, and social worker. The women were present in the PSI's and transcripts in two ways: they were described by the probation officer or another person, but not in their own words; and their words were paraphrased or quoted in the PSI, or they spoke in court.

I analyzed whether the women were characterized positively, negatively, in neither way, or in both ways (Table 2a). For 30 percent of cases, the women were not characterized. Examining the 38 women who were, 21 percent were depicted in positive terms; 45 percent, in negative terms; and 34 percent, both positively and negatively. The characterizations of the offenders' mothers or caretakers were both positive and negative, but they were more likely to be negative for the offenders (Table 2b). For example, Dee Dee's mother was described as "neglectful to the point of disbelief;" she and her siblings "were neglected, malnourished, physically abused, and never registered with the school system." Several aunts, who cared for Dee Dee and her siblings, were described in far more positive terms, although they were viewed as not fully capable of exercising control over the children. In the case of Alice, her mother was deemed by the state to have neglected her children, but another caretaker (the mother of a friend of Alice's) was described as "a good influence on Alice ... she supplied the mother figure Alice never had."

While none of the offenders was characterized in fully positive terms, one third had both positive and negative elements. The probation officer's description of Lonnie shows

this mixed portrait of faint praise and sympathy: "The defendant presents as a naive, intellectually limited person who currently is experiencing emotional upheaval. Obviously a caring person, as evidenced by her good reputation as a day care provider as well as the close relationship she enjoys with her daughter, Lonnie has a history of depression." More often, offenders were characterized negatively, e.g., "Marcie is a 26 year old woman whose upbringing leaves a lot to be desired; she now seems to be following her mother's footsteps, which is not good" and "Over the past 12 years, Pat has had the benefit of probation and outpatient drug treatment ... and has been unsuccessful in all attempts for her rehabilitation."

How did the women relate to white justice? Not surprisingly, their orientations were keyed to their reasons for coming to court (Table 2b and Appendix A). I characterized them as cooperative (24 percent), neutral (24 percent), antagonistic (26 percent), or too little information to say (26 percent) (Table 3c). Crime victims allied with white justice in calling for the punishment of the defendant, for example: "My feelings are that they [the defendant and her accomplice] should have at least five years in jail. My main fear is that they may come out and do it again" (one of Pat's victims) and "Ten years isn't anything for what she did. She put a knife through his heart. She should get the electric chair" (a family member of Lonnie's victim). Some defendants were cooperative in supplying information about accomplices to prosecutors. In several cases, white justice

agreed with the offender's version of events as provoked or warranted; these were women fighting back partners (or ex-partners), who had abused them. The women with a neutral relationship to white justice took two stances: as defendants, they appealed to white justice for leniency; and as mothers, they distanced themselves from responsibility for their daughters' (or other children's) lawbreaking.

The mothers or caretakers of defendants agreed with white justice that their daughters had problems. These mothers did not hold themselves responsible for their daughters' lawbreaking, however. Some criticized their daughters, and others explained their lawbreaking as part of a "downhill" biographical trajectory: "She didn't want to work her way up" (Maggie's mother); "After the miscarriage, Nola floundered, moving from place to place" (probation officer describing what Nola's mother said); and "Bell's life has steadily gone downhill since the stabbing incident [when she was 13]" (probation officer describing what Bell's mother said).

Although mothers or caretakers may have distanced themselves from their daughters' lawbreaking, the PSI writers sometimes hinted that they were partly to blame. In an unusual PSI, a mother blamed herself for her daughter's involvement in drugs:

"The defendant's mother stated that she feels that the defendant has patterned her life after hers. She stated, 'She saw the glamour, not the ugliness of it'" (Pamela's mother).

It was mainly the defendants who expressed antagonism toward white justice: they neutralized the crime as provoked by the victim's actions, as something they had not planned to

do, or as a way to get fast money. For example, Lonnie "denied remembering any argument or fight with [the victim] and repeated, 'I just don't know how you can kill someone and not remember it.'" Kathleen said simply she "didn't do it." Dee Dee reported, "She [the victim] stabbed me in the leg, and I took the knife and threw it. She got it and came after me again. Then I got really angry and upset."

Controlling images

Using the female defendant cases only, I restricted my analysis to 24 women for whom there was sufficient detail to make a determination: 20 were offenders, and 4, mothers of offenders. I first reviewed the documents to determine whether there was a reference to welfare support. Of the 24, 30 percent contained references to "supported herself and children on welfare" or "receiving welfare benefits." The same proportion (33 percent), however, was described as employed; and for the remainder, I could not determine what the woman's source of income was, apart from illegal sources.

