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# The Impact of Gender and Focal Concerns Theory on the Treatment of White-Collar Defendants by Federal Judges

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2016

Abstract

The Impact of Gender and Focal Concerns Theory on the Treatment of White-Collar

Defendants by Federal Judges

by

Brandon Roberts

MS, John Jay College of Criminal Justice, 2011

BA, Mount Saint Mary College, 2010

Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

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## Abstract

Previous research found gender to be a primary consideration of judges in terms of actions towards defendants. Blameworthiness, the combined effect of criminal history, offense severity, and the defendant's role in the criminal event, is also known to impact judge's actions. Little, though, is known about how gender and blameworthiness, combined, may be related to judges' actions towards white-collar defendants. The purpose of this case study, therefore, was to explore whether defendant gender and blameworthiness impact judicial actions towards defendants charged with white-collar crime(s) in a federal district court of New York. The theoretical framework was Demuth and Steffensmeier's theory of focal concerns. Research questions focused on the impacts of defendants' gender and blameworthiness in general and with regard to bail and restitution decisions. Data consisted of published court case summaries for 1,162 criminal cases heard by the US District Court for the Southern District of New York between 2009 and 2015. These data were analyzed via an inductive coding process and then subjected to content analysis. Themes that emerged revealed that all facets of blameworthiness impacted restitution while only the seriousness of the offense impacted bail decisions. Further, gender was found to impact judge's actions in subtler ways than in prior research. For example, analysis revealed slight modifications in word choice in the case summaries that appeared to be connected to the gender of the defendant, particularly related to restitution decisions. The results of this study may be used to courts and Congress to enhance existing statutes and guidelines directed at decreasing the impact of gender and blameworthiness on defendants by the justice system.

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## Dedication

In memory of my loving grandfather Addison Tice (1921-2014).

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## Chapter 1: Introduction to the Study

### Background

For decades the actions of judges towards defendants has and continues to be impacted by a host of legal and extra-legal factors (Cullen, Hartman, & Johnson, 2009). According to several researchers (Cullen, Hartman, & Johnson, 2009; Doerner & Demuth, 2010); Holtfreter, Piquero, & Piquero, 2008; Lambiras, 2003; Madden, Hartley, Walker, & Miller, 2012; Shanzenbach & Yaeger, 2006; and Starr, 2012), differential treatment of defendants based on gender continues to occur within the U.S. federal court system. What this means is that when factors such as crime are held constant that defendants are still treated differently based on their gender. This is a problem as it violates the constitutional notion of equality under the law. Holtfreter et al. (2008) and Cullen et al. (2009) argued that gender based differential treatment of defendants is orchestrated by all types of judicial personnel including judges. Lambiras (2003) and Shanzenbach and Yaeger (2006) posited that which court heard the case against the defendant gave rise, albeit only in part, to gender based differential treatment of the defendant. Doerner and Demuth (2010) and Madden et al. (2012) provided a direct link between the phenomenon of gender based differential treatment and white-collar criminal defendants.

According to Holtfreter (2013), focal concerns theory, defendants received differential treatment based on the level of blameworthiness exhibited by the defendant; however, no significant gender differences were found. I examined gender as a variable here because Holtfreter (2013) focused on crimes in general whereas I focused on a

specific crime (i.e. white-collar crime). Researchers have not examined the impact of judges' perceptions of defendant blameworthiness within the context of a specific legal jurisdiction (Holtfreter, 2013). Researchers have simply examined the topic at specific court levels (ex. appellate courts) or within state or federal courts in general (Holtfreter, 2013).

In my study, I sought to add to previous research on gender based differential treatment (Cullen, Hartman, & Johnson, 2009; Doerner & Demuth, 2010); Holtfreter, Piquero, & Piquero, 2008; Lambiras, 2003; Madden, Hartley, Walker, & Miller, 2012; Shanzenbach & Yaeger, 2006; and Starr, 2012), and focal concerns theory by examining additional variables outside the realm of sentencing outcomes. I believe that my study is needed as prior research on gender based differential treatment and defendant blameworthiness are both generic in nature. Also, based on my literature review, researchers have not examined either concept was examined within a single court. Examination judges' actions based on their perceptions of white-collar criminal defendants' gender and blameworthiness may aid scholars and practitioners in the quest to further and preserve equality under the law, which is a Constitutional mandate. Knowledge of this may help scholars and practitioners develop a better decision making model for judges as the findings of my study are specific to this court something that scholars and practitioners have not had up to this point. This will further social change by helping scholars and practitioners, in addition to the judges on this court, to preserve equality under the law.

In this chapter I will preview the following eleven topics: problem, purpose,

research questions, theoretical framework, nature of study, definitions, assumptions, scope, delimitations, limitations, and significance of my study.

### Problem Statement

There is a link between differential treatment and blameworthiness. According to Holtfreter (2013) defendants received differential treatment, which was based on the level of blameworthiness that the judge perceived the defendant to exhibit. However, Holtfreter's (2013) findings were not significant. However, according to Gottschalk and Rundmo (2014), gender based differential treatment of defendants continues to be an issue within the U.S. federal court system.

Scholars have not studied judges' perceptions of defendant blameworthiness within the context of a single court or specific legal jurisdiction (Holtfreter, 2013). This is important because each individual court is inherently different even if at the same level (ex. district courts). The judges in one court are different from the judges in another so it is paramount to study the topic within a single court.

Conducting a court specific examination of gender and defendant blameworthiness not only made sense from an academic standpoint but provided the best chance of having far-reaching social impact on the work of scholars and practitioners. I also focused on addressing two gaps in the literature, concerning the impact of focal concerns within specific courts and the impact of focal concerns outside the context of sentencing decisions.

### Purpose of the Study

The purpose of this study was to examine whether judges in U.S. federal courts

provided differential treatment to white-collar defendants based on their perceptions of the defendants' gender and blameworthiness. I also sought to examine whether focal concerns affected judicial treatment of these defendants. Although both differential treatment (Cullen, Hartman, and Johnson, 2009), and focal concerns (Holtfreter, 2013) had received scholarly attention in the past, neither concept had been studied within the context of a single court. Studying these concepts from this angle was advantageous as it showed how both concepts present within a specific court for a small pool of judges verses for courts in general.

### Research Questions

I posed three research questions in this study:

RQ1:

How might a criminal defendant's gender affect a judge's actions within a single court?

RQ2: How might a criminal defendant's blameworthiness affect a judge's actions within a single court?

RQ3: How might a criminal defendant's blameworthiness affect bail decisions and restitution by a judge?

### Theoretical Framework

This dissertation is influenced by work on focal concerns theory by several theorists, including Demuth and Steffensmeier (2004b), Kramer and Ulmer (2002), Steffensmeier and Demuth (2001), and (Steffensmeier et al. 1993,1998). According to focal concerns theory, a judge's actions in terms of sentencing are shaped by the

blameworthiness of the defendant as perceived by the judge (Demuth & Steffensmeier, 2004). Defendant gender impacts a judge's actions in terms of sentencing as a judge simply does not have enough time to properly evaluate all defendants on the aforementioned focal concern (i.e. defendant blameworthiness) (Demuth & Steffensmeier, 2004). Consequently, judges make decisions entirely, or in part, based on their own stereotypes that they associate with defendant characteristics including gender (Demuth & Steffensmeier, 2004). A more detailed explanation of focal concerns theory and its link to the three research questions will be provided in Chapter 2.

#### Nature of the Study

Three key concepts were investigated in this dissertation: white-collar crime, differential treatment, and blameworthiness. Sutherland first coined the term white-collar crime in 1939 (Barnett, n.d.); however, this dissertation adhered to the more recent definition of white-collar crime as prescribed by the Federal Bureau of Investigation (FBI) (See Operational Definitions Section of Chapter One for Definition). In terms of differential treatment, this dissertation adhered to Wayne State University's (2015) definition of the construct (See Operational Definitions Section of Chapter One for Definition). As for blameworthiness, this dissertation adhered to Holtfreter's (2013) definition of the construct (See Operational Definitions Section of Chapter One for Definition).

This research was guided by the works of Cullen et al. (2009), Doerner and Demuth (2010), Holtfreter et al. (2008), Lambiras (2003), Madden et al. (2012), Shanzenbach and Yaeger (2006), and Starr (2012) who examined the differential

treatment of white-collar defendants by the judiciary. The study was also guided by the works of Demuth and Steffensmeier (2004), Kramer and Ulmer (2002), Steffensmeier and Demuth (2001), Steffensmeier et al. (1993), and Steffensmeier et al. (1998) who posited that judge perception of defendant blameworthiness impacted the judge's actions in terms of sentencing decisions.

What was particularly valuable about utilization of focal concerns theory as the theoretical lens was that past scholarship had only looked at the treatment of white-collar crime defendants via this lens for sentencing decisions/outcomes. Whether or not focal concerns theory could be used to explain judge's actions outside the realm of sentencing outcomes was an area of research that had yet to be explored and the gap in the literature that this dissertation sought to fill.

Content analysis was chosen as the best methodological approach for this study as the objective here was to describe in-depth the phenomenon of gender based differential treatment. Content analysis was also beneficial to the task of assessing to what degree, if any, focal concerns had on the action(s) of the judges who presided over the cases.

Only after describing in detail the nature of gender based differential treatment of defendants by judges working within this court would it make sense to develop a study geared at measuring quantitatively the scope and breath of gender based differential treatment within this court. In other words, first it needed to be established that gender based differential treatment was occurring and then second portraying the nature of that gender based differential treatment; the groundwork for a study to quantify the scope of the issue; a groundwork laid in part by this study. This same logic was applied to the

focal concerns component of this study. First it needed to be established that focal concerns were present and the nature of those focal concerns before embarking on a study to quantify any facet of focal concerns.

Further, qualitative content analysis was chosen as the research design for this study as this research design circumvented many of the issues that would have arisen if other qualitative research design methods had been employed. Given geographical restrictions, face-to-face interviews were deemed not appropriate due to the immense financial cost associated with this methodology.

Participant observation, in any form, was also not viable as many of the white-collar crime cases heard by this court were sensationalized by the media creating a situation where there was extremely high demand for the limited public seating at court proceedings. In order for participant observation to have been a viable approach there would have had to be an assurance that access to the courtroom was guaranteed; something that could not be attained in this instance.

By conducting content analysis of secondary data (i.e case summaries), this removed the geographical and accessibility issues related to the utilization of other qualitative research design methods as described above. Also content analysis ensured access to all facets of each case; something that was not guaranteed if a participant observation methodology was adopted.

The study began by utilizing the official governmental website of the United States District Court for the Southern District of New York to identify a list of white-collar crime cases adjudicated by the aforementioned court between 2009 and 2015. The

case summary associated with each case was then downloaded from the aforementioned governmental website. From each case summary, the judge who presided over the case was identified along with information on the following five things: offense severity, defendant role in offense, criminal history, bail decisions, and restitution.

The data gleaned from the content analysis was then analyzed qualitatively to assess whether defendant gender coupled with defendant blameworthiness impacted judge's actions and whether defendant blameworthiness as perceived by the judge impacted judge's actions outside the realm of sentencing decisions/outcomes.

#### Definitions

*Blameworthiness:* The defendant's culpability in the offense(s) committed. Blameworthiness is determined by examining offense severity, criminal history, and the defendant's role in the offense(s) committed (Holtfreter, 2013).

*Differential treatment:* A phenomenon that "occurs when an individual notices the differences between things or people that are otherwise alike and makes decisions based on those differences" (Holtfreter et al., 2008, p.1).

*White-collar crime:* "Illegal acts which are characterized by deceit, concealment, or violation of trust and which are not dependent upon the application or threat of physical force or violence. Individuals and organizations commit these acts to obtain money, property, or services; to avoid the payment or loss of money or services; or to secure personal or business advantage" (Barnett, n.d., p.1).

#### Assumptions

It was assumed that the case summaries as provided on the official website of the

United States District Court for the Southern District of New York constituted an exhaustive listing of white-collar crime cases adjudicated by the aforementioned court between 2009 and 2015. It was necessary to make the aforementioned assumption as there was no other source to check the listing of white-collar crime cases provided on this website against to ensure an exhaustive list. It was also assumed that the pre-sentence investigation report pertaining to the named defendant(s) in the case was taken into consideration by the judge. It was necessary to make this assumption as there was no source by which to check that the pre-sentence investigation report was indeed taken into consideration by the judge.

#### Scope and Delimitations

This study examined white-collar crime cases adjudicated by the United States District Court for the Southern District of New York between 2009 and 2015. Cases occurring before 2009 were excluded so as to ensure that cases were not included that occurred before the most recent economic recession which would have added an unneeded layer to this study and required a pre-post-recession analysis of cases. By only looking at cases adjudicated after the start of the most recent economic recession, attention was focused solely on gender based differential treatment of defendants and not on discerning what, if any, impact the most recent economic recession had on the actions of district court judges within this jurisdiction.

In instances where an identified court case had been adjudicated by more than one federal court, only those aspects adjudicated by the United States District Court for the Southern District of New York were included. The remaining data was excluded as it

was not derived from the actions of a judge serving on the aforementioned court.

It proved difficult to transfer the findings pertaining to the three research questions identified in this dissertation to the population at large as the findings related to these three research questions were directly tied to the actions of judges within the aforementioned court. However, it is possible for a researcher to take the model of analysis utilized in this dissertation and replicate that model in a future study geared at examining the same topic within a different federal district court.

Given that much of the content included in the case summaries was summarized content, it was hard to establish that this summarized content included in the case summaries provided a complete picture of the phenomena under examination. According to Shenton (2004), a studies creditability is in part associated with the researcher's ability to establish that their data provided a true picture of the phenomena.

Second, given that judges vary from district court to district court and that law is dynamic in nature, the study had limited transferability despite their indeed being similarities between this district court and other district courts. Thus according to Shenton (2004), it proved difficult to establish for the reader that the findings of this study were transferrable. Third, Shenton (2004) denoted that many qualitative studies struggled to establish confirmability; in other words, that the findings reported resulted from the data that was collected during the study and were not resultant from a predisposition of the researcher.

#### Limitations

There are two limitations/biases associated with this study. First, this study dealt

with recent cases (i.e. cases from 2009 to 2015). In light of this, many of the cases examined were ongoing at the time of the study thus when interpreting and applying these findings it is crucial to understand that the findings were in part based on cases that were only partially completed. Second, one must understand that this study derived all of its data from the case summaries. Although case summaries were deemed a reliable data source, any actions of judges towards defendants not disclosed by the author(s) of the case summary are in no way reflected in the findings of this study nor was it possible to determine what if any impact such additional actions would have had on the findings of this study.

To address the identified limitations of this study, Guba's constructs were utilized as described by Guba and Lincoln (1981), Morse et al. (2002), and Shenton (2004). In addition, assurance that all cases meeting the definition of white-collar crime being adhered to in this dissertation that were adjudicated by the aforementioned court between 2009 and 2015 are included in the data set so as to provide what Shenton (2004) described as a 'true picture' of the phenomena under examination; an action that in part ensured the creditability of the study.

Second, a thorough description of gender based differential treatment and the methodology utilized in this study was provided to enable the reader to be able to judge for themselves whether other 'environments' are similar in nature to the environment of the study and thus would allow for the reader to extrapolate the findings of this study to that environment (Shenton, 2004). In doing this, it bolstered the transferability of the findings generated by this study (Shenton, 2004).

Third, an effort was made to enable future researchers to be able to repeat part or all of this study. This goal was achieved by taking appropriate steps to ensure that the findings generated by the study were consistent and capable of being replicated. As a result, the dependability of the study was increased according to Shenton (2004).

Forth, all facets of the results were reported within the findings of the study regardless of whether or not those findings were favorable or unfavorable to the researcher. In doing so, this established that the findings were derived from the data generated and not from predisposition thus increasing the confirmability of the study as a whole (Shenton, 2004).

Although thorough, this study did not cover every facet of the topic that could legitimately have been examined. To begin, this study did not provide a pre-recession/post-recession analysis of gender based differential treatment of white-collar crime defendants by the United States District Court for the Southern District of New York. The decision was made to exclude pre-recession white-collar cases as a pre/post-recession comparison of gender based differential treatment of white-collar crime defendants, even if conducted within the same court, could have been a dissertation topic on its own. This topic could however have been legitimately addressed in this dissertation by simply widening the data collection period to 2000 to 2015 thus generating the data needed to conduct such a pre/post-recession analysis.

This study also did not involve any direct observation of court proceedings; a decision made because of the hardships and uncertainty of gaining continuous access to the aforementioned court. However, this could legitimately have been done via the

public nature of the trials and the fact that seating at the trials was open to the public. Had observation been utilized, I would have been able to witness judge's actions with their own eyes verses reading about them within the case summaries. Further, I would have been able to witness non-verbal actions of the judge towards the defendant during the case that may not have been recorded within the case summaries such as hand gestures.

Despite the appropriateness of the research methodology, there were still some inherent problems associated with its utilization. First, in utilizing content analysis over face-to-face interviews, this consequently removed the ability to assess non-verbal cues of the judge. Further, this dissertation only included cases that adhered to the definition of white-collar crime as provided by the FBI. However, at the time this dissertation was written, there was no one set agreed upon definition of what constituted white-collar crime. The FBI was only one of several federal level agencies with authority to investigate white-collar offenses. This created a situation where another federal agency may have pursued an offender on actions that under their definition constituted white-collar crime but did not constitute white-collar crime as per the FBI creating a scenario where cases because of differences in definition between agencies were excluded even though they meet a valid definition of white-collar crime.

### Significance

White-collar crime was a notoriously under-researched realm of criminality. Previous research had not tested the applicability of focal concerns theory to the treatment of white-collar defendants by judges within the context of a single court

(Holtfreter, 2013). Further, previous research had not examined whether defendant blameworthiness as perceived by the judge impacted judge's actions outside the context of sentencing decisions (Holtfreter, 2013). As defendant blameworthiness was found to impact actions of judges within this court, this dissertation provided valuable information to scholars about how this phenomenon played out within a single court verses courts in general; something that was not discernible from existing literature. Further, this study looked at other factors such as offense severity, defendant criminal history, and defendant role in the offense; all factors related to blameworthiness according to focal concerns theory but factors not examined in past studies including the most recent by Holtfreter (2013).

Many individuals within the criminal justice system benefited from this dissertation. Judges working in this court benefited as this dissertation highlighted how their actions are impacted by the interplay between defendant gender and defendant blameworthiness as perceived by the judge. Judges also gained a firmer understanding of how defendant blameworthiness impacts actions they took towards the defendant outside the context of sentencing decisions. In addition, academics in sociology, criminal justice, criminology, and law also benefited from this dissertation as it expanded the scope of knowledge available on the applicability of focal concerns theory to explaining the actions of judges within the context of white-collar crime cases.

This study allows for the creation of court specific policy verses generalized policy based on generalized results; something that will likely lead to more effective and efficient policy making and revision. In addition, the methodology could be replicated

onto other federal courts by researchers to better aid scholar/practitioners working to change policies in those jurisdictions. Further, the link that was discovered between defendant blameworthiness and judge's actions outside the context of sentencing decisions could come to serve as a launching point for subsequent studies expanding the fields understanding of the link between focal concerns theory and gender based differential treatment.

### Summary

Overall, Cullen et al. (2009), Demuth and Steffensmeier (2004a), Doerner and Demuth (2010), Gustafson (2007), Holtfreter (2008), Holtfreter et al. (2008), Lambiras (2003), Maddan et al. (2012), Mann (1985), Podgor (2007), Shanzenbach and Yaeger (2006), Stadler (2010), Van Slyke (2012), and Weissmann and Block (2007) all asserted that differential treatment of offenders of white-collar crime by the judiciary did occur within the United States. This study was guided by the work of Demuth and Steffensmeier (2004), Kramer and Ulmer (2002), Steffensmeier and Demuth (2001), Steffensmeier et al. (1993), and Steffensmeier et al. (1998) specifically their rendition of focal concerns theory. Here the goal was to determine how defendant gender coupled with defendant blameworthiness impacted judge's actions when the phenomena was examined within the context of a single court and how defendant blameworthiness as perceived by the judge impacted other facets of judge's actions outside the context of sentencing outcomes. In Chapter Two, I elaborate on the academic research that provided the basis for this dissertation as well as elaborates on the development and application of the theoretical framework.

## Chapter 2: Literature Review

### Introduction

Differential treatment of defendants continues to be a widespread issue in courts in the United States. According to Gottschalk and Rundmo (2014) and Holtfreter (2013), defendants receive differential treatment based on the level of blameworthiness exhibited by the defendant. Further examination of the topic was necessary as no study examining the impact of defendant blameworthiness as perceived by the judge had ever examined the phenomena within the context of a specific legal jurisdiction (Holtfreter, 2013). My purpose is thus to fill this gap in the literature.

In this chapter, I do several things. First, I outline the steps and measures that are taken to identify the scholarship included in the literature review. Second, I discuss the theoretical framework that governs the dissertation (i.e. focal concerns theory). Third, I summarize articles that pertain to the theoretical framework. Fourth, I provide an exhaustive review of all current peer-reviewed scholarship that pertains to the topic gender based differential treatment of white-collar defendants. Fifth, I provide an overview of relevant non-peer-reviewed scholarship that supplements the argument for the relevancy and necessity of my study. Sixth, I discuss trends, patterns, and themes identified within the literature reviewed. Seventh, I discuss peer-reviewed scholarship that supports the research design-qualitative case study. Eight, I provided justification for selecting all of the identified variables and concepts included within the study.

### Literature Search Strategy

The information gathered for the theoretical framework section of the literature review focused on identifying studies that sought to apply, directly or indirectly, elements of focal concerns theory to the explanation of judicial actions. The review of related literature contained information on how focal concerns theory had been applied in the past as well as a synthesis of articles that pertained to related methods. The current research on topic section contained articles that discussed both the gender based differential treatment of defendants by the judiciary for crime in general as well as articles that specifically focused on white-collar defendants. Scholarship in this section was predominately peer-reviewed; however, several non-peer reviewed sources were noted.

The current literature research base description included the rationale for the selection of concepts/variables as well as a synthesis of studies related to the phenomenon that was examined as well as to the research questions. The methodology literature review contained a synthesis of studies that supported the methodology of this dissertation. The articles included in the theoretical framework were identified via a meticulous search of the literature (search terms utilized, journals searched, and databases examined were listed later in this chapter) that involved the searching of Google Scholar as well as Walden Library databases as well as the library databases of the City University of New York.

The articles included within the current research on topic section were identified via the following process. First, a prescribed list of search terms was generated to be

used to search Google Scholar for peer-reviewed scholarship on gender based differential treatment of white-collar defendants. To better enable this process, I also linked the Walden Library and the CUNY Library to the Google Scholar searches eliciting full-text of the necessary articles.

Second, a list of databases was compiled from which the articles in step one were derived. I then went to those databases and searched each of them using the same set of search terms as were used in step one ensuring that no relevant articles were missed; in other words, relevant articles that were not generated by Google Scholar. The articles spanned roughly forty years of scholarship and covered the impact of defendant gender on the actions of the judge in adult criminal court, civil court, and the juvenile court system.

To identify articles related to case study, the methodology of this dissertation, the same procedure that was utilized to identify the articles for the theoretical framework and current research on topic was employed. A full list of search terms employed, journals examined, and databases utilized was provided later in this chapter.

The following is a more detailed rendition of the procedure I used to identify scholarship for the theoretical framework. First, I constructed a list of keywords related to focal concerns theory: Focal Concerns Theory, Holtfreter, judges, judiciary, and Steffensmeier. From those keywords, I constructed a list of search terms for identifying studies relevant to the theoretical framework: focal concerns and courts, focal concerns and law, focal concerns and law abiding behavior, focal concerns and judges, and focal concerns and magistrate.

I then input the following search terms into the following search engines: Google, and Google Scholar. In conducting this search process, I generated a pool of articles published within the following five scholarly journals: *Journal of Public Law, Law & Society Review, Pennsylvania Law Review, Temple Law Review, and the Washington University Law Review.*

I also conducted a search of the Walden Library to link the aforementioned journals to scholarly databases; a process that led to the identification of three scholarly databases: Criminal Justice Abstracts, HeinOnline Law Journal Library, and LexisNexis Academic. I then went to each of the three databases and input the search terms to verify that no relevant article(s) were missed.

My procedure for identifying germane scholarship applicable to the related literature was as follows, first, I compiled a list of keywords related to gender based differential treatment of white-collar defendants which included the following: adjudication, gender, judiciary, pink-collar criminal, sentencing disparities, sentencing outcomes, trial process, white-collar crime, white-collar defendant, and white-collar crime judiciary.

From these keywords, I constructed a list of search terms for identifying studies relevant to the literature review section which included the following terms: actions of judge's gender criminal justice system, defendant gender court case outcome, defendant gender does the judge matter, defendant gender judicial decision making, defendant gender judicial decision making judges, differential treatment white-collar crime defendants, female judge's treatment of defendants, gender based differential treatment

judicial decision making, gender based differential treatment judicial decision making adult criminal court, gender based differential treatment judicial decision making financial crimes, gender criminal justice system, gender differential treatment judicial decision making, gender discrimination judicial decision making, how is judicial decision making impacted by gender, impact of gender judicial decision making judges, impact of gender of judge on judicial decision making, impact of gender on adjudication of white-collar defendants, impact of gender on case outcome, impact of gender on case outcome white-collar defendants, judge gender judicial decision making, judges gender judicial decision making white-collar crime, judges judicial decision making, judges judicial decision making gender, judicial decision making impacted by gender, male judge's treatment of defendants, male judge's treatment of white-collar defendants, sex based differences actions of judges, and sex differences judicial decision making.

I then input these search terms into the following search engines: Google and Google Scholar. My search generated a pool of articles published within the following scholarly journals: *American Criminal Law Review*, *American Journal of Political Science*, *American Sociological Review*, *Behavioral Sciences & the Law*, *Buffalo Women's Law Journal*, *Crime & Delinquency*, *Crime, Law & Social Change*, *Criminal Justice Policy Review*, *Criminal Justice Review*, *Criminology*, *Federal Sentencing Reporter*, *Feminist Criminology*, *International Letters of Social & Humanistic Sciences*, *Journal of Contemporary Criminal Justice*, *Journal of Criminal Justice*, *Journal of Criminal Law & Criminology*, *Journal of Empirical Legal Studies*, *Journal of Law & Courts*, *Journal of Law & Economics*, *Journal of Legal Studies*, *Journal of Politics*,

*Journal of Public Law, Journal of Quantitative Criminology, Journal of Women, Politics, & Policy, Justice Quarterly, Law & Policy, Law & Society Review, Modern Management Science & Engineering, Pennsylvania Law Review, Political Research Quarterly Psychiatry, Psychology, and Law, Punishment & Society, Security Journal, Social Forces, Social Problems, Social Science Journal, Social Science Quarterly, Temple Law Review, University of Toledo Law Review, Washington University Law Review, Women & Criminal Justice, Yale Law Journal*

I then conducted a search of the Walden Library to link the aforementioned journals to scholarly databases; a process that led to the identification of the following scholarly databases: Academic OneFile, Academic Search Complete, Annual Reviews Complete A-Z List, Business Insights: Essentials, Criminal Justice Abstracts, Directory of Open Access Journals, EBSCO Host EJS, Education Source, HeinOnline Law Journal Library, Legal Source, LexisNexis Academic, ProQuest Criminal Justice, ProQuest Sociology, SAGE Criminology, SAGE Premier 2010, ScienceDirect Freedom Collection 2013, SOCINDEX w/Full Text, SpringerLink Contemporary, Taylor & Francis Online, and Wiley-Blackwell Full-Collection.

I then went to each of these databases and input the search terms verifying that no relevant article(s) were missed.

My procedure for identifying germane scholarship applicable to the methodology was as follows, first, I compiled a list of keywords related to the methodology (qualitative case study) which included the following: gender, judges, judicial decision making, and qualitative. From those keywords, I constructed a list of search terms for identifying

studies relevant to the methodology section which included the following: qualitative studies judicial decision making, qualitative studies judicial decision making female judges, qualitative studies judicial decision making gender judges, and qualitative studies judicial decision making judges.

I then input the search terms into the following search engines: Google and Google Scholar. My search generated a pool of articles published within five scholarly journals: *American Sociological Review*, *Criminal Justice Policy Review*, *Journal of Law & Society*, *Law & Society Review*, and *Women & Criminal Justice*. I then conducted a search of the Walden Library to link the aforementioned journals to scholarly databases; a process that led to the identification of five scholarly databases: Criminal Justice Abstracts, SAGE Criminology, SAGE Premier 2010, Taylor & Francis Online, and Wiley Blackwell Full Collection. I then went to each of the five databases and input the search terms verifying that no relevant article(s) were missed.

Given that a good portion of the information on gender based differential treatment of white-collar crime defendants by the judiciary was beyond five years old, I made the decision to look for more recent dissertations on this topic and/or dissertations that addressed topics closely related to this topic. Using Google Scholar two relevant dissertations one by Doerner (2009) and the other by Stadler (2010) were identified, both addressing gender based differential treatment of male and female defendants of white-collar crime. Although not peer-reviewed, these two dissertations were important to the literature review on the aforementioned topic as both dissertations asserted the currentness of the topic.

## Theoretical Foundation

The theoretical framework of this dissertation was focal concerns theory; specifically, focal concerns theory as defined by Demuth and Steffensmeier (2004), Kramer and Ulmer (2002), Steffensmeier and Demuth, 2001, Steffensmeier et al. (1993), and Steffensmeier et al. (1998).

The version of focal concerns theory utilized in this dissertation was developed out of Steffensmeier's (1980) original conception of focal concerns theory. Steffensmeier (1980) identified in the original version of focal concerns theory five influences on judge's actions in terms of sentencing: practicality, chivalry, naivete, permanence of behavior, and perception of dangerousness. Demuth and Steffensmeier (2004a), Kramer and Ulmer (2002), Steffensmeier and Demuth, 2001, Steffensmeier et al. (1993), and Steffensmeier et al. (1998) then reconstructed focal concerns theory around three focal concerns; one, blameworthiness/culpability of defendant; two, desire to protect community; and three, practical constraints and consequences impacting judges sentencing decisions; the version of focal concerns theory that served as the theoretical framework for this dissertation.

Focal concerns theory posited that three focal concerns: one blameworthiness/culpability of defendant, two, desire to protect community, and three practical constraints and consequences impacted judges sentencing decisions (Demuth & Steffensmeier, 2004a; Kramer & Ulmer, 2002; Steffensmeier & Demuth, 2001; Steffensmeier et al., 1993; Steffensmeier et al. 1998). Within this theory, defendant gender came to impact judge's actions in terms of sentencing as judges simply did not

have enough time to properly evaluate all defendants on each of the three aforementioned focal concerns (Demuth & Steffensmeier, 2004a; Kramer & Ulmer, 2002; Steffensmeier & Demuth, 2001; Steffensmeier et al., 1993; Steffensmeier et al. 1998). Consequently, judges made decisions in part, or entirely, based on their own stereotypes they associated with defendant characteristics including gender (Demuth & Steffensmeier, 2004a; Kramer & Ulmer, 2002; Steffensmeier & Demuth, 2001; Steffensmeier et al., 1993; Steffensmeier et al. 1998).

Hartley et al. (2007), Huebner and Bynum (2006), Kramer and Ulmer (2002), Steffensmeier et al. (1998), and Steffensmeier and Demuth (2001) provided support for selecting focal concerns theory as the theoretical lens of this dissertation. In their study, Huebner and Bynum (2006) found that legal and extra-legal factors were important to examine when seeking to understand parole release decisions. Further, Huebner and Bynum (2006) posited that judges took into consideration the seriousness of the offense, defendant misconduct, and parole readiness when making decisions related to parole. Steffensmeier et al. (1998) added that defendant race, defendant gender, and defendant age all influenced the actions of the judge.

Focal concerns theory became the best theoretical lens for use in this dissertation as Steffensmeier et al. (1998) noted that focal concerns theory could be used to explain how defendant gender in addition to other legal and extra-legal factors impacted the actions of the judge. Hartley et al. (2007) built on this assertion stating that there was a tangible link between defendant gender and the key concepts of the focal concerns perspective/theory. Further, Hartley et al. (2007) argued that focal concerns theory could

be used to explain differences in sentence outcomes between male and female defendants. Kramer and Ulmer (2002) also added that judge's definitions of focal concerns impacted the actions that they took towards the defendant.

This study departed from previous research on focal concerns theory by examining how defendant gender coupled with defendant blameworthiness impacted judge's actions when the phenomena was examined within the context of a single court and how defendant blameworthiness as perceived by the judge impacted other facets of judge's actions outside the context of sentencing outcomes. Historically, research on focal concerns theory had entailed studies that examined courts in general or courts at a specific level (ex. court of appeals) generating a pool of knowledge as to how the theory could be used to explain judge actions for courts in general or at specific judicial levels but no knowledge as to how focal concerns theory applied to one specific court. Here, focal concerns theory was applied to one specific court, expanding knowledge of the applicability of the theory to judge action.

Further, all prior research on focal concerns theory focused exclusively on sentencing outcomes leaving a gap in the literature-how focal concerns theory impacted judge actions outside the context of sentencing outcomes. This study applied focal concerns theory to judge actions outside the context of sentencing outcomes helping to fill the void in the literature on focal concerns theory.