Welfare Mother was present in these documents, as were other images such as Drug Addict (see Table 2c). However, images of Sapphire and Mammy were less evident. In reading and re-reading the documents for references and allusions to these icons, I saw them in four cases: Maggie, Edie, Lonnie, and Mary, all of whom were defendants. I found that the negative controlling images of these women emerged, in part, from the woman's efforts to reject the images.

Maggie. With a black male accomplice, Maggie, 21, robbed and kidnapped an elderly white man, for whom she had recently

worked as a housekeeper, and it appears, had had sexual relations. Maggie justified the crime as committed to get fast money and to get off welfare: "I guess I was interested in a fast buck along with the fast life. I was desperate, I didn't like being on the State." Maggie cooperated with state authorities in identifying her accomplice, who was subsequently convicted and sentenced. The controlling image of Maggie combined Welfare Mother and Sinister Sapphire. But, somewhat contrary to these images, Maggie's motivation for the offense was not to be a welfare mother, and her "treachery" was directed to a white man. In a highly unusual move, Maggie wrote a letter to the probation officer (a white woman) who wrote her PSI, thanking her for the "favorable support" in the PSI and its positive impact on the sentencing judge.

Edie. Edie, age 60, stabbed her stepmother, who was 87. The stepmother had Alzheimer's disease, and Edie remarked that she was "worn out from getting the strength to do those things that [she] required of me. ... It was an intolerable situation. She was a very nice lady, but she just wasn't herself." Several controlling images are present in Edie's case. Her husband, a medical professional, did not help Edie in caring for his in-laws, and later Edie reported, "I murdered the wrong person. ... I should have killed my husband." Her husband accused her of having relationships with other men (Sinister Sapphire), and the sentencing judge believed that she was a threat to others, "particularly her husband." At the same time, Edie's defense attorney pointed out that despite Edie's history of mental depression, "She

managed to hold it all together, to function as a wife and mother, a citizen in the community, a caretaker of all of her elderly relatives, and exhibited a great deal of concern and responsibility ... in dealing with them." The controlling image was not of Mammy, but of Crazy Mammy.

Edie's was the only case that had an explicit discussion of a woman's racial identity. Described in a psychological evaluation as a "Caucasian-appearing Negro," Edie believed that she and others like herself were unique members of a black aristocracy. The PSI described her first suicide attempt as occurring around the same time that "an uncle called her a 'Negress'." After she stabbed her stepmother, Edie took the train to New York City, and along the way, she thought she "must be crazy" because "she felt no remorse." In New York City, she went window shopping, watched a movie, and had a meal; she then checked into Bellevue Hospital, saying "I killed my stepmother" and asking to see a psychiatrist.

For Edie, I see an affirmation of controlling images of black womanhood even as she seeks to challenge them. Her file was among the thickest of the New Haven defendants precisely because she appeared so anomalous: she was an elderly woman and middle class; she was not "really" black because she could pass as white; and she killed an elder stepmother, an uncommon victim-offender relationship for women's homicides. In fact, in the police report, Edie had to remind the investigating officer precisely who the victim was: "Let's set the record straight," Edie said, "I killed my stepmother not my mother. ... There's a difference." Other fragments appear in Edie's

file that suggest a desire to be conventional and to escape the bounds of conventionality. She was described as being both deeply religious and as having sexual fantasies about priests; she enjoyed the safety and sanctuary of the prison and wished she could be in a religious monastery. She said, "I'm free at last," and when prodded, she said she was free from her husband and from worrying about what may happen to her. Although white justice constructed Edie as both crazy and dangerous, she could be Every Woman, albeit in a heightened, exaggerated, and dramatic form.

Lonnie. Lonnie, who fatally stabbed a former boyfriend during a fight, was a blend of Amazon, Sinister Sapphire, and Mammy. When the police arrived at the scene, she was reported to have said about the male victim: "You keep that son of a bitch away from me because the next time I am going to kill him." Two members of the victim's family, his current girlfriend and his mother, had little sympathy for Lonnie: "There's no excuse for what she's done" (victim's girlfriend) and "Lonnie threatened to kill him before. I thought she was joking" (victim's mother). While there was a history of violence between Lonnie and her victim, her stabbing involved more than simply fending him off. Like Edie, Lonnie was characterized both as having mental problems (a long history of depression) and as being devoted to the care of children (she was praised for her work as a licensed day care provider). White justice rendered the stabbing of her ex-partner explicable, but not excusable.^{xxii}