#### Literature Review Related to Key Variables and/or Concepts

Five previous studies had applied focal concerns theory in a similar fashion to

how it was applied in this dissertation. In his study, Steffensmeier (1980) applied focal concerns theory to sentencing decisions and found that chivalry was less of an influence on judges sentencing decisions than was perceived danger of defendant and defendant future criminality. Steffensmeier (1980) expanded the scope of the theory by assessing the impact of judge professionalism and bureaucratization finding that both reduced sentencing disparities by sex that arose out of focal concerns.

In their study, Steffensmeier et al. (1993) found that the sentencing practices of judges was impacted by two main concerns blameworthiness and practicality.

Blameworthiness encompassed defendant prior record, type of involvement, and remorse and practicality encompassed child care responsibilities, pregnancy emotional/physical problems, and prison/jail space (Steffensmeier et al. 1993).

Steffensmeier et al. (1998) applied focal concerns to judge actions in terms of sentencing outcomes finding that defendant race, age, and gender all had some degree of impact on the actions of the judge in terms of sentencing outcomes. Steffensmeier and Demuth (2001) also found that defendant race had an impact on the actions of the judge and insinuated that this impact could be viewed through the lens of focal concerns.

Kramer and Ulmer (2002) noted that the judge's definition of focal concerns impacted the actions that the judge took towards the defendant. Demuth and Steffensmeier (2004) noted that judge's actions towards the defendant were in part shaped by the gender of the defendant. Holtfreter (2013) reiterated the point that focal concerns impacted judge's actions in terms of sentencing decisions.

Existing scholarship on differential treatment of defendants by the judiciary was

classified into twelve themes: crime, geography, remorse, legal representation, organizational factors, judicial beliefs, law, classification of defendant, defendant demographics, judge demographics, defendant gender, and culpability and blameworthiness.

### Crime

Scholars had established that there was a correlation between the impact that white-collar crime(s) had on the victim and the actions of the judge (Steffensmeier et al., 2013). Steffensmeier et al. (2013) denoted that the financial toll of white-collar crime on victims impacted the judge's actions towards the defendant. It had also been shown that the non-financial losses incurred by white-collar crime victims such as loss of cars and homes impacted the judge's actions towards the defendant (Steffensmeier et al., 2013).

Scholars also agreed that the actions of the judge varied depending on the type of white-collar crime the defendant was charged with committing (Van Slyke & Bales, 2012). According to Van Slyke and Bales (2012), the likelihood of a judge issuing a sentence involving incarceration varied by type of white-collar crime committed by the defendant. Further, there was agreement amongst scholars that the duration of the white-collar crime impacted the actions of the judge towards the defendant (Steffensmeier et al., 2013).

There was also agreement as to why females committed less white-collar crime in contrast to their male counterparts and that this led to female white-collar defendants being treated differently than their male counterparts (Gottschalk & Glaso, 2013). Gottschalk and Glaso (2013) posited that women committed less white-collar crime

because they had less opportunity to do so; were less opportunistic; were more committed to personal relationships; were more committed to following the rules; were less likely to be invited into an existing white-collar offender group; and tendency to exercise risk aversion whereas males were more open to the idea of taking risks. Due to these factors, female defendants were treated inherently differently by judge's in contrast male defendants (Gottschalk & Glaso, 2013).

There had also been an extensive discussion on the impact that the defendants reason for committing the crime(s) had on the actions of the judge. Steffensmeier et al. (2013) clearly denoted that the defendant's purpose for committing white-collar crime and how that information was revealed to the judge impacted the judge's actions towards the defendant. However, according to Braithwaite (1993), males and females committed white-collar crime for different reasons and those differences led to differences in the defendant's treatment by the judge. Dodge (2007) built on this discussion positing that women committed white-collar crime because of issues stemming from their family or their desire to secure theirs or another's safety and that these issues shaped female white-collar criminality and the judiciary's view of the defendant and the crimes they orchestrated.

How the defendant chose to neutralize their behavior/crime had also been shown to have an impact on the actions of the judge (Daly, 1989; Kieffer & Sloan III, 2009). Daly (1989) linked the criminological theory 'Techniques of Neutralization' to the treatment of white-collar defendants by members of the judiciary positing that how the defendant justified their actions directly impacted how they came to be treated by

members of the judiciary. Daly (1989) further posited that men and women used neutralization techniques differently and that this led to vastly different outcomes even when the crime committed was held constant. This notion had continued to be supported by more recent literature as Kieffer and Sloan III (2009) found that male and female defendants employed different neutralizations/justifications for their engagement in white-collar crime and those differences led to differences in treatment of male and female defendants of white-collar crime by the judge. This notion was also supported in a book published by Dodge (2009) and by the work of Haantz (2002).

#### Geography

Scholars had also established that there was a correlation between offender geographical location and involvement in white-collar crime and that this correlation impacted the judge's treatment of the defendant (Steffensmeier et al., 2013).

#### Remorse

Braithwaite (1993) had noted that if the defendant exhibited remorse during court proceedings that this impacted how the defendant was treated by the judge.

#### Legal Representation

Scholars had also examined the legal representation of white-collar defendants and whether this had an impact on the actions of the judge. According to Braithwaite (1993), the legal representation afforded to white-collar defendants did impact how they were treated by the judge.

#### Organizational Factors

According to Daly (1989), the defendant's position within the organization

impacted and shaped how they were treated by the judiciary. This notion was echoed by Braithwaite (1993) who also found that the defendant's position in the organization impacted how they were treated by the judge. More recently, Cullen et al. (2009) denoted that the defendant holding the office of CEO had a direct impact on the nature of the sentence passed down on the defendant by the judge. Cullen et al. (2009) elaborated further positing that many CEO's who were convicted of white-collar crimes were sentenced to hefty sentences that frequently created a situation where the defendant would spend the remainder of their life incarcerated; something not common among non-CEO white-collar crime defendants.

Albeit limited, there was also research establishing a link between the marginalization of women and how women were treated by the judge (Daly, 1989). Daly (1989) stipulated that the marginalization of women in the workplace inhibited women's opportunities to engage in white-collar crime and if women did become involved, the nature of their involvement was starkly different than male white-collar offenders. Closely related, Steffensmeier et al. (2013) noted that institutional sexism had an impact on female involvement in white-collar crime and subsequently the behavior of the judge towards the defendant (Steffensmeier et al., 2013).

#### Beliefs of Judge

There was evidence that certain beliefs held by the judge directly impacted the judge's actions towards the defendant (Klenowski et al., 2011; Recine, 2002; Rodriguez et al., 2006). For example, according to Rodriguez et al. (2006), judges who exhibited chivalry treated female offenders differently than did judges who did not exhibit chivalry.

Recine (2002) also denoted that judge acceptance/rejection of the emancipation/liberation hypothesis shaped how the judge came to treat female white-collar defendants. Recine (2002) assertion was further supported by Rodriguez et al. (2006) who posited that judges who adhered to the liberation thesis treated defendants differently than did judges who rejected the liberation thesis.

Related, Klenowski et al. (2011) stipulated that cultural expectations of masculinity and femininity impacted the decision making process of members of the judiciary. Klenowski et al. (2011) built on this point positing that perceived defendant adherence to expectations of masculinity and femininity led to treatment of the defendant that was different from the treatment provided to defendants whose actions did not adhere to cultural expectations of masculinity and femininity.

#### Law

There was also research positing a direct link between enactment and utilization of specific white-collar crime laws and the judge's treatment of male and female defendants of white-collar crime (Recine, 2002). This notion was centered on the work of Recine (2002) who denoted that the Sarbanes-Oxley Act had a differential impact on male and female defendants of white-collar crime even in light of its prescribed sentencing guidelines.

#### Classification of Defendant

Whether the judge designated a defendant as an elite white-collar criminal or non-elite white-collar crime drastically altered how the judge came to act towards the defendant (Braithwaite, 1993). According to Braithwaite (1993), the judiciary 'cowered'

when confronted with elite white-collar criminals; a response not commonly seen in cases where the judge deemed the defendant to be outside the aforementioned group. Further, the judiciary as a collective preferred to prosecute white-collar offenders of lower statuses verses those of higher statuses who were classified as elite white-collar criminals (Braithwaite, 1993). However, when prosecutors did take elite white-collar criminals to trial, elite white-collar defendants had a higher probability of being incarcerated by the judge than did lower status white-collar crime defendants (Braithwaite, 1993).

Judges also drew a distinction between corporate white-collar criminals and white-collar criminal entrepreneurs and what group they deemed the defendant to be in altered the judge's actions towards the defendant (Gottschalk, 2013). According to Gottschalk (2013), defendant gender had an impact here with corporate white-collar criminals committing the most financially costly white-collar crimes whereas female white-collar offenders committed the least financially costly white-collar crimes; this in turn led to differences in treatment by defendant gender.

In contrast, criminal entrepreneurs committed less financially costly white-collar crimes than corporate white-collar criminals (Gottschalk, 2013). Despite this, corporate white-collar defendants were given shorter terms of incarceration than their white-collar criminal entrepreneur counterparts (Gottschalk, 2013). Criminal entrepreneurs also tended to be older than corporate white-collar criminals and on average received an incarceration term of three years (Gottschalk, 2013).

Judges also treated defendants who acted alone differently from defendants classified as co-conspirators or who acted with co-conspirators (Steffensmeier et al.,

2013). Related, defendants defined as the ‘ringleader’ by the judge were treated differently than were defendants who were not deemed to be the ringleader (Steffensmeier et al., 2013).

#### Defendant Demographics

There was mixed evidence that defendant race had an impact on the actions of the judge presiding over the case (Freiburger & Hilinski, 2010; Van Slyke & Bales, 2012; Rodriguez et al., 2006). For instance, Freiburger and Hilinski (2010) argued that when it came to male defendants that there was no significant correlation between their race and receiving pre-trial release. However, other studies had found significant correlations between defendant race and judge actions. Van Slyke and Bales (2012) posited that defendant race had an impact on likelihood of the judge sentencing the defendant to a term of incarceration. The work of Van Slyke and Bales (2012) elaborated on and provided support for the earlier assertion made by Rodriguez et al. (2006) who stipulated that defendant race impacted the sentence type levied against the defendant. Van Slyke and Bales (2012) also found a correlation between defendant age and the likelihood of the judge issuing a term of incarceration to the defendant.

Evidence was mixed as to the impact of defendant criminal history on judge action (Freiburger, 2009; Van Slyke & Bales, 2012). For example, Van Slyke and Bales (2012) denoted that defendant criminal history had an impact on sentencing outcomes for white-collar defendants. Holtfreter (2013) added that the defendant having a prior fraud conviction was especially impactful on the present case increasing the likelihood of conviction by 415%. The assertion that defendant criminal history had an impact on

judge action was also supported in Doerner's (2009) book. However, the linkage between defendant criminal history and judge action was in part called into question by Freiburger (2009) stipulation that prior criminal record did not have a significant impact on the actions of the judge towards male defendants.

There also appeared to be a correlation between defendant gender, defendant marital status, and sentence length (Crew, 1991). According to Crew (1991), when defendant gender, sentence length, and defendant marital status were correlated a significant difference in sentence length developed between married women and non-married women with judges sentencing married women to significantly longer prison sentences than their non-married counterparts.

In terms of the impact of defendant education on judge actions, there was agreement amongst scholars that education level had no impact on sentencing outcome (Holtfreter, 2013). Holtfreter (2013) supported this assertion by stipulating that male defendants (46.2%) were just as likely as female defendants (48.2%) to have received no formal sanction for their white-collar offenses.

#### Judge Demographics

Albeit minimal, there was evidence that legal practitioner gender had an impact on the actions of the legal practitioner (Ahola et al., 2010). According to Ahola et al. (2010), when the legal practitioner and defendant were the same gender, the legal practitioner tended to respond more harshly to the defendant (Ahola et al., 2010). In contrast, if the legal practitioner and the defendant were of opposite genders, the legal practitioner tended to respond to the defendant less harshly even when the crime

committed was held constant (Ahola et al., 2010).

There also appeared to be a correlation between legal practitioner gender, defendant attractiveness, and defendant evaluation by the legal practitioner (Ahola et al., 2010). For example, female prosecutors and defense attorney's evaluation of the male defendant was impacted by the attractiveness of the defendant (Ahola et al., 2010). In this instance, the more attractive the defendant was, the harsher the evaluation of the defendant by the legal practitioner (Ahola et al., 2010). However, when only examining male prosecutors and defense attorneys, no such trend was found (Ahola et al., 2010).

Evidence was mixed as to the impact that the number of female judges had on the actions of the other judges on the judicial panel (Maule, 2000; Schanzenbach, 2005). Maule (2000) argued that there was a correlation between the number of women on a State Supreme Court and the unanimity of decisions made by that State Supreme Court. According to Maule (2000), as the number of female judge's increased, the unanimity of the courts holdings decreased.

Schanzenbach (2005) added that there was also a correlation between the number of female judges within the district court and the length of sentences levied by those female judges against female defendants. Schanzenbach (2005) noted that the more female judges there were in the district court, the longer the sentences levied against female defendants by those female judges. However, Schanzenbach (2005) also stipulated that increasing the concentration of female judges in the district court did not have any noticeable impact on how the judges in the district court as a collective (i.e. both male and female) acted towards the defendant.

Scholars disagreed as to whether or not the presence of female judges on a panel had an impact on the rulings of the male judges serving on the same panel. According to Peresie (2005), the presence of a female judge on the panel had a direct impact on the nature of the rulings levied by her male judge counterparts. However, a later study conducted by Boyd et al. (2010) contradicted the findings of Peresie (2005) finding that the presence of a female judge on a court panel did not have any impact on the behavior of the male judges serving on that panel. Boyd et al. (2010) supported this claim by stating that no significant difference in behavior were noticed between mixed-gender and all male court panels. Boyd et al. (2010) did however note that despite this trend, if the court case involved sex discrimination, the presence of even a single female judge on the panel increased the likelihood that the other male judges on the panel would vote in favor of the plaintiff by up to 14%.

There was evidence that when the chief judge was female that this impacted the actions of the subordinate judges (Moyer, 2013). Moyer (2013) noted that if the chief judge was female that this was correlated with an increased likelihood of the subordinate judges siding with the plaintiff regardless of the plaintiff's gender. Moyer (2013) added to this stating that the increase in likelihood of supporting the plaintiff in cases involving a civil rights claim was larger for female justices within the U. S. Court of Appeals than it was for male justices.

In terms of case outcome, scholars agreed that the presence of female judges had an impact on the outcome of the case (Gryski et al., 1986; Maule, 2000). According to Gryski et al. (1986), the presence of a female judge on a court panel significantly

increased the likelihood that the panel would reach the conclusion that sex discrimination had occurred in the case in contrast to panels not including female judges which were significantly less likely to reach the same conclusion. The impact of judge gender on case outcome was most pronounced in situations where the victim was female in a sex discrimination case and a female judge was on the panel (Gryski et al., 1986). In this situation, judges on the panel were the most likely to find evidence of sex discrimination (Gryski et al., 1986). Maule (2000) added to the argument that judge gender impacted case outcome noting that in most instances, female justices all rule the same when on a panel.

Interesting trends also arose when examining female justices and the frequency of their dissenting (Maule, 2000). Maule (2000) noted that female justices were more likely to author dissents than were their male justice counterparts. Further, as the number of female justices on the court increased, the more likely those female justices were to author dissents (Maule, 2000).

There was also significant pool of literature that discussed the impact of judge gender (male or female) on judge action. To begin, according to Boyd (2013), there was a statistically significant correlation between judge gender and the length of time elapsed before the case would terminate. Boyd (2013) supported this stipulation stating that cases presented before a female judge terminated in a shorter period of time than did cases presented before a male judge.

In terms of settlements, Boyd (2013) found differences between male and female judges. For instance, Boyd (2013) found a statistically significant correlation between

judge gender and the likelihood of a civil rights and/or tort case being settled noting that cases presented before female judges were more likely to be settled than were cases presented before male judges.

There was disagreement amongst scholars as to the impact of judge gender (male or female) on case outcome (Collins et al., 2010; Johnson et al., 2011; Kritzer & Uhlman, 1977; Martin & Pyle, 2005; Peresie, 2005). While Kritzer and Uhlman (1977) found that case verdict was not impacted by judge gender; scholarship published since had provided near unanimous support for the assertion that judge gender did indeed impact case outcome with Peresie (2005) even going so far as to insinuate that judge gender mattered more to the outcome of the case than did the ideology of the judge(s) presiding over the case.

For example, Martin and Pyle (2005) posited that judge gender was the primary predictor of how a judge would come to vote/rule within a divorce case. Martin and Pyle (2005) supported this assertion by pointing to the fact that in 60% of all divorce cases, the female judges put aside politics and ruled in alignment with their fellow female judges on the panel; especially in instances where their female colleagues ruling was seen to be upholding the position of the female party to the case. A similar trend was also found amongst male judges as in 55% of divorce cases, male judges put aside politics to rule in alignment with their fellow male judges on the panel (Martin & Pyle, 2005).

Further, scholars agreed that judge gender had an impact on the likelihood of the judge rendering liberal decisions however they disagreed over the nature of this impact (increase/decrease). Collins and Moyer (2007) noted that female minority judges were

least likely to support a liberal position in a case and were most likely to support the conservative position. However, more recent scholarship by Collins et al. (2010) noted that female justices were significantly more likely to render liberal decisions in criminal cases than were their male justice counterparts. More recent research by Johnson et al. (2011) supported Collins et al. (2010) finding that female justices were significantly more likely to support liberal outcomes in court cases than were their male justice counterparts. Johnson et al. (2011) also added to this conversation stipulating that female justices were significantly more likely to support liberal outcomes in cases that involved civil liberties in comparison to their male justice counterparts.

Additionally, in cases not involving a civil liberties matter, Johnson et al. (2011) also found that female justices were significantly more likely than male justices to support 'pro-prosecution outcomes'. There was also evidence that the gender composition of the appellate court bench in a trial affected the outcome of the case being presented before the court (Peresie, 2005). Scheurer (2014) linked the correlation between judge gender and rendering liberal decisions to economic cases stipulating that a critical mass of female judges substantially increased the likelihood that those same female judges would vote 'liberally' in cases that pertained to civil rights and/or economic activity.

However, when examining the impact of judge gender on case outcome solely within cases pertaining to economic conflict, there was disagreement amongst scholars as to whether judge gender had an impact on case outcome. For example, Collins et al. (2010) posited that in criminal cases involving an economic matter, no significant

difference was observed between the actions of male and female justices. Johnson et al. (2011) argued the opposite stipulating that in cases involving economic conflict, female justices were significantly more open to the plight of the 'have not' and were thus also significantly more likely to engage in actions that supported the 'have not' in contrast to their male counterparts who tended to side with the wealthy/elite.

Scholars also did not agree as to what impact, if any, judge gender had on the length of sentence levied against the defendant. For example, Steffensmeier and Hebert (1999) dictated that judge gender had little impact on the length of sentence levied against the defendant regardless of the defendant's gender. Schanzenbach (2005) supported the assertion of Steffensmeier and Hebert (1999) stating that judge gender had little to no impact on the length of sentence levied against the defendant. However, a more recent study by Ahola et al. (2009) found that judge gender impacted the judge's decisions about sentence length.

Scholars did agree however that judge gender did impact the likelihood of the judge imposing a term of incarceration on the defendant (Steffensmeier & Hebert, 1999). According to Steffensmeier and Hebert (1999), female judges were 9% more likely to impose incarceration on the defendant than were their male counterparts. Further, female judges were 24% less likely to impose incarceration on the defendant if the defendant was also female (Steffensmeier & Hebert, 1999). Defendant age also appeared to be a factor with Steffensmeier and Hebert (1999) noting that female judges were more inclined to give older defendants, regardless of gender, more lenient sentences in comparison to male judges.

There was also a pool of literature supporting the assertion that judges decision making process overall was impacted by the judge's gender (Collins et al., 2010). For example, according to Collins et al. (2010), female judge's decision making was significantly different from male judge's decision making. Collins et al. (2010) added that the significance of this difference increased as the number of female judge's on the court increased. Boyd et al. (2010) also denoted that the gender of the judge authoring the majority opinion had a direct and gendered impact on the actions of the other judges on the panel.

Judge gender also impacted the frequency of judge dissent; however, that impact appeared to be heavily dependent on the nature of the court on which the judge was serving (Szmer et al., 2014). For example, according to Szmer et al. (2014), female justices were significantly less likely to enter dissenting opinions than their male justice counterparts. Szmer et al. (2014) also posited that as the gender mix of the Supreme Court became more diverse that the likelihood of the female justices offering dissenting opinions increased. However, this impact appeared to occur only in cases involving women's issues as Szmer et al. (2014) also found that in instances where there was only a single female judge serving on the state Supreme Court, in all cases involving 'non-women's issues', the female judge was less likely to enter a dissenting opinion than she would have been if there were either more women on the court or the case being presented involved a 'women's issue'. There also appeared to be an intersection between dissent, judge gender, and judge race with African American female justices entering dissents that were inherently different than those authored by female justices of other

races (Szmer et al., 2014).

There was also evidence that judge gender impacted the judge's actions towards the plaintiff in the case (Boyd et al., 2010; Moyer, 2013; Peresie, 2005). Peresie (2005) argued that female appellate court judges were more likely to rule in favor of the plaintiff than were their male judge counterparts serving on the same case. Peresie (2005) further noted that within mixed-gender appellate court panels, the male judges serving on the panel were 2x more likely to vote in favor of the plaintiff in comparison to appellate court panels consisting solely of male judges.

However, these two assertions were called into question somewhat by Moyer (2013) who posited that as mixed-sex panels of judges became more common within the U.S. Court of Appeals, justices, regardless of gender, have become more inclined to support the plaintiff in cases involving a civil rights claim. Evidence appeared to point to the notion that the impact of judge gender on the judge's actions towards the plaintiff was dependent on type of case with Boyd et al. (2010) stipulating that in sex discrimination cases female judges were significantly more likely than their male counterparts to vote in favor of the plaintiff. Further, it was also important to note that defendant attractiveness did not impact the judge's actions towards the defendant (Ahola et al., 2009).

Overall, scholars disagreed as to whether judge gender had an impact on judge action. Boyd et al. (2010), and Collins and Moyer (2007) argued that there was no significant difference between how male and female judges treated defendants. Boyd et al. (2010) also denoted that male and female judge's tended to come to the same conclusions when the type of case and crime committed were held constant. However,

even Collins and Moyer (2007) leaved open the possibility that judge gender was not wholly irrelevant to defendant treatment noting that female justices from a minority racial group treated defendants significantly different from female justice from a non-minority racial group.

#### Defendant Gender

Scholars agreed that defendant gender had an impact on the actions of the judge (Daly & Bordt, 1995; Daly, 1995; Demuth & Steffensmeier, 2004a; Jeffries et al., 2003; Kritzer & Uhlman, 1977; Leiber & Peck, 2012; Spohn & Beichner, 2000). According to Kritzer and Uhlman (1977), when all elements of the case were examined as a collective, defendant gender had a significant impact on the actions of the judge; a sentiment echoed by Daly and Bordt (1995). However, Daly (1995) slightly drew back the strength of this proposition stating that judge's actions were only in part shaped by defendant gender.

There was also a pool of evidence showing a more complex relationship between defendant race, defendant gender, severity of crime committed, and the actions of the judge (Leiber & Peck, 2012; Spohn & Beichner, 2000). According to Spohn and Beichner (2000), there was a correlation between defendant gender, defendant race, and how leniently or harshly the judge treated the defendant. However, Spohn and Beichner (2000) noted that this correlation was contingent on the jurisdiction/city under examination. Spohn and Beichner (2000) supported this stipulation by stating that in Chicago and Kansas City that female defendants, regardless of race, were significantly less likely than male defendants to be sentenced to a term of incarceration by the judge. Contrast that to findings in Miami, where African American women were significantly

less likely to be incarcerated than male defendants and no significant difference was recorded between Caucasian female defendants and male defendants; a trend not found in the other two cities (Spohn and Beichner, 2000). This sentiment was echoed by Leiber and Peck (2012) who argued that defendant race, defendant gender, and severity of the crime all impacted the actions of the judge presiding over the case.

However, other findings by Spohn and Beichner (2000) undercut the impact of this correlation. For example, Spohn and Beichner (2000) also found that Caucasian female defendants were not treated more leniently than any other group of defendants by the judge. Spohn and Beichner (2000) supported this claim via pointing to their finding that in Miami there was no significant difference between a judge's treatment of Caucasian female defendants and any other group of defendants. Demuth and Steffensmeier (2004a) further undercut this correlation arguing that judge's favorable treatment of the female defendant persisted across all racial/ethnic groups thus race/ethnicity appeared to be a non-factor in the formation and continuance of this trend. Additionally, Jeffries et al. (2003) argued that female defendants were treated significantly more leniently than male defendants; however, this difference in treatment appeared to be solely the result of defendant gender and not related to defendant race/ethnicity.

In terms of judge discretion overall, there was evidence that there was a connection between discretion on the part of judges and judges engaging in behavior that led to actions that tended to favor female defendants over male defendants in terms of case outcomes (Nagel & Johnson, 1994). This phenomenon was known as gender based

leniency (Nagel & Johnson, 1994).

Scholars agreed that defendant gender impacted the actions of the judge in terms of bail (Ball & Bostaph, 2009; Demuth & Steffensmeier, 2004a). According to Demuth and Steffensmeier (2004a), defendant gender had a direct impact on the bail amount set by the judge. Demuth and Steffensmeier (2004a) supported this assertion by stipulating that judges tended to set bail for female defendants at a rate that was 17% lower than the bail rate for male defendants. However, Ball and Bostaph (2009) argued that this trend reversed in violent crime cases where judges set bail significantly higher for female defendants charged with a violent crime than they did for males charged with a violent crime. In terms of likelihood of denying bail, Ball and Bostaph (2009) contended that when a judge was presented with a property crime case that the judge was significantly more likely to deny bail if the defendant in the case was male versus female.

Scholars agreed that pre-trial release decisions were impacted by defendant gender; what was contentious was the nature of that impact (Ball & Bostaph, 2009; Demuth & Steffensmeier, 2004a; Freiburger & Hilinski, 2010; Leiber et al., 2009). For example, Demuth and Steffensmeier (2004a) posited that judges were significantly less likely to release female defendants on financial terms in comparison to male defendants. Demuth and Steffensmeier (2004a) supported this claim via the fact that judges were 35% less likely to release a female defendant on financial terms in comparison to a male defendant. Related, Ball and Bostaph (2009) noted that judges were significantly more likely to pass down non-financial release in cases involving a female defendant who had been previously incarcerated in comparison to cases involving a male defendant who had

been previously incarcerated.

However, the works of Leiber et al. (2009) and Freiburger and Hilinski (2010) contradicted the findings of Demuth and Steffensmeier (2004a) and Ball and Bostaph (2009). For example, Leiber et al. (2009) found that judges were 1.38x more likely to release a female defendant than they were to release a male defendant; the exact opposite of the trend noted by Demuth and Steffensmeier (2004a) and Ball and Bostaph (2009). Further, Freiburger and Hilinski (2010) posited that judges were significantly more likely to deny pre-trial release to male defendants versus female defendants.

This was not to say that all female defendants were treated similarly (Freiburger & Hilinski, 2010). For instance, for female defendants, there was a correlation between defendant gender, defendant race, and likelihood of being granted pre-trial release (Freiburger & Hilinski, 2010). Caucasian and African American female defendants were significantly less likely to be denied pre-trial release in comparison to other cohorts of female defendants (Freiburger & Hilinski, 2010). Further, judges were significantly more likely to grant pre-trial release to female African American defendants in comparison to Caucasian female defendants (Freiburger & Hilinski, 2010).

There was disagreement amongst scholars that defendant gender impacted pre-trial detention decisions made by the judge (Demuth & Steffensmeier, 2004a; Leiber et al., 2009). According to Demuth and Steffensmeier (2004a), judges were significantly more likely to detain male, black, and Hispanic defendant's pre-trial than they were to detain female defendant's pre-trial. Further, judges were significantly more likely to detain male defendant's pre-trial in comparison to female defendants even after legal,

extralegal, and contextual variables were held constant (Demuth & Steffensmeier, 2004a). Demuth and Steffensmeier (2004a) supported their assertions via stipulating that judges were 37% less likely to detain a female defendant pre-trial than they were to detain a male defendant pre-trial. Leiber et al. (2009) added that judges were 3x more likely to detain an African American male defendant verses a male Caucasian defendant and that no such difference existed between African American female and Caucasian female defendants. There was also evidence that these trends carried over to juvenile defendants as Leiber et al. (2009) noted that the odds of a juvenile court judge detaining a female defendant were .58 lower in comparison to male defendants; a significant difference. Despite these trends, Leiber et al. (2009) contended that even though judges were significantly less likely to detain female defendants that the gender of the defendant had no role in that decision process.

There was also limited scholarship establishing a link between defendant gender and judges referring a case for formal processing (Leiber & Peck, 2012). According to Leiber and Peck (2012), judges were significantly less likely to refer cases involving a female defendant for formal processing than they were cases involving a male defendant.

The impact of defendant gender on judge action also appeared to be impacted by the classification of the crime(s) (felony vs. non-felony) (Daly & Bordt, 1995; Holtfreter, 2013). According to Daly and Bordt (1995), defendant gender was more of a factor in cases involving a felony offense(s) in comparison to cases involving a non-felony offense. More recent scholarship by Holtfreter (2013) supported this assertion with Holtfreter (2013) noting that the seriousness of the offense impacted the gender sentence

length disparity; the more serious the offense, the greater the gender sentence length disparity.

There was also a correlation between defendant gender, defendant prior criminal record, and defendant race (Freiburger, 2009). According to Freiburger (2009), defendant prior criminal record had a significant impact on the actions of the judge when the defendant was Caucasian and female; however, if the defendant was female and African American, prior criminal record did not have a significant impact on the actions of the judge.

Scholars did not agree whether defendant gender impacted case outcome (Eisenberg et al., 2012; Kritzer & Uhlman, 1977). Kritzer and Uhlman (1977) contended that there was no significant relationship between defendant gender and the verdict rendered in the case. However, more recent scholarship by Eisenberg et al. (2012) posited that there was a significant correlation between defendant gender and case outcome. Eisenberg et al. (2012) supported this claim by stating that female defendants were 17% more likely than their male counterparts to receive a favorable vote from the judges of the court in regards to their appeal; a significant difference.

There was mutual agreement amongst scholars that defendant gender impacted the nature of the sentence imposed on the defendant by the judge (Blackwell et al., 2008; Freiburger, 2009; Kritzer & Uhlman, 1977; Rodriguez et al., 2006). According to Kritzer and Uhlman (1977), there was a significant relationship between defendant gender and sentence outcome. Kritzer and Uhlman (1977) claim was supported by more recent scholarship by Rodriguez et al. (2006) and Freiburger (2009) both of whom asserted that

the sentence type levied against the defendant was impacted by defendant gender. Blackwell et al. (2008) went further positing that at no point in their study did the treatment of male and female defendants by judges in terms of sentencing approach anything close to what could have been deemed equal treatment. However, though dated, Kritzer and Uhlman (1977) noted that despite a significant correlation between defendant gender and nature of sentence that this correlation only explained 5% of the variance in sentence length given to defendants by judges.

Scholars did not agree whether defendant gender had an impact on the judge's incarceration decision within the case (Daly & Bordt, 1995; Koeppel, 2014; Koons-Witt et al., 2014; Van Slyke & Bales, 2012). Daly and Bordt (1995) contended that judge's incarceration decision was impacted by defendant gender. Van Slyke and Bales (2012) and Koeppel (2014) echoed this sentiment stipulating that defendant gender did significantly impact the likelihood that the judge would sentence the defendant to a term of incarceration.

According to Spohn and Beichner (2000), judges were significantly more likely to sentence male defendants to terms of incarceration verses female defendants. This claim was further supported by the work of Steffensmeier and Demuth (2006) who posited that female defendants received more favorable outcomes from judges in terms of the incarceration decision. Steffensmeier and Demuth (2006) elaborated on this point noting that judges were more likely to sentence male defendants to a term of incarceration (71%) than female defendants (56%). Further, if the judge did opt to sentence a female defendant to a term of incarceration, the term of incarceration was shorter in duration

than the length of sentence levied upon her male defendant counterpart (Steffensmeier & Demuth, 2006). More recent scholarship by Freiburger (2009) and Koons-Witt et al. (2014) provided continued support for the assertion that judges were significantly less likely to incarcerate female defendants than they were to incarcerate male defendants.

Related, judges were significantly less likely to sentence female defendants to a term of incarceration because of gendered information and gender based decisions made earlier in the adjudication process (Jeffries et al., 2003). Further, regardless of sentencing guidelines, female defendants were still significantly less likely than their male defendant counterparts to be sentenced to prison verses jail (Blackwell et al., 2008). In other words, sentencing guidelines could be in place or completely suspended; in either instance, judges still treated female defendants, in terms of nature of sentence, significantly different than they did male defendants (Blackwell et al., 2008). However, the claims of Blackwell et al. (2008), Daly and Bordt (1995), Jeffries et al. (2003), Koepfel (2014), Koons-Witt et al. (2014), Spohn and Beichner (2000), Steffensmeier and Demuth (2006) and Van Slyke and Bales (2012) appeared to be refuted by Koons-Witt et al. (2014) finding of no significant correlation between defendant gender, defendant race, and judge's decision as to whether or not to incarcerate the defendant.