Mary. The controlling image of Mary combined Welfare

Mother and Sinister Sapphire. Mary, another elder defendant at age 51, was convicted of selling narcotics. She challenged Judge Kinney on the day of sentencing, and in that proceeding, he noted that she had been rude to him during a previous court appearance ("I would hope that she [addresses the court] in a more respectful way than [the last time]"). Mary and her attorney were pressing the court for a delay in her serving a prison sentence: she wanted more time to withdraw from her methadone addiction before she entered prison. Judge Kinney was not persuaded by their arguments because, in part, the case had been pending for a year. Moreover, he was typically harsh toward those defendants with a history of drug sale convictions.^{xxiii} Despite Mary's pleas and protestations, "Your Honor, please, please . . .," the judge replied, "I've listened to you . . . so don't waste your time. . . . The difficulty is that whenever she's able, she involves herself in the sale of narcotics. That's a dirty business, as far as I'm concerned. . . . [Her record] goes back 20 years. . . . She is unreformed, unrepentant." In Mary's appeal for understanding, the judge would not listen. Instead, he constructed her as an even more recalcitrant subject.

These four cases, although dramatic and compelling, were unusual. More often I discovered that the controlling negative images centered on lives organized around drug use, lives tempered in violence, and less often, bad mothering. Recall that Collins (1990) suggested that one mode of reacting to dominant images of black womanhood was escape through drugs, alcohol, excessive religion, and mental illness. For

the 24 women (and recall that 20 were defendants), three-quarters had either abused illegal drugs, abused alcohol, or had been diagnosed with mental problems. With the exception of Edie, the reasons they gave for escape were related to specific events in their lives. For example, drug use began in association with others who used drugs; alcohol abuse and mental problems were linked to a crisis in the woman's life (killing a teen as a teenager, learning she was unable to bear children). For those whose lives were tempered in violence, some had been in relationships with abusive mates, some had suffered severe abuse as a child, and some were quick to anger. Three of the four mothers were blamed by white justice for their daughters' own bad mothering and drug use (mothers of Dee Dee, Pamela, and Marcia). The fourth (Pat's mother) took partial responsibility for her daughter's lawbreaking when she said to the judge at sentencing, "Pat is one of ten children I have. I have been mother and father throughout the years in raising them, and I know I went wrong with some of the things I said and done and some of the things I taught them." Compared with the popular cultural images analyzed by Collins (1990) and others, in which sexuality saturates the definition of black womanhood, I found other images to be more frequent: Welfare Mother, Drug Addict, Abused and Abusive Woman, and Bad Mother.

Black Women in Male Defendants' Cases

The 40 women related to these cases as mothers or caretakers of defendants (45 percent), girlfriends or spouses (25 percent), and others (30 percent), which included victims

and their family members, the defendant's sister or other relative, and community people. For how the women were characterized, most (58 percent) were not (Table 3a). Excluding these cases, the most frequent characterization was positive or heroic.

Mothers were characterized positively as "having worked all her life" or "a hard working mother as well as good provider." Several mothers were characterized both positively and negatively. For example, Lennie's mother was described as " ... a hardworking parent with the children's best interests at heart, [but because] she works varying shifts at a factory, [she] has not been able to supervise them sufficiently. Her children have stated that she consumes alcohol on a frequent basis, and it is this officer's suspicion that this is done to excess." This excerpt illustrates well how mothers may be blamed both for having a paid job (they cannot exercise proper supervision) or not having a paid job (Welfare Mother). For the two primary caretakers depicted negatively, one had had an alcohol problem too severe to care for her children (mother of Clarence's victim) and the other had been convicted of drug offenses (Dylan's aunt).

Overall, 35 percent of the women related to white justice cooperatively (Table 3b and Appendix B). Most were mothers, girlfriends, or spouses of defendants. These women were viewed as a stable force in the defendant's life, one that white justice could rely on to provide structure and social control. For example, Simon's mother is described as "very supportive by her presence here [in court]," Darrell's wife

says her husband is "a good family man who always stays at home," and Lester's attorney points out that "the significant bright spot for Lester is his girlfriend. ... She provides some guidance and insight."

The 6 women who cooperated with white justice either by providing information or seeking redress were crime victims or their family members. Without their testimony, the male defendant would not have been arrested. The 6 were associated with 3 cases: a convenience store robbery (2 women identified the man), a sexual assault (the young girl who was victimized by her uncle told her aunt, and her aunt told her mother), and an assault (a mother saw her son beaten by another man).