Scholars also did not agree whether defendant gender impacted the length of incarceration imposed on the defendant by the judge (Crew, 1991; Daly & Bordt, 1995; Koepfel, 2014; Mustard, 2001). According to Crew (1991) there was a statistically significant relationship between defendant gender and sentence length; male defendants were significantly more likely to receive longer prison sentences. This assertion was

further supported by the work of Mustard (2001) who found that defendant gender impacted the length of sentence that the judge decided to levy upon the defendant.

Jeffries et al. (2003) added that when a judge did decide to incarcerate a female defendant, the term of incarceration levied against that female defendant was significantly shorter than the term of incarceration levied against her male defendant counterpart and that this trend was significant even after controlling for all other legal factors. The work of Jeffries et al. (2003) was supported by the work of Koons-Witt et al. (2014) who posited that judges were significantly more likely to pass down a shorter term of incarceration on female defendants in contrast to male defendants. Mustard (2001) further noted that the impact of defendant gender on sentence length decisions was attributable to departures from sentencing guidelines by the judge(s) presiding over the case. However, these findings appeared to be contradicted by the work of Daly and Bordt (1995) and Koeppel (2014) both of whom found no significant correlation between defendant gender and the judge's decision as to how long of an incarceration term to levy against the defendant.

Scholars did not agree whether defendant gender impacted judge use of alternatives to incarceration (Koeppel, 2014; Steffensmeier & Demuth, 2006). According to Steffensmeier and Demuth (2006), judges were more inclined to grant female defendant's probation/non-incarceration sentences (44%) than they were to grant probation/non-incarceration sentences to male defendants (29%). However, more recent scholarship by Koeppel (2014) found that defendant gender had no bearing on the judge's decision as to whether or not to issue a fine to the defendant or the amount of that fine.

There was a limited pool of scholarship linking defendant gender, feminine norms, and the actions of the judge towards the defendant (Rodriguez et al., 2006). Rodriguez et al. (2006) contended that the existence of feminine norms shaped the treatment of female defendants by the judiciary. Related, there was also evidence that the judge's view of women as a collective group impacted how they treated female defendants (Franklin & Fearn, 2008). According to Franklin and Fearn (2008), those working in the justice system acted to protect women because they viewed women as a group in need of help/protection. No such relationship was seen for males whom those in the justice system viewed as a group not in need of protection (Franklin & Fearn, 2008). Judge's see women as a group in need of protection because they see the responsibility of the justice system as being to punish severely defendants who victimize women (Franklin & Fearn, 2008). Collins and Moyer (2007) added that differential treatment by defendant gender persisted even after controlling for the ideology of the judge as an individual, the ideology of the panel of judges as a collective, and lower court rulings.

There was also a pool of literature establishing a link between defendant gender, defendant family role, and judge action(s) towards the defendant (Freiburger, 2009). According to Freiburger (2009) there was a significant relationship between defendant gender, providing care for one's children, and judge decisions on sentencing outcomes. Male defendants who had children but did not take care of them were significantly less likely to be incarcerated (Freiburger, 2009). This correlation did not hold for female defendants who did not see a significant reduction in their likelihood of being incarcerated if they had children and did not take care of them (Freiburger, 2009).

There was also a relationship between defendant gender, being an emotional caretaker, defendant race, and likelihood of incarceration (Freiburger, 2009). Caucasian defendants defined as caretakers saw a significant reduction in the likelihood of the judge deciding to incarcerate them; a trend that did not hold for other racial groups (Freiburger, 2009). In contrast, African American male defendants only saw a significant reduction in the likelihood of the judge sentencing them to a term of incarceration if they did not fulfill the caregiver role (Freiburger, 2009).

There was also a relationship between defendant gender, judge action, and court jurisdiction location (urban vs. rural) (Daly & Bordt, 1995). According to Daly and Bordt (1995), defendant gender impacted judicial action more in urban areas versus rural areas.

There was also a correlation between juvenile defendant gender and judge action (MacDonald & Chesney-Lind, 2001). According to MacDonald and Chesney-Lind (2001), judges were significantly more likely to handle the juvenile female defendant informally during the initial stages of the adjudication process in comparison to juvenile male defendants. As the case neared disposition this trend reversed with judges becoming significantly more likely to handle the female defendant formally versus informally (MacDonald & Chesney-Lind, 2001).

Scholars had also established a firm link between defendant gender and the judge's treatment of the white-collar crime defendant (Ahola et al., 2010; Albonetti, 1998; Cullen et al., 2009; Gottschalk, 2013; Holtfreter, 2013). According to Cullen et al. (2009), defendant gender had no significant impact on the actions of members of the jury

towards white-collar defendants. Cullen et al. (2009) posited that if the jury perceived the goal of the justice system to be ‘getting tough’ on white-collar crime that this would make the jury members more sympathetic to the prosecutor’s case regardless of the gender of the offender. However, defendant gender did impact the actions of prosecutors and defense attorneys towards the white-collar defendant (Ahola et al., 2010). Ahola et al. (2010) supported this assertion via stipulating that prosecutors and defense attorneys tended to evaluate male defendants more harshly than female defendants.

However, when examining the impact of defendant gender on the actions of the judge towards white-collar crime defendant’s differences in treatment by gender arose (Albonetti, 1998; Gottschalk, 2013; Holtfreter, 2013). According to Albonetti (1998), key differences exist between the treatment of male and female defendants of white-collar crime. Albonetti (1998) defended this stipulation by arguing that male white-collar defendants had higher degrees of education, plead guilty more often, and received more lenient sentencing outcomes in comparison to female defendants of white-collar crime who were less educated, plead guilty less often, and received harsher sentences. The assertion that female white-collar defendants were less educated than their male counterparts and that this impacted the actions of the judge was also supported by Holtfreter (2013) who posited that female white-collar defendants were less educated than their male counterparts with male white-collar crime defendants being 5x more likely to hold a graduate degree.

Related, Gottschalk (2013) denoted that females were less likely than males to become involved in ‘large scale governmental based’ white-collar crimes; a fact that led

to differential treatment of the defendant by gender by the judge. Further, unlike other cohorts of criminal's male and female defendants charged with fraud were highly unlikely to have a prior criminal record and this led to differences in how this cohort of defendants was treated in contrast to other cohorts of defendants (Holtfreter, 2013).

Additional differences in the treatment of white-collar defendants by gender by the judge arose when only examining female white-collar defendants (Albonetti, 1998). According to Albonetti (1998), the treatment of female defendants of white-collar crime was impacted by five things: lack of pleading guilty, presence/lack of a criminal record, level of remorse exhibited, role in crime(s), and duration of the crime. Further, Albonetti (1998) posited that women tended to avoid involvement in serious forms of white-collar offending such as "insider trading, price-fixing, restraint of trade, dumping of toxic waste, fraudulent product commerce, bribery, and official corruption" (p.9); activities that tended to be dominated by a majority of males.

#### Defendant Culpability/Blameworthiness

According to Holtfreter (2013), defendant level of culpability was strongly related to likelihood of conviction. Defendants deemed as culpable by judges were 85% more likely to be convicted (Holtfreter, 2013). Further, Holtfreter (2013) made clear that the main factor associated with the incarceration decision was the level of blameworthiness attributed to the defendant. If blameworthiness was held constant, extralegal factors had no impact on the judge's decision as to whether or not to incarcerate the white-collar defendant (Holtfreter, 2013).

The impact of judge gender on judge action towards the defendant had received

more scholarly attention in the past than the impact of defendant's gender on the actions of the judge towards the defendant. Within the past five years, 1 in 4 studies had found mixed results as to whether judge gender and/or defendant gender impacted the judge's actions towards the defendant.

Whether or not defendant gender had an impact on judge action was a topic that scholars had been examining in great detail since the 1970's. 81% of all scholarship to date had established and/or supported the notion that defendant gender and/or judge gender had a direct impact on judge action.

Despite overwhelming consensus amongst scholars of the presence of gender based differential treatment, support for this assertion had increased and decreased depending on the decade being examined. For example, studies conducted in the 1970's on whether defendant gender had an impact on judge action produced majority mixed results; however, articles published in the 1980's provided near unanimous support for the claim that defendant gender impacted judge action. This pattern of near unanimous support continued thru the 1990's; however, in the 2000's there was a sharp uptick in the number of studies exhibiting mixed results; although the majority still supported the notion that defendant gender impacted judge action. From 2010 to present, the percentage of articles yielding mixed results had increased to 25%.

The following constituted a synopsis of the scholarly knowledge that existed pertaining to the phenomena under examination in this dissertation as well as to the research questions that were examined. To begin, previous scholarship had found that the judge's actions towards the defendant of white-collar crime were impacted by the

defendant's gender, race, ethnicity, and age. Scholars had also found tangible links between judge action towards the defendant and the defendant's level of education, marital status, employment status, and family role at the time of the trial process.

The defendant's actions during the trial process also appeared to have a significant impact on judge action with scholars indicating that judge action towards the defendant was shaped by all of the following: the nature of the plea the defendant entered; the level of remorse the defendant exhibited during the trial or the lack of remorse exhibited; the defendant's reason(s) for committing white-collar crime; the defendant's role in white-collar crime; and the defendant's employment of techniques of neutralization. Further, scholars had also found that judge action was impacted by the defendant having or not having a prior criminal record, the defendant's culpability in white-collar crime, and the defendant's blameworthiness in white-collar crime.

When focusing specifically on defendant gender, defendant gender appeared to impact all of the following actions of the judge presiding over the case: the sentence type the judge applied to the defendant; the sentence length imposed upon the defendant; and whether or not the court exhibited gender based leniency towards the defendant. There was also mixed evidence that defendant gender may even have had some influence on the verdict rendered in the case.

Outside the context of defendant gender, judge action also appeared to be impacted by: legal/extra-legal factors of case; the defendant's position within the organization; the degree of crime the defendant committed (i.e. felony vs. misdemeanor); the geographical location of the court; sentencing guidelines; ability to exercise

discretion; the gender makeup of the court; judge's labialization of the defendant; judge seeing the female defendant of white-collar crime as a victim verses an offender; politics; judge distinction between corporate white collar criminals and criminal entrepreneurs; the financial cost of the white-collar crime the defendant committed; judge gender; the duration of the crime; the chief judge's gender; and lower court holdings.

Criminal theory, social/cultural expectations, and law also appeared to have a strong influence on judge action towards the defendant. Prior scholarship had established that critical mass theory; cultural expectations of masculinity and femininity; the chivalry/paternalism hypothesis; the emancipation/liberation hypothesis; and the Sarbanes Oxley Act all impacted judge action. In addition, scholars had also found that judge action towards the defendant was impacted by the nature of the legal representation afforded to the defendant; judge's understanding of the root causes of white-collar crime; the marginalization of female employees in the workplace; and feminine norms.

Based on the examination of prior research, it was concluded that previous literature supported the assertion that defendant gender seemed to, in most instances; impact some facet of the judge's actions towards the defendant. The impact of defendant gender on the actions of the judge also appeared to be something that transcended all parts of the adjudication process and occurred at all levels of courts both in the United States as well as internationally.

Scholars had also found some degree of interplay between gender, race, and judge actions but that linkage had not been supported to the degree that the linkage between gender and judge action alone had been supported. Differential treatment as a concept

came up across the literature spanning the decades to describe this phenomenon; although no study really put forth a solid definition of what was meant by the construct and instead inferred that the patterns in the findings were what was meant by the construct.

A qualitative case study methodology centered on the use of content analysis of court case summaries was meaningful as the majority of existing literature on whether defendant gender impacted judge action had only examined the topic from a quantitative perspective. Second, although all examining some form of existing data, none of the key studies authored by Kritzer and Uhlman (1977), Martin and Pyle (2005), Steffensmeier and Demuth (2006), and Boyd (2013) examined court case summaries as was done in this dissertation.

Third, many of the quantitative studies were based solely on sentencing data, most of which was derived from the United States Sentencing Commission and thus only examined if gender impacted sentence outcome. Fourth, less than 5 studies over the past forty years had restricted the examination of the impact of defendant gender on judge action to just white-collar crime and most of that research was well dated such as Gryski et al. (1986) and Crew (1991). The current approach was not only fixated on white-collar crime but also derived data on how defendant gender coupled with defendant blameworthiness impacted judge's actions when the phenomena was examined within the context of a single court.

Studies conducted by Huebner and Bynum (2006), Jeffries and Bond (2013), Koublitskaia (2012), Kramer and Ulmer (2006), Spohn and Beichner (2000), and Steffensmeier et al. (1993) firmly established that the qualitative methods of

interviewing, observation, and content analysis were appropriate for examining factors that impacted the actions of the judge towards the defendant. Huebner and Bynum (2006), Jeffries and Bond (2013), Koublitskaia (2012), Kramer and Ulmer (2006), Spohn and Beichner (2000), and Steffensmeier et al. (1993) also established that pre-sentence investigation reports, court files, court transcripts, and sentencing data were viable data sources for use in qualitative studies involving interviewing, observation, and/or content analysis or any combination of the aforementioned.

What remained controversial was the nature and degree of impact that defendant gender had on the actions of the judge (Huebner & Bynum, 2006; Jeffries & Bond, 2013; Koublitskaia, 2012; Kramer & Ulmer, 2006; Spohn & Beichner, 2000; and Steffensmeier et al., 1993). What remained to be studied was how defendant gender coupled with defendant blameworthiness impacted judges actions when the phenomena was examined within the context of a single court and how defendant blameworthiness as perceived by the judge impacted other facets of judge's actions outside the context of sentencing outcomes such as bail decisions and restitution via content analysis of court case summaries within the context of a specific court-The United States District Court for the Southern District of New York.

Within these six identified studies, researchers employed three different types of qualitative methods: interviewing, observation, and content analysis. Interviewing and observation were not the best fit for this study as the attributes of defendant blameworthiness could all be accessed via examination of case summaries without necessitating speaking to the judge or directly observing their behavior.

The concept differential treatment was selected because the term had come up in previous literature studying the impact of defendant gender on the actions of the judge. The identification of differential treatment as a variable led, in part, to the decision being made to undertake a qualitative case study. In this dissertation, the objective was to describe three things; first, how defendant gender impacted judge's actions when the phenomena were examined within the context of a single court; second, how defendant blameworthiness impacted judge's actions when the phenomena was examined within the context of a single court? And third, how defendant blameworthiness as perceived by the judge impacted other facets of judge's actions outside the context of sentencing outcomes.

White-collar crime was selected because of the lack of literature on how the white-collar defendant's gender impacted the actions of the judge within individual courts. The United States District Court for the Southern District of New York was chosen because New York, NY was a mega center of business and economics and some of the highest profile white-collar crime cases ever adjudicated such as the case against Bernard Madoff was adjudicated by this very court.

### Summary and Conclusions

Overall, since the 1970's, scholars had consistently shown that defendant gender had an impact on judge action. Even the most recent scholarship had continued to show majority support for the aforementioned assertion. Further, defendant gender had been found to impact judge's actions at all stages of the adjudication process and this trend carried over to juvenile courts as well as to international courts. Moreover, this pattern of

gender based differential treatment of defendants had continued to persist despite the enactment of sentencing guidelines which were designed to eradicate it. There was also some evidence that this problem impacted the white-collar defendant; a pathway upon which this dissertation expanded.

It was well known based on previous scholarship how this phenomenon (i.e. how defendant gender impacted judge action) looked between the 1970's and the late 1990's in the United States as well as in the international community. It was also well known how this phenomenon presented within the context of levels of courts or within clusters of courts. However, what was not known was how this phenomenon presented itself in the 21<sup>st</sup> century as even the most recent of scholarship utilized datasets that were decades older than the studies themselves. Further, it was not known how this phenomenon presented within a single court such as the United States District Court for the Southern District of New York.

This had created a gap in the literature, despite forty years of consistent scholarship no study had ever examined how defendant gender coupled with defendant blameworthiness impacted judge's actions when the phenomena were examined within the context of a single court. Nor had any study examined how defendant blameworthiness as perceived by the judge impacted other facets of judge's actions outside the context of sentencing outcomes.

In departing from the methodologies of previous scholars and employing a qualitative methodology rooted in content analysis while fixated on a single court this study came to fill these gaps in the literature by providing a unique and never before seen window into

this phenomenon. In chapter three, the author laid out this qualitative methodology in detail thus further establishing its applicability to the aforementioned topic and gap in the literature.

## Chapter 3: Research Method

### Introduction

The purpose of this dissertation was to fill a gap in existing literature-the lack of research on the impact of defendant gender and blameworthiness within the context of a single court (Holtfreter, 2013). In this chapter I will provide a detailed introduction to all facets of the chapter; second, I will describe the research design and how the research design derives logically from the problem statement; third, I will describe my role in the research; fourth, I will describe the setting of the study and the sample that is derived; fifth, I will describe the data collection procedures that are employed; sixth, I will describe the data analysis process that is employed; seventh, I will establish the trustworthiness of the study; eight, I will prescribe all ethical procedures that are in place to protect the rights of participants; ninth, I will provide a description of how the results will be presented in Chapter Four and tenth, I will provide a summary and transition into Chapter Four.

### Research Design and Rationale

RQ1:

How might a criminal defendant's gender affect a judge's actions within a single court?

RQ2: How might a criminal defendant's blameworthiness affect a judge's actions within a single court?

RQ3: How might a criminal defendant's blameworthiness affect bail decisions

and restitution by a judge?

I believe that a qualitative research method was best suited to answer the research questions. Qualitative research is ideal for use in situations where the objective is to examine a limited number of cases in great detail (Atkinson & Delamont, 2006; Johnson & Onwuegbuzie, 2004; Morales, 1995; Stanfield II, 2006; University of South Alabama, n.d.). Here the court itself is what constitutes the case and the entire study is about explaining how the identified concepts present within that one case making case study the ideal approach.

Second, qualitative research was effective for use in describing complex phenomena (Atkinson & Delamont, 2006; Johnson & Onwuegbuzie, 2004; Morales, 1995; Stanfield II, 2006; University of South Alabama, n.d.). How might a criminal defendant's gender affect a judge's actions within a single court? How might a criminal defendant's blameworthiness affect a judge's actions within a single court? How might a criminal defendant's blameworthiness affect bail decisions and restitution by a judge? Were all complex phenomena not easily defined or examined.

Third, qualitative research was used to provide case specific information (Atkinson & Delamont, 2006; Johnson & Onwuegbuzie, 2004; Morales, 1995; Stanfield II, 2006; University of South Alabama, n.d.). Within this dissertation it was important to be able to identify case specific instances of both differential treatment as well as instances of perceived impact of focal concerns (i.e. blameworthiness) on the actions of judges.

Fourth, qualitative research generated case specific information, allowing for

comparisons between individual cases, in this instance, between individual judges or groups of judges (Atkinson & Delamont, 2006; Johnson & Onwuegbuzie, 2004; Morales, 1995; Stanfield II, 2006; University of South Alabama, n.d.).

Fifth, qualitative research uncovered the actor's experience of the phenomena (Atkinson & Delamont, 2006; Johnson & Onwuegbuzie, 2004; Morales, 1995; Stanfield II, 2006; University of South Alabama, n.d.). In this dissertation, the judge's experience with differential treatment and focal concerns within the context of white-collar crime cases.

Sixth, qualitative research was used to describe phenomenon that were embedded within a context (Atkinson & Delamont, 2006; Johnson & Onwuegbuzie, 2004; Morales, 1995; Stanfield II, 2006; University of South Alabama, n.d.). The phenomena of differential treatment and defendant blameworthiness were both embedded within the context of the United States District Court for the Southern District of New York.

Seventh, I used qualitative research to identify contextual factors that impacted the phenomena under examination (Atkinson & Delamont, 2006; Johnson & Onwuegbuzie, 2004; Morales, 1995; Stanfield II, 2006; University of South Alabama, n.d.). In this dissertation, contextual factors of the court that give rise to gender based differential treatment and/or focal concerns.

Eight, qualitative research was well equipped for the study of this dynamic process (Atkinson & Delamont, 2006; Johnson & Onwuegbuzie, 2004; Morales, 1995; Stanfield II, 2006; University of South Alabama, n.d.). Differential treatment was not this static concept that remained unchanged over time; it instead evolved and changed

over time and those changes were uncovered and documented via a qualitative approach.

Ninth, qualitative research was used to produce an explanatory theory about the phenomena under examination (Atkinson & Delamont, 2006; Johnson & Onwuegbuzie, 2004; Morales, 1995; Stanfield II, 2006; University of South Alabama, n.d.). No study examining the impact of defendant blameworthiness as perceived by the judge had ever examined the aforementioned phenomena within the context of a specific legal jurisdiction (Holtfreter, 2013); thus it made inherent sense to adhere to a qualitative approach that was geared at yielding an explanatory theory about this phenomenon that I or another researcher could examine quantitatively in a future research project.

Tenth, qualitative research typically entailed collecting the data in a natural setting (Atkinson & Delamont, 2006; Johnson & Onwuegbuzie, 2004; Morales, 1995; Stanfield II, 2006; University of South Alabama, n.d.). In this case, there was no pathway by which to manipulate any factor of the court case or the actions of the judge; in light of that, it made sense to pursue qualitative research and observe the phenomena in its natural setting.

Eleventh, qualitative research revealed not only how the phenomenon occurred but why it occurred (Atkinson & Delamont, 2006; Johnson & Onwuegbuzie, 2004; Morales, 1995; Stanfield II, 2006; University of South Alabama, n.d.). It was not enough to discover that defendant gender and/or defendant blameworthiness impacted judge's actions when the phenomena were examined within the context of a single court and then go no further. The research questions answered wholly demanded the pursuit of a research method that would uncover the how and the why of the phenomena.

There were five main qualitative research methods: narrative, grounded theory, ethnography, phenomenology, and case study (Merriam et al., 2002).

According to Merriam et al. (2002), researchers used narrative when they sought to tell a single person's story across some period of time. The focus of the research thus became revealing the meaning of that person's story and what lessons could be learned from that person's story (Merriam et al., 2002). Narrative was not chosen as the qualitative research method for this study because how defendant gender and/or defendant blameworthiness impacted judge's actions when the phenomena was examined within the context of a single court was not something that could be uncovered and fully understood via the examination of only one judge or only one court case.

At first glance, grounded theory appeared to be a viable fit to this dissertation. Grounded theory was used to examine an action or interaction with the goal of developing a theory to explain that action or interaction (Merriam et al., 2002). The reason why grounded theory was not chosen for use in this dissertation was that grounded theory was not context specific whereas the research questions posed in this dissertation were context specific.

Ethnography sought to produce an in-depth description of a phenomenon via the researcher immersing themselves to some degree within the phenomena that they sought to examine (Merriam et al., 2002). Ethnography was not chosen for use in this dissertation as it was not possible to effectively immerse into any facet of the phenomena examined or to guarantee that such immersion would not be prevented by factors outside of my control such as limits placed on the number of people from the public that can

attend a trial on any given day.

According to Merriam et al. (2002), the objective of a phenomenological research study was to “describe participants’ experiences in a specific context and understand a phenomenon” (p.1). Although here, the objective was to describe the judge’s experience/actions within the specific context of white-collar crime cases adjudicated between 2009 and 2015 by the United States District Court for the Southern District of New York, in reality the court represented a case; consequently, phenomenology was not the best suited qualitative design for use in this dissertation. Case study was chosen as the best suited qualitative design as case studies were used to look at events bounded by a prescribed time and setting with the objective of answering the ‘how’ question (Merriam et al., 2002). In this dissertation, the case was identified as the United States District Court for the Southern District of New York. The study was also bounded by time (i.e. 2009 to 2015) and by setting (United States District Court for the Southern District of New York). Identification of the how was also emphasized in all three research questions posed in this dissertation; for example, how did defendant gender impact judge’s actions when the phenomena was examined within the context of a single court? How did defendant blameworthiness impact judge’s actions when the phenomenon was examined within the context of a single court? And how did defendant blameworthiness as perceived by the judge impact other facets of judge’s actions outside the context of sentencing outcomes such as bail decisions and restitution?

Qualitative research allowed me to delve deeply into the ‘how’ and ‘why’ components behind uncovered instances of gender based differential treatment that arose

during the course of the study; something not easily done had this topic been approached from a quantitative perspective. Further, much of what was examined (i.e. the actions of the judges towards defendants) was material that was not capable of being quantified or measured from a numerical perspective. For example, there was no manner by which to conduct this study where it would have been possible to quantify the reason why Judge A took Action B within the context of Scenario C. That was something that could only be examined and explained via detailed qualitative analysis of a non-numerical nature.

In addition, quantitative research strongly emphasized the ‘what’. What was there not so much as why it was there or how it appeared. Simply knowing what was there within the context of this dissertation was not enough; I could not just simply say that defendant gender and/or defendant blameworthiness impacted judge’s actions when the phenomena was examined within the context of a single court and then just stopped there which was where a quantitative approach would effectively have forced me to stop. Only via qualitative methods was I able to go one step further after identifying the ‘what’ and explain why it existed and how it existed within particular scenarios or even for particular judges.

#### Role of the Researcher

Given that there was no feasible manor to participate in the trial process of any of the cases examined, I was not a participant or a participant-observer during any part of the study. Further, given the restrictions placed on access to this court; the inability to guarantee continued access to identified relevant ongoing cases; and the inability to observe closed cases; no form of direct observation of participants in the courtroom was

conducted. Instead, my objective was to observe the phenomena via content analysis of official court case summaries which served as the basis of the data that I analyzed in Chapter 4 of this dissertation.

My role in the data collection procedure was solely to examine the case summaries of cases adjudicated by the United States District Court for the Southern District of New York between 2009 and 2015. As for personal/professional relationships, I had no existing or prior personal or professional relationship with any of the district court and/or magistrate judges that had active status within the United States District Court for the Southern District of New York between 2009 and 2015. Further, at the time of the writing of this dissertation, I had no pending future personal, professional, or contractual relationships with any of the district court and/or magistrate judges mentioned previously. I also had no prior or current personal or professional relationship with any staff member working within the United States District Court for the Southern District of New York.

There were two key potential researcher biases associated with this dissertation observer bias and culture bias. Observer bias referred to the fact that different observers could come to interpret the meanings of the categories included in the coding system differently and thus draw different conclusions (Elo et al., 2014). This bias was reduced within the context of this dissertation by having all observations made by a single observer, myself.

Culture bias inferred that how one interpreted verbal and written content was affected by their own language, their own culture, and the coding system employed (Elo

et al., 2014). This bias was addressed via ensuring that the coding system and all interpretations made based off of it were rooted solely in the culture from which the data was derived.

In addition, there were several ethical issues surrounding this dissertation. The judges and defendants named within the context of the case summaries that were reviewed possessed a reasonable expectation that their privacy would be guaranteed during all stages of the study (Fritz, 2008; Halley, n.d.; Orb et al., 2000; Richards & Schwartz, 2002; Stevens, 2013). To ensure the privacy and anonymity of the judges and defendants named in the case summaries was maintained, no type of identifying information (i.e. names) was included in any part of this dissertation. Instead pseudonyms were utilized when referring to judges or defendants within the context of this dissertation; for example, Judge A or Judge One.

The judges and defendants named in the case summaries also expected that this dissertation would not be overly intrusive (Fritz, 2008; Halley, n.d.; Orb et al., 2000; Richards & Schwartz, 2002; Stevens, 2013). Judges and defendants expected that the content analysis would not be overly intrusive on their personal lives (Fritz, 2008; Halley, n.d.; Orb et al., 2000; Richards & Schwartz, 2002; Stevens, 2013). To ensure that the content analysis was not too intrusive, the content analysis did not entail any degree of intrusion into elements of the personal life of the judges or defendants (Fritz, 2008; Halley, n.d.; Orb et al., 2000; Richards & Schwartz, 2002; Stevens, 2013).

## Methodology

### Participant Selection Logic

The data for this dissertation were gathered from official case summaries published on the courts website covering white-collar crime cases adjudicated by the United States District Court for the Southern District of New York between 2009 and 2015. I made the decision to gather the data for this dissertation from the aforementioned source because all elements of the case pertaining to defendant blameworthiness were contained within the case summaries. Further, the case summaries were in the public domain and were readily accessible online for anyone to view.

The population from which the sample was derived was all white-collar crime cases adjudicated by this court. The sample for this study encompassed only financial crimes adjudicated by this court between 2009 and 2015 that adhered to the definition of white-collar crime as provided by the FBI.

Restriction to white-collar crime cases between 2009 and 2015 by this court was justified as no prior study examining the impact of defendant blameworthiness as perceived by the judge had ever examined the aforementioned phenomena within the context of a specific legal jurisdiction (Holtfreter, 2013) or via using a dataset from the aforementioned timeframe. Further, this court's jurisdiction covered New York City, a major economic center, making fixation on this court and the actions of judges within this court justified.

According to Francis et al. (2010), Guest et al. (2006), and Mason (2010), the qualitative researcher continues to gather data and expand the sample size until the information being gathered becomes redundant, at which point the researcher can claim

saturation. Here, the sample included all white-collar crime court cases meeting the FBI definition of white-collar crime adjudicated by the aforementioned court between 2009 and 2015. Given the inclusion of all cases meeting this definition the sample was deemed as possessing saturation.

Eligibility criteria for inclusion in the study were as follows. First, case adjudicated by United States District Court for the Southern District of New York. This criterion was verified by only examining case summaries derived from this courts website which only published case summaries pertaining to cases adjudicated by the aforementioned court. Second, case adjudicated between 2009 and 2015. Criterion was verified by conducting a date range search of case summaries on the aforementioned courts website which ensured that all resultant case summaries pertained to cases adjudicated between 2009 and 2015. Third, case involved a white-collar crime(s). Criterion was verified by restricting the search for case summaries to financial crimes which the courts website made clear encompassed white-collar crime. Further, identified cases were checked against the FBI definition of white-collar crime to ensure adherence to that definition before they were included in the sample. Cases not meeting all three of the above prescribed criterion were deemed ineligible for inclusion in the studies sample.

In terms of characteristics, the United States District Court for the Southern District of New York was about evenly split between male (60%) and female judges (40%). However, what the court possessed in terms of gender diversity it did not possess in terms of racial diversity as 76% of all judges who served on this court between 2009 and 2015 were Caucasian.

The overwhelming majority of judges were also older with 81% of all judges being between the ages of 50 and 79 years old and 53% being over the age of 60; contrasted to the fact that only 14% of all judges on this court were under the age of 50. The sample was also dominated by judges who were graduates of Ivy League law schools with 69% of all judges graduating from Harvard, Yale, Columbia, or Cornell. Harvard Law was by far the most frequent law school with nearly 3 in 10 judges reporting Harvard as their alma mater.

Identification of relevant white-collar crime cases was based off of information gleaned from the official website of the United States District Court for the Southern District of New York; specifically, information on white-collar crime cases adjudicated by this court between 2009 and 2015. This information was readily available on the aforementioned courts website. The information was used to compile a list of all white-collar crime cases heard by the aforementioned court within the prescribed timeframe.

Attainment of sample cases began by first confirming that the prospective case was adjudicated by The United States District Court for the Southern District of New York. Second, that the prospective case was adjudicated between 2009 and 2015. Third, that the case involved a white-collar crime that met the definition of white-collar crime as prescribed by the FBI.

The archived data consisted of case summaries published in the public domain. These case summaries were located on the official website of the aforementioned court and the content of the case summaries was produced and published by staff members working for the United States District Court for the Southern District of New York.

## Instrumentation

The data collection instrument in this dissertation was content analysis. Hall and Wright (2008), Horvath et al. (2002), Mercer (1998), and Terpstra and Baker (1992) all conducted studies that utilized content analysis to examine judge actions. All of these studies utilized content analysis as the sole data collection instrument or the primary data collection instrument. Nothing about these studies suggested that the addition of another data collection instrument or substitution of another data collection instrument would have led to the uncovering of any additional information not already uncovered by content analysis. Consequently, it appeared as though qualitative content analysis was more than sufficient to examine the research questions posed by this study.

Four key studies conducted between 1980 and 2012 established the viability of using content analysis for examining the actions of the judiciary. First, Terpstra and Baker (1992) conducted a study that involved content analysis to determine how characteristics of the case impacted the actions of the judge in terms of case outcome. This study entailed examination of legal and extra-legal factors that impacted judge actions thus content analysis was appropriate for application here.

Second, Mercer (1998) conducted a study that involved content analysis to assess judicial decision making; specifically, decision making pertaining to primary caregivers and custody determinations. Although this dissertation did not deal with primary caregivers or custody determinations it dealt with factors impacting judicial decision making thus content analysis was appropriate for application here.

Third, Horvath et al. (2002) used content analysis to analyze factors that impacted

judge's custody holdings. Granted this dissertation was not about custody holdings; however, this study showed that content analysis was an appropriate data collection instrument when the objective was to evaluate factors that impacted judge action thus content analysis was appropriate for application here.

Fourth, Hall and Wright (2008) used content analysis to analyze judicial opinions. Although judicial opinions were not the focus of this study, factors that impacted the actions of judges towards white-collar defendants was; Hall and Wright (2008) examined a different factor but within the same population making it appropriate to have deployed content analysis here.