For those I characterized as relating to white justice in a neutral way, most were mothers. They agreed with white justice that their lawbreaking sons had problems, but they distanced themselves from responsibility for it. For example, Casey's mother said that Casey was an "unacceptable boarder because of his drug use;" Rob's mother assured the probation officer that "all [my children] had a good home;" and Allen's mother was fed up with her son's lawbreaking, saying "I have had it ... it is too much." The 3 women who denied the injury of the crime and asked white justice to not punish the defendant had a conflictual relationship to white justice. One woman could not believe that her son killed her brother (Barry's mother), another initially reported that her husband had beaten her young son but then denied this when her husband's case went to trial (Jack's wife), and the third changed her mind toward the offender, a boyfriend, in the

pretrial period (Wayne's girlfriend). Wayne had burned her apartment and had threatened her for several months; she was initially angry and upset, but during the pretrial period, she visited him in prison and said she still loved him.

None of the women related to white justice in an antagonistic way, and for 28 percent, there was too little information to make a determination. If we remove those cases with no information and focus on the rest, the major impression from the male defendants' cases is of black women who are a source of stability and social control in the lives of black men (52 percent); who despite their efforts to provide for their families, have lawbreaking sons (28 percent); and who want to bring lawbreakers to justice (20 percent) (Table 4).

VI. SUMMARY AND DISCUSSION

In observing, recording, and analyzing events, it is instructive to shift one's angle of vision. That was the major boundary I crossed here: to shift my analytic frame from one way of conceptualizing and "finding" discrimination to another. Rather than analyzing racial-ethnic differences in the court's treatment of female defendants or victims, I analyzed how a particular race-gender group related to the court. Shifting from an assessment of whether particular race-gender sub-groups are treated differently by a presumptively color-blind and gender-neutral court, I focused instead on the varied ways that black women challenged, negotiated, and agreed with a white-male point of view.

Much can be learned by seeing justice system processes from another vantage point. Foremost, we can see the multiple positions of black women to white justice: as mothers, wives, girlfriends, and others who supported lawbreaking sons, daughters, and mates; as crime victims and their family members who wanted to bring lawbreakers to justice; as mothers who have distanced themselves from lawbreaking sons and daughters; and as lawbreakers who denied or neutralized their lawbreaking. Such variability highlights the wholeness of and variation in black women's lives, not in comparison to white women's or black men's, but in their own terms.

In examining the circumstances that bring black women to the criminal court, we can flesh out Austin's (1992) analysis of why "the black community" may become polarized. Focusing on the male defendants' case, we find that half the women supported lawbreakers in some way, whereas another half distanced themselves or sought to bring lawbreakers to justice. In their relationships with male offenders (mother-son, wife-husband or girlfriend-boyfriend), many black women acted as their advocates, and they were viewed favorably by white justice as sources of social control. This can be a positive and cooperative relationship so long as black women can mediate the multiple demands of "their men" and the state.

Drawing from Austin (1992: 1813-14), we may wonder if these women saw white justice as too unyielding and harsh, not permitting "their men" a "chance for redemption." However, a portion of women did not advocate on behalf of their defendant sons; they may have tried to do so in the past, but they have

since given up. This group, while agreeing with white justice that their sons were lawbreakers, held their sons responsible.

Another portion of women, who were crime victims or their family members, sought redress for their injuries. Such victim advocacy may bring some black women into conflict with those who support lawbreakers; it may also tag some black women as disloyal sisters.

One interesting finding is that black women were most often present in the court or its records as mothers, girlfriends, or spouses of defendants. Crime victims or defendants, who are the center of most research, were in the minority. If we want a deeper appreciation of how gender and race prejudice work in the court through the eyes and experiences of black women, we may learn as much from family members connected to the cases, as from lawbreakers or victims.

My analysis of the controlling images of black womanhood was based on fragmentary evidence and should be viewed as suggestive. Of the 24 women for whom there was sufficient information, I identified only 4 who reflected varied combinations of Mammy, Sinister Sapphire, Amazon, and Welfare Mother. The negative images of black womanhood were constructed and consolidated in the process of the women's efforts to reject them. From the perspective of white justice, it is as if these women's "acts of resistance" moved them more firmly into the space of negative imagery. The most frequent images I found were Welfare Mother, Drug Addict, Abused and Abusive Woman, and Bad Mother.^{xxiv} Like trying to

"find" discrimination, Mammy and Sapphire may also be hard to "find."