According to Key (1997), content validity referred to the degree in which "the elements within a measurement procedure are relevant and representative of the construct that they will be used to measure" (p.1). Content validity was established as the elements within the measurement procedure offense severity, criminal history, and role in offense had already been said by Holtfreter (2013) to be representative of the construct defendant blameworthiness.

There were some context specific issues that impacted this court while this data collection instrument was being developed. In 2015, the United States Sentencing Commission (2015) set to work on crafting amendments/revisions to sentencing guidelines for economic crimes. The United States Sentencing Commission (2015) was calling for alteration to the victim enhancement section of fraud guidelines to ensure that even if only one individual was victimized, if the victimization was deemed substantial, that this would automatically increase the sentence length levied against the offender.

The United States Sentencing Commission (2015) also wanted to ‘refocus’ sentencing guidelines onto offender intent and not just simply on financial loss to the victim. The objective here was to create a scenario where judges would sentence less severely offenders deemed minimally involved in the white-collar crime(s) (United States Sentencing Commission, 2015).

These recommendations were contentious and were drafted during the course of development of the data collection instrument. Further, there had been much public and political push for further modifications to sentencing guidelines for economic crime; a process that was actively ongoing as this dissertation was underway.

Content analysis of archived data in the form of case summaries constituted a sufficient data collection instrument to answer research question one-how did defendant gender impact judge’s actions when the phenomena was examined within the context of a single court? Defendant gender was clearly indicated within the case summaries; thus, this data source was sufficient for answering the aforementioned research question.

Content analysis of archived data in the form of case summaries constituted a sufficient data collection instrument to answer research question two-how did defendant blameworthiness impact judge’s actions when the phenomena was examined within the context of a single court? The elements that make up defendant blameworthiness (offense severity, criminal history, and role in offense) were all facts included within the context of the aforementioned case summaries. Thus this data source was sufficient for answering the aforementioned research question.

Content analysis of archived data in the form of case summaries constituted a

sufficient data collection instrument to answer research question three-how did defendant blameworthiness as perceived by the judge impact other facets of judge's actions outside the context of sentencing outcomes such as bail decisions and restitution? The actions of judges outside the context of sentencing outcomes were described within the context of the case summaries thus this data source was sufficient for answering the aforementioned research question.

#### Procedures for Recruitment, Participation, and Data Collection

RQ1:

How might a criminal defendant's gender affect a judge's actions within a single court?

Data was collected from case summaries pertaining to white-collar crime cases that met the definition of white-collar crime as prescribed by the FBI that were adjudicated by the United States District Court for the Southern District of New York between 2009 and 2015. All data was collected solely by myself and was collected one time from each case summary. The data collection event occurred over a period of two weeks and data were recorded in an Excel spreadsheet. In the event that not enough cases were identified, the timeframe of the study would have been expanded by one year.

RQ2: How might a criminal defendant's blameworthiness affect a judge's actions within a single court?

Data was collected from case summaries pertaining to white-collar crime cases that met the definition of white-collar crime as prescribed by the FBI that were adjudicated by the United States District Court for the Southern District of New York

between 2009 and 2015. All data was collected solely by myself and was collected one time from each case summary. The data collection event occurred over a period of two weeks and data was recorded in an Excel spreadsheet. In the event that not enough cases were identified, the timeframe of the study would have been expanded by one year.

RQ3: How might a criminal defendant's blameworthiness affect bail decisions and restitution by a judge?

Data was collected from case summaries pertaining to white-collar crime cases that met the definition of white-collar crime as prescribed by the FBI that were adjudicated by the United States District Court for the Southern District of New York between 2009 and 2015. I collected all of the data and data was collected one time from each case summary. The data collection event occurred over a period of two weeks and data was recorded in an Excel spreadsheet. In the event that not enough cases were identified, the timeframe of the study would have been expanded by one year.

For the data collection instrument (i.e. content analysis) I collected data from the official website of the United States District Court for the Southern District of New York. I collected all data and data was collected on an ongoing basis until all relevant cases were included in the sample. The data needed had already been compiled as part of the research conducted for chapters one and two and examination of the data took two weeks. Data was recorded in an Excel spreadsheet.

As there were no human participants in this study, this study did not entail any debriefing procedures. In the event that questions arose regarding the material generated via the content analysis the court would have been contacted directly and queried for

clarification of the material. This would have entailed my calling the Court Clerk for the United States District Court for the Southern District of New York and asking the Court Clerk to provide additional public records pertaining to the material that was in need of clarification. If the Court Clerk could not readily provide these public records to me, the Court Clerk would have been asked to provide directions to me as to where I could have gone to gain access to the additional public record documents. This situation never arose during the study consequently the Court Clerk was never contacted.

#### Data Analysis Plan

RQ1:

How might a criminal defendant's gender affect a judge's actions within a single court? The data collected specific to this research question was qualitative in nature and consisted of rich descriptions of judge's actions taken towards the defendant. Actions of judges towards white-collar defendants were not something easily quantified. This question wanted to know the 'how'; a type of questions that was best answered via qualitative data.

RQ2: How might a criminal defendant's blameworthiness affect a judge's actions within a single court? The data collected specific to this research question was qualitative in nature. How defendant blameworthiness impacted the actions of the judge towards the defendant was not something that could be quantified. Thus, this question was best answered via examination of qualitative data.

RQ3: How might a criminal defendant's blameworthiness affect bail decisions and restitution by a judge? The data specific to this research question was strictly

qualitative in nature. How defendant blameworthiness impacted judge's actions outside the context of sentencing outcomes was not something that could be quantified.

Explanation of this phenomenon was only possible if the question was examined via qualitative data.

All of the data collected in this study was subjected to an inductive coding process. Review of the case summaries generated a list of themes presented within those summaries. This list of themes was then recorded in Excel and once completed allowed for case summary content to be categorized by theme and analyzed accordingly. This inductive coding process began with a series of broad codes which as part of the analysis process were further broken down into more specific 'sub-codes'. For example, Code A being the broad code which after analysis was further broken down into Sub-Codes B and C.

As for discrepant cases, according to Creswell (1998), Mays and Pope (2000), Patton (1999), Patton (2001) and the University of Prince Edward Island (n.d.), a discrepant case was a case that contradicted an emerging pattern or category during the data collection process. Failing to examine and subsequently discuss any and all discrepant cases discovered was to be avoided (Creswell, 1998; Mays & Pope, 2000; Patton, 1999; Patton, 2001; University of Prince Edward Island, n.d.).

In this dissertation discrepant cases were discussed in detail. It was crucial to provide the reader with both sides of the argument (i.e. evidence in support of and opposition to the research questions). Evidence in support of the research questions was presented first with a subsequent discussion following of evidence that contradicted the

claims made in the section where findings in support of the research questions were presented. The decision to separate the two pools of evidence was made so as to make each analysis easier for the reader to understand.

#### Issues of Trustworthiness

Creditability of this study was established by using a transparent coding process and making all conclusions based solely off of the raw data (Zhang & Wildemuth, n.d.). The author also provided the exact coding definitions used as well as all coding procedures employed (Zhang & Wildemuth, n.d.).

Transferability was established via providing rich data and descriptions that enabled other researchers to gauge the transferability of the findings in this dissertation to different settings or contexts (Zhang & Wildemuth, n.d.). It was not my task to provide an index of transferability; rather, he or she was responsible for providing data sets and descriptions that were rich enough so that other researchers were able to make judgments about the findings' transferability to different settings or contexts.

Dependability was established via a transparent coding process (Zhang & Wildemuth, n.d.). That process also entailed the use of a code book and all coding practices conducted within this study adhered to the definitions of the codes as prescribed in the codebook.

Confirmability was established via examination of the internal coherence of the study (Zhang & Wildemuth, n.d.). This process involved examination of the data, findings, interpretations, and recommendations.

According to Johnson and Christensen (2010) and Stacks (2010), intra-coder

reliability infers that the researcher's judgments of Phenomenon A will vary across time; in other words, if the researcher examined Phenomenon A now and again in three hours, the judgments generated would be different. To ensure intra-coder reliability, I ensured that all judgments made about Phenomenon A were made during a single examination.

#### Ethical Procedures

Regardless of profession, all scholarly research involving human subjects is required by law to take numerous measures to protect the human participants as well as the privacy of those participants (APA, 2015; National Institute of Health, n.d.). However, as this dissertation involved the use of secondary data and no human participants these measures were not applicable to the current study.

Despite the lack of human participants, an IRB application will still completed and submitted along with the study for IRB review through Walden University. Only after receiving IRB approval (02-18-16-0432129) was the study conducted.

There were no ethical concerns in this study related to the recruitment of participants as this study did not involve the use of any human participants. There were also no ethical concerns related to data collection. No agreements were needed to access participants as this study did not involve human participants.

All data collected remained anonymous and no names were listed on the Excel document that contained the data derived from the case summaries or referenced at any point during this dissertation. Granted, there was a concern that in not linking judges to instances of gender based differential treatment that this would inhibit efforts to make changes within this court as it would prove impossible from the findings to determine

who was part of the problem and who was not. However, to avoid risk being generated by this study to the judges referenced in the case summaries to be examined the best approach to fully examine the phenomenon was to provide complete anonymity and confidentiality to the judges by keeping their names out of the data and the dissertation itself.

All data collected were archived with pseudonyms used in place of the judge/defendants actual names. Data were and continue to be stored in an encrypted Excel file on my personal computer. A backup copy of the data (also encrypted) is also stored on one of my personal flash drives.

Data has not been disseminated to anyone and I was the sole individual involved in conducting all analysis of the data. After the study was complete, an encrypted copy of the data was retained to potentially be used in future research studies. I did not work for the United States District Court for the Southern District of New York, nor did I work for any affiliate agency of the aforementioned court.

The results section of the dissertation was broken down into three sections: The first section discussed findings related to the first research question-how did defendant gender impact judge's actions when the phenomenon was examined within the context of a single court? The second section discussed findings related to research question two-how did defendant blameworthiness impact judge's actions when the phenomena was examined within the context of a single court? Within this section there were three subsections. Subsection one examined how offense severity impacted judges actions when the phenomenon was examined within the context of a single court. Subsection

two addressed how defendant role in offense impacted judge's actions when the phenomenon was examined within the context of a single court. Subsection three examined how defendant criminal history impacted judge's actions when the phenomenon was examined within the context of a single court. This section concluded with an examination of the findings of subsections one to three as a collective (collectively subsections constituted defendant blameworthiness) to determine overall how defendant blameworthiness impacted judge's actions when the phenomenon was examined within the context of a single court.

Section three discussed findings pertaining to research question three-how did defendant blameworthiness as perceived by the judge impact other facets of judge's actions outside the context of sentencing outcomes such as bail decisions and restitution? This section contained two subsections. The first examined how defendant blameworthiness as perceived by the judge impacted judge's actions in terms of bail decisions. The second subsection examined how defendant blameworthiness as perceived by the judge impacted judge's actions in terms of restitution.

Discrepant cases were described separately so as to highlight the content of those discrepant cases. In terms of order of presentation of findings, non-discrepant cases were presented first followed by discrepant cases. A cross comparison of the two groups of cases was then conducted to highlight the differences.

### Summary

The phenomena that this dissertation sought to examine were not easily quantifiable and the research questions posed were best suited to a qualitative style of

inquiry. The devised study aimed at answering the three research questions posed by this study was set in the United States District Court for the Southern District of New York, a district court that had handled many high profile white-collar crime cases in recent years including the case against Bernard Madoff.

A sample consisting of all case summaries of white-collar crime cases meeting the FBI definition of white-collar crime adjudicated by the aforementioned court between 2009 and 2015 was examined to determine how did defendant gender impact judge's actions when the phenomena was examined within the context of a single court? How did defendant blameworthiness impact judge's actions when the phenomenon was examined within the context of a single court? And how did defendant blameworthiness as perceived by the judge impact other facets of judge's actions outside the context of sentencing outcomes such as bail decisions and restitution? The data generated were kept confidential and pseudonyms were used in lieu of the names of the judges and defendants listed within the case summaries. Data was subjected to qualitative analysis.

I presented this study to the IRB for its approval (02-18-16-0432129) so as to ensure that the study conducted was indeed ethical in nature. Much of the results/findings were in the form of thick descriptions; however, tables and charts were utilized where appropriate to highlight key findings or to provide additional clarification.

In Chapter Four, I present thorough analysis of the findings generated from deployment of the previously discussed methodology within the context of this study. All pertinent supporting and opposing findings were presented clearly and concisely to the reader. Tables and charts were used to clarify otherwise complex findings as needed

during the process of writing up the findings of this study.

## Chapter 4: Results

### Introduction

The purpose of this study was to examine whether judges' perceptions of white-collar criminal defendant's gender and blameworthiness had an impact on judge actions towards those defendants. I examined this phenomenon within the context of a specific legal jurisdiction, which is something that Holtfreter (2013) said had yet to be done by researchers. The research questions I posed in this study are listed below:

RQ1:

How might a criminal defendant's gender affect a judge's actions within a single court?

RQ2: How might a criminal defendant's blameworthiness affect a judge's actions within a single court?

RQ3: How might a criminal defendant's blameworthiness affect bail decisions and restitution by a judge?

### Setting

The study site was the United States District Court for the Southern District of New York. Two organizational conditions influenced participants during the timeframe in which this study was conducted. First, between 2009-2015, two new magistrate judges were appointed to serve within the U.S. District Court for the Southern District of New York ("News", n.d.). Second, the court was also impacted by the death of one of the retired/former judges; an event that also occurred between 2009-2015 ("News", n.d.).

The appointment of the two new magistrate judges impacted data collection as it created a situation where several of the cases that were examined were commenced and concluded by two different judges; in some instances, judges of the opposite gender. For example, the case would begin with an arraignment by a female judge and conclude with one of the new magistrate judges presiding over the case. This made it difficult in these instances to differentiate whether observed differences were the result of defendant gender and blameworthiness or resultant from the simple change in judge presiding over the case. The death of a judge may have also impacted the actions of the judges in the immediate aftermath of the incident again making it difficult to differentiate whether observed differences resulted from defendant gender and blameworthiness or were resultant from this death.

### Demographics

A total of 1162 defendants charged with one or more white-collar crimes presented in this court between 2009-2015. Of the 1162 defendants, 279 (24%) were female and 883 (76%) were male. Approximately 24% ( $n = 282$ ) of the defendants were presented before a female judge; the remaining 880 (76%) were presented before a male judge. The 1162 defendants were charged with 27 different types of white-collar crime ranging from the misdemeanor level up to a Class B felony. Eighty-five percent of the defendants were classified as co-conspirators in the offense(s); the remaining 165 (15%) were classified as sole actors in the offense(s).

### Data Collection

Data pertaining were collected from court cases adjudicated by the court between 2009-2015 that met the definition of white-collar crime prescribed in this study- “Illegal acts which are characterized by deceit, concealment, or violation of trust and which are not dependent upon the application or threat of physical force or violence. Individuals and organizations commit these acts to obtain money, property, or services; to avoid the payment or loss of money or services; or to secure personal or business advantage” (Barnett, n.d., p.1). Data were collected on a one-time basis (i.e. each summary was examined only once) from each court case summary. Data collection occurred over the course of one week.

Overall, the data in the content analysis were derived from the official website of the United States District Court for the Southern District of New York. Data were collected from the case summaries on an ongoing basis until all relevant data had been included in the sample. The case summaries were compiled as part of the research conducted during the writing of Chapters One and Two. Data were recorded in an encrypted Excel file; one copy stored on my personal flash drive and another on my personal computer. Further, no modifications were made to the data collection procedure that presented in Chapter Three.

Going into this study, I expected during data collection that the case summaries analyzed would contain information about individual defendants. However, many summaries despite focusing on one defendant often included information on other defendants involved in the same case or a related case that stemmed from the same crime. For example, a case summary would be about Defendant A who was charged with

Medicare fraud. Revealed within this case summary also was information on Defendant B who was a co-conspirator of Defendant A who was formerly convicted of involvement in the scheme. This type of scenario presented itself over and over again leading to a situation where multiple summaries referencing the same defendant had to be used to garner all necessary data points; something that I did not anticipate going into this study.

### Data Analysis

For the category seriousness of offense, the first step was to classify the level of offense(s) committed. Based on this classification process, it was possible to move to larger categories where defendants were grouped based on the categorization of the crime(s) they committed. This facilitated movement to even broader categories where all defendants who committed a B Felony and any other crime(s) for instance were examined as one collective category. The codes for role in offense and bail decision were left specific as they were not able to be re-coded into larger categories or themes.