Which brings me back to the beginning or perhaps to another beginning. Many readers may find an analysis of black women incomplete. They will want to know, how did white women or Latinas challenge or negotiate with white justice? Or black men? Were there different controlling images? More frequent positive or negative characterizations? These questions indicate a longing to return to the traditional ways of "finding" discrimination by comparing advantage and disadvantage or differences in treatment. The traditional discrimination frame has shifted a little, though: we may now want to compare the ways in which racial and gender power are expressed and enacted differently toward and by black women and black men, or we may use black women as the norm, analyzing white women as Other. It is hard to shake the desire to compare and rank differences, to demonstrate the "fact" of privilege and disadvantage, to "find" discrimination. Try as we may to cross the boundary from older ways of conceptualizing discrimination to newer, more sophisticated understandings, we may find ourselves forever shifting back and forth.

NOTES

i.. My claim is based on quantitative studies in the U.S., most of which are of sentencing. The referent for "race" is to black-white classification with all its attendant problems (Omi and Winant 1994). The research literature suggests different patterns for race and gender in non-capital sentencing outcomes: more studies find "sex effects" favoring female defendants than "race effects" favoring whites. Sex effects hold within race groups; non race effects are found for both men and women (see Daly and Bordt 1995). Capital sentencing studies pre-Furman more often found race effects favoring white defendants (Kleck 1981) than did non-capital sentencing studies. While it is always possible to "find" one (or several) studies that demonstrate race effects favoring whites in the criminal justice system (see e.g., Flagg 1993: 984), the net pattern is of no differences or varied findings across studies.

Based on this body of research, I would not argue that racism and derogatory racial imagery against members of minority groups (Johnson 1993) are not prevalent in the criminal justice system. Nor that race does not "matter." To the contrary, I am arguing that race and gender relational hierarchies are so deeply embedded in and constitutive of criminal law and justice system practices that they can be hard to "find" with conventional color-blind and gender-neutral assumptions of "white justice," or with conventional social science methods of "white science."

ii.. At least four meanings of the term can be found: differential treatment ("differences in the treatment of one group by another"); prejudicial treatment ("the behavioral expression of [an attitude] of prejudice"; disadvantaging treatment ("effective injurious treatment on grounds irrelevant to the situation"), and denial of desire (the "unjust denial of preference" and "differential treatment of group-connected differences that are contrary to the group's plans or desires" (Hagan 1977: 168, 170-71, 173).

iii.. I am addressing only "black-white" race relations here, though well aware of the limits of thinking of race as dichotomy, and of black and white as having unified, stable referents (see Daly 1994b).

iv.. My analysis focuses on the variable orientations of and strategies used by particular black women in relationship to white justice. I do not focus on the particular individuals whose actions and decisions embody (in part) white justice. As detailed below, I do not view white justice as monolithic or consistently operating to benefit white men.

v.. There are several personal boundaries I am crossing.

First, I am trying to imagine the character of white justice from black women's frames of reference; as a white woman, my imaginings may be inadequate and wrong because of "white solipsism" (Rich 1979: 299, "to think, imagine, and speak as if whiteness described the world") or the "transparency problem" (Flagg 1993: 969, "whiteness vanish[es] from whites' self-perception"). Second, I am revising this text in another country (Australia) and at great physical distance from the streets, sounds, and smells of New Haven (or other U.S. urban centers). I must therefore engage memories of place and politics.

vi.. The authors are, respectively, Hill and Crawford (1990: 602) and Simpson (1991: 129). See Daly and Stephens (1995) for a review of the literature on and by black women.

vii.. The role is invisible to social science researchers and legal commentators, but surely not for the black women themselves.

viii.. This scheme borrows from Smart (1992).

ix.. Little qualitative research exists on black women's relationships to institutions of criminal process. There are some studies of women of color and domestic violence (Chaudhuri and Daly 1992; Ferraro 1989; Mama 1989; Rasche 1988; Richie 1996); rape, community attitudes, and feminist activism (Matthews 1989; Williams and Holmes 1981); the handling of black and white women's cases in court (Mann 1984); and race relations in policing (Martin 1995). Most of what we know comes either from individual stories or statistical aggregations.

x.. Young and I capitalize these controlling images, but Collins does not.

xi.. She puts "the black community" in quotation marks to indicate its meaning as "more of an idea, or an ideal, than a reality" (Austin 1992: 1769).

xii.. Carrington (1990) analyzes how Australian Aboriginal "otherness," including acts of resistance to white justice, are criminalized by white justice. There are two dimensions: the "other" is not viewed as normal when registered against the culturally dominant white subject, and qualities of "otherness" are represented as pathology, a form of "deficit discourse" (pp. 13-14).

xiii.. It is tricky to analyze racial imagery without reinscribing racist images. Like analyzing rape trials (Bumiller 1990), one can all too easily be caught in the discursive mire of the controlling images themselves. The only check is being aware of the pitfalls.

xiv.. I selected a deep sample of 40 men and 40 women who were charged and convicted of statutorily "like" crimes, from a reduced wide sample of cases disposed of by conviction in the New Haven felony court during 1981-1986. The deep sample contains those convicted of homicide, assault, harm to a minor, arson, robbery, larceny, and drug offenses. Black women were 56 and 58 percent, respectively, of women in the wide and deep samples; black men were 57 and 65 percent, respectively, of men.

xv.. The PSI, normally of 3 to 4 single-spaced pages in length, is written by a probation officer after the defendant has pleaded guilty (or has been convicted at trial) and before sentencing. The probation officer interviews the defendant and others such as teachers, mothers, and friends; obtains and reviews medical or mental health reports; and checks official records of the defendant's previous arrests and convictions. The PSI is written for legal officials (judges, prosecutors, and defense attorneys), but especially the judge in guiding the sentence decision. For my purposes, the Connecticut's PSI's are informative historical artifacts of the state's view of defendants and their cases, constructed through the eyes and ears of a probation officer.

xvi.. The sentence hearing is a tightly scripted ceremony, normally lasting 10-15 minutes. The prosecutor describes the offense, the defendant's role in it and the victim's reaction (if any), and recommends a sentence. The defense attorney speaks, acknowledging the defendant's role in the offense and highlighting mitigating circumstances, if any. The defense attorney may point out others in the courtroom who are prepared to speak on the defendant's behalf. The judge then asks if the defendant wishes to speak. On the advice of his or her attorney, a defendant typically does not speak. The judge then imposes the sentence and the reasons for it. Impassioned defendant pleas, lively exchanges between defendants and judges, or other dramatic moments are uncommon. The major reason is that of 96 percent of the male and 98 percent of the female convictions were secured by some form of guilty plea, which often (though not always) comes with an agreed sentencing recommendation.

xvii.. Racial designation was not typically given in the PSI's. Rather readers are assumed to be competent to infer this information, or they are assumed to be color-blind. Even in the "stranger" cases and inter-racial incidents, racial designation was not often given. My research assistant and I had to consult the original arrest report or ask a probation officer familiar with the case. Racial segregation in the wider society is also seen in these court cases: except one case involving a white female defendant and her black female accomplice, none of the other white or latin men and women had a black woman associated with the case. My analysis was of 24 female defendant cases (23 black, 1 white) and 23 black male

defendant cases.

xviii.. There were, in addition, fleeting references given to 15 and 13 women, respectively, in the female and male defendant cases, who were family members. An example of a fleeting reference is, "When Edie was 21 days old, her mother developed a post-partum fever and died," with nothing further said about the mother.

xix.. Some generous assumptions are required in estimating from the deep sample. I assume that the deep sample, which was not a randomly selected sample, but chosen to match male-female pairs by charges at arraignment and conviction, is adequate for my purposes. The estimate does not include those male cases with convictions for burglary and rape, which were 15 percent of the men's cases (Daly 1994a: 277). It may therefore underestimate somewhat the presence of black women as crime victims.

xx.. At times, black women were speaking to white justice on behalf of themselves, and at times, they were characterized by probation officers in a particular way. I needed to be aware, then, of when a portion of text or a "speech act" characterized a black woman (from a white justice or other referent) and when it reflected how a black woman wanted white justice to see her point of view.

xxi.. I use the terms "offenders" and "defendants" interchangeably.

xxii.. The New Haven black women's violence cases were not as likely to be "excused" or rendered harmless as those violence cases analyzed by Allen (1987) in London or by Wilkie (1993) in Perth. Their analyses do not discuss racial differences, however.

xxiii.. I have wondered why this judge could not see the connection between his own nicotine habit and the defendants' cocaine or heroin habits (cf. Greene 1990).

xxiv.. Several of these images are fused in the crack-using pregnant black woman, a focus of media and selected prosecutorial attention during the late 1980s (Gomez 1994; Maher 1997; Roberts 1991).