During initial data collection, for the category seriousness of offense, I initially coded data into two categories 'felony' and 'misdemeanor'. The category 'felony' was then further broken down into four sub-codes 'B felony', 'C felony', 'D felony', and 'E felony' using sentencing classification information provided by the Legal Information Institute (n.d.). This information allowed specific felony level crimes to be classified into one of the four sub-categories via examining the severity of sentence associated with each offense. The severity of sentence associated with each offense was derived directly from the case summaries which established clearly what the minimum sentence was for each offense committed.

For the category role in offense, I coded data into two categories ‘sole actor’ and ‘co-conspirator’. Data were classified into these two categories via examination of the case summary which clearly established whether the defendant acted alone (i.e. sole actor) or in conjunction with one or more co-conspirators.

For the category bail decision, data were coded into three categories ‘granted’, ‘denied’, and ‘pled guilty’. Defendants were classified into one of the three categories based solely on information provided in the case summary which made use of these exact terms. Thus if the case summary stated that the defendant was denied bail, that piece of data was coded as ‘denied’ within the data set.

Several qualities of discrepant cases were worth noting and were factored into the analysis as part of this dissertation. For instance, defendants charged with both a Class C and a Class D felony were more likely to have pled guilty to the charge(s) against them before a bail decision was rendered fitting with trends found in other categories of defendants. However, this particular category of defendants constituted a discrepant case as none of the defendants charged with both a Class C and a Class D felony were ordered to pay restitution; a trend found in no other category of defendants.

Defendants charged with both a Class C and a Class E felony were more likely to have pled guilty to the charge(s) against them before a bail decision was rendered. However, in cases where a bail decision was rendered, defendants were more likely to be denied bail verses granted bail. All of the aforementioned trends were also found in some other category(s) of defendants. What made this a discrepant case was that in terms of restitution, restitution was levied on the majority of defendants charged with this

combination of offenses; something not found in the other categories of defendants. The amount of the restitution in the majority of cases was less than one million dollars; this trend being found in other categories of defendants.

Only one of the defendants charged with a Class B felony and a misdemeanor pled guilty; however, bail decision was not discussed in the case summaries for any of the four defendants. What was clear however was that defendants charged with this particular combination of offenses were likely to be ordered to pay restitution. However, what made this a discrepant case was that in all instances where restitution was levied, the amount of restitution was less than one million dollars. For all other categories of defendants, at least one defendant ordered to pay restitution was ordered to pay restitution in an amount in excess of one million dollars.

Defendants charged with combined B and C felonies and a misdemeanor rarely pled guilty. Unfortunately, almost all of the defendants charged with this combination of offenses were involved in a new case where the case had yet to reach the point where a bail decision was rendered. Defendants charged with this combination of offenses were also rarely ordered to pay restitution. However, what made this a discrepant case was that in the few cases where restitution was levied on the defendant, in all instances, the defendant was ordered to pay restitution in an amount in excess of one million dollars. For all other categories of defendants at least one defendant ordered to pay restitution paid restitution in an amount less than one million dollars.

These discrepant cases highlighted examples of defendants whose experiences contradicted the larger overarching trends previously discussed. They showed that while

the majority of defendant's experiences adhered to the previously discussed overarching trends, that a small minority of defendant's experiences did not.

#### Evidence and Trustworthiness

Credibility was established during the presentation of results by making it clearly evident how the identified broad codes were further broken down into more specific sub codes both through the use text and tables. Second, all codes and conclusions drawn from those codes were based solely off the raw data collected during the content analysis. Lastly, the coding definitions and coding procedures utilized were outlined in great detail as well as in the codebook.

Transferability was established via my providing rich data descriptions pertaining to data gleaned related to all three research questions posed. I also provided rich descriptions pertaining to the setting and context in which the study occurred.

Dependability was established via my development and continued maintenance of a codebook the contents of which described the coding definitions and practices that were utilized as part of this study. This code book was also transparent in the sense that it was easy to deduce how broad themes/codes were further broken down into more specific themes/sub codes.

Confirmability was established via clearly establishing that the findings reported previously were derived solely from the data collected in this study. Confirmability was further established by showing that the interpretations made were made solely on the findings of this study. Further, by showing that the recommendations outlined were rooted solely in the findings of this study.

## Results

### Research Question One

Research question one asked how might a criminal defendant's gender affect a judge's actions within a single court?

**Female defendant/female judge.** Female white-collar defendants made up a minority of the total number of white-collar defendants (n=1162) presented before the United States District Court for the Southern District of New York between 2009 and 2015; however, the majority of these female white-collar defendants were presented before a female judge. Of the female white-collar defendants presented before a female judge, the overwhelming majority were classified as co-conspirators in the offense(s); female sole actors were rarely presented before a female judge. Female white-collar defendants presented before a female judge were also seldom denied or granted bail; the overwhelming majority of these defendants instead at the onset or at some point in the trial process plead guilty to the offense(s).

In terms of restitution, female white-collar defendants presented before a female judge were rarely ordered to pay restitution. However, a stark discrepancy arose when female co-conspirators were compared to female sole actors; female sole actors were rarely ordered to pay restitution whereas female co-conspirators presented before a female judge almost always were ordered to pay restitution. As to the amount of restitution levied on the female defendant by the female judge, the majority of female defendants were ordered to pay terms of restitution that were less than one million dollars.

A portion of the case summaries involving a female defendant and a female judge also provided judge comments pertaining to the ordering of restitution. Two common themes emerged within these statements, respect and fraud. Statements pertaining to respect focused on how the offense(s) committed by the female defendant were disrespectful to some entity(s). Statements pertaining to fraud focused on how the offense(s) committed constituted a fraud against one or more entities or against society as a whole.

**Female defendant/male judge.** Only a small portion of female white-collar defendants were presented before a male judge. Of the female white-collar defendants presented before a male judge, the overwhelming majority were classified as co-conspirators in the offense(s). Female white-collar defendants presented before a male judge were also seldom ordered to pay restitution; however, when they were ordered to pay restitution, the amount of that restitution never exceeded one million dollars.

**Overall trends female defendant/ male or female judge.** First, female white-collar defendants were more likely to be presented before a female judge than a male judge. Second, female white-collar defendants presented before a female judge were more likely to have an order of restitution imposed upon them in contrast to female defendants presented before a male judge. Third, female white-collar defendants presented before a male judge were never ordered to pay restitution in an amount in excess of one million dollars whereas roughly 1 in 3 female defendants presented before a female judge were ordered to pay restitution in an amount exceeding \$1 million dollars.

**Male defendant/female judge.** Male white-collar defendants made up the

majority of the total number of white-collar defendants (n=1162) presented before the United States District Court for the Southern District of New York between 2009 and 2015; however, only a minority of these male white-collar defendants were presented before a female judge. Of the male white-collar defendants presented before a female judge, the overwhelming majority were classified as co-conspirators in the offense(s) whereas only a small portion were classified as sole actors in the offense(s). Further, male white-collar defendants presented before a female judge almost always had no prior criminal record.

Given the currentness of many of the cases examined and the fact that a large portion were ongoing or just commencing many of the cases involving a male white-collar defendant and a female judge had not progressed to the point where a bail decision had been determined. In the cases where data was available, male defendants were seldom granted or denied bail with most pleading guilty before the case went to trial.

As to restitution, male defendants presented before a female judge were seldom ordered to pay restitution. There was also little difference between how often male defendants classified as sole actors and male defendants classified as co-conspirators were ordered to pay restitution by a female judge. However, the majority of male defendants ordered to pay restitution by a female judge were ordered to pay restitution in an amount in excess of one million dollars.

A small portion of the case summaries containing a male defendant and a female judge also provided judge commentary pertaining to the restitution decision. The only theme that came up in multiple cases was 'fraud'; specifically, how the actions of the

defendant constituted a fraud against a particular person or society as a whole.

**Male defendant/male judge.** The overwhelming majority of male white-collar defendants presented before the United States District Court for the Southern District of New York were presented before a male judge. Of the male white-collar defendants presented before a male judge, the overwhelming majority were classified as co-conspirators whereas only a small portion of male defendants presented before a male judge were classified as sole actors. However, unlike their male defendant counterparts presented before a female judge; male defendants presented before a male judge were more likely to have a criminal record. As to bail, many of the cases involving a male defendant and a male judge involved the defendant pleading guilty at the onset of the case before a bail decision was rendered.

As for restitution, male white-collar defendants presented before a male judge were seldom ordered to pay restitution. However, a discrepancy existed when comparing male defendants who were classified as co-conspirators who were ordered to pay restitution to male defendants who were classified as sole actors who were ordered to pay restitution with those classified as sole actors being more likely to be ordered to pay restitution than those classified as co-conspirators. As to the amount of restitution levied on the male defendant by the male judge, the majority of male defendants were ordered to pay terms of restitution that were in excess of one million dollars.

A small portion of the case summaries involving a male defendant and a male judge also contained commentary from the judge pertaining to the restitution decision. The six themes that arose were coded into three generalized themes: nature of offense,

impact on society, and significance of offense. For a complete listing of themes see Table 18 on page 107.

**Overall trends male defendant/male or female judge.** First, male white-collar defendants were more likely to be presented in front of male judges than female judges. Second, male white-collar defendants with a criminal record were rarely presented before female judges. Third, male white-collar defendants presented before male judges were more likely to plead guilty than were male defendants presented before female judges. Fourth, male white-collar defendants were more likely to have restitution imposed upon them when the judge presiding over the case was also male. Fifth, male white-collar defendants classified as sole actors were more likely to have restitution imposed upon them when presented before a male judge than when presented before a female judge. Sixth, male white-collar defendants classified as co-conspirators were more likely to have restitution imposed upon them when presented before a female judge than when presented before a male judge. Seventh, male white-collar defendants presented before male judges were more likely to have restitution imposed upon them in amounts in excess of one million dollars in comparison to male defendants presented before female judges.

**Overall trends defendant gender/judge gender same.** First, female white-collar defendants being presented before female judges was less common than male defendants being presented before male judges. Second, female white-collar defendants classified as co-conspirators being presented before female judges was more common than male defendants classified as co-conspirators being presented before male judges. Third, male white-collar defendants classified as sole actors being presented before male

judges was more common than female defendants classified as sole actors being presented before female judges. Fourth, female white-collar defendants being denied bail by female judges was more common than male defendants being denied bail by male judges. Fifth, female white-collar defendants presented before female judges pled guilty more often than did male defendants presented before male judges. Sixth, male white-collar defendants being granted bail by male judges was less common than female defendants being granted bail by female judges.

Seventh, male white-collar defendants being ordered to pay restitution by male judges was more common than female defendants being ordered to pay restitution by female judges. Eighth, female white-collar defendants classified as sole actors being ordered to pay restitution by a female judge was less common than male defendants classified as sole actors being ordered to pay restitution by a male judge. Ninth, female white-collar defendants classified as co-conspirators being ordered to pay restitution by a female judge was more common than male defendants classified as co-conspirators being ordered to pay restitution by a male judge. Tenth, male white-collar defendants being ordered to pay restitution in excess of one million dollars by a male judge was more common than female defendants being ordered to pay restitution in excess of one million dollars by a female judge.

### **Research Question Two**

Research question two asked How might a criminal defendant's blameworthiness affect a judge's actions within a single court? It is important to note here that the overwhelming majority of white-collar defendants did not have a bail decision rendered

to them in the court case summaries as in the overwhelming majority of cases the defendant plead guilty at the onset of the case or the case had yet to progress to a point where a bail decision was rendered. Likewise, the findings pertaining to bail decision discussed in this section only reflect judge's actions towards a small portion of the overall number of defendants presented before them for the period 2009 to 2015.

**Impact of offense severity on judge's actions.**

*Class b felony (131 of the 1162 defendants).* Defendants charged with a Class B felony rarely pled guilty to the charge(s) levied against them. Second, defendants charged with a Class B felony rarely had a term of restitution imposed upon them by the judge; however, in cases where restitution was levied, the majority of defendants were ordered to pay restitution in an amount in excess of one million dollars.

*Class c felony (247 of 1162 defendants).* Nearly 1 in 3 defendants charged with a Class C felony pled guilty to the charge(s) against them. Second, only a small portion of defendants charged with a Class C felony were denied bail; however, all of these defendants were later ordered to pay restitution in an amount in excess of one million dollars. In contrast, only a small portion of defendants charged with a Class C felony who were granted bail were ordered to pay restitution of any amount. Overall, judges ordering defendants charged with a Class C felony to pay restitution was rare but when judges did order defendants charged with Class C felonies to pay restitution, in the majority of cases, the amount of the restitution was in excess of one million dollars.

*Class d felony (178 of 1162 defendants).* For the overwhelming majority of defendants charged with a Class D felony, the case against them had yet to reach a point

where a bail decision had been rendered. Based on the cases where a bail decision was rendered, defendants charged with a Class D felony were more likely to be granted bail versus denied bail. Of the defendants charged with a Class D felony who were denied bail none were ordered to pay restitution in an amount in excess of one million dollars. Further, no defendants charged with a Class D Felony who were granted bail were ordered to pay restitution of any amount. Also interesting is that 2 in 10 defendants charged with a Class D felony pled guilty to the charges against them before the case went to trial. Overall, restitution was rarely ordered in cases involving a defendant charged with a Class D felony; however, when it was ordered, it was almost always in an amount in excess of one million dollars.

*Class e felony (149 of 1162 defendants).* Defendants charged with a Class E felony were rarely denied or granted bail as nearly half of all defendants charged with a Class E felony pled guilty to the charge(s) against them at the onset of the case. However, in cases where a bail decision was rendered, defendants charged with a Class E Felony were more likely to be denied bail than granted bail.

Overall, only 1 in 4 defendants charged with a Class E felony were ordered to pay restitution; however, the majority of those defendants were ordered to pay restitution in an amount in excess of one million dollars. Also interesting to note was that defendants who were granted bail were more likely to be ordered to pay restitution by the judge in comparison to defendants who were denied bail.

*Both class b and class c felonies (16 of 1162 defendants).* Defendants charged with both a Class B and a Class C felony were rarely denied or granted bail and were

instead more likely to have pled guilty to the charge(s) against them before a bail decision was rendered. However, in cases where a bail decision was rendered, defendants charged with both a Class B and a Class C felony were more likely to be granted bail verses denied bail. Overall, defendants charged with both a Class B and a Class C felony were rarely ordered to pay restitution; however, when they were ordered to pay restitution, nearly all of the defendants were ordered to pay restitution in an amount in excess of one million dollars.

*Combined b, c, and e felonies (20 of 1162 defendants).* Defendants charged with combined B, C and E felonies were rarely denied or granted bail and were instead more likely to have pled guilty to the charge(s) against them before a bail decision was rendered. However, in cases where a bail decision was rendered, defendants charged with combined B, C, and E felonies were more likely to be granted bail verses denied bail. Overall, only 1 in 4 defendants charged with combined B, C, and E felonies were ordered to pay restitution; however, when they were ordered to pay restitution, 4 out of 5 defendants were ordered to pay restitution in an amount in excess of one million dollars.

*Both b and e felonies (43 of 1162 defendants).* Defendants charged with both a Class B felony and a Class E felony were rarely denied or granted bail and were instead more likely to have pled guilty to the charge(s) against them before a bail decision was rendered. However, in cases where a bail decision was rendered, defendants charged with both a Class B felony and a Class E felony were more likely to be denied bail verses granted bail. Overall, defendants charged with both a Class B and a Class E felony were rarely ordered to pay restitution; however, 7 in 10 were ordered to pay restitution in an

amount in excess of one million dollars.

*Both d and e felonies (35 of 1162 defendants).* Defendants charged with both a Class D and a Class E felony were more likely to have pled guilty to the charge(s) against them before a bail decision was rendered. Defendants charged with this combination of offenses also rarely were ordered to pay restitution and of those defendants ordered to pay restitution, most paid restitution in an amount less than one million dollars.

*Misdemeanor only (18 of 1162 defendants).* Defendants charged with a misdemeanor were more likely to have pled guilty to the charge(s) against them before a bail decision was rendered. As to restitution, defendants charged with a misdemeanor were rarely ordered to pay restitution; however, when they were ordered to pay restitution, half paid restitution in an amount in excess of one million dollars.

**Overall trends impact of offense severity of judge actions.** First, defendants charged with E felonies, those charged with both a C and an E felony, and those only charged with a misdemeanor were the groups most likely to have bail denied to them by the judge. In contrast, defendants charged with more serious felonies (B, or C felony) were less likely than those defendants charged with less serious felonies to have bail denied to them by the judge. Second, of those defendants denied bail, only defendants charged with a C or an E felony who were ordered to pay restitution paid restitution in an amount over one million dollars. Third, defendants charged with two or more felonies, or a combination of one or more felonies and a misdemeanor were more likely to be granted bail than were defendants charged with a single felony or misdemeanor. Fourth, defendants charged with any combination of two C, D, or E felonies were most likely to

plead guilty.

Fifth, defendants charged with a C or an E felony, and those charged with a B and a C felony who were granted bail were most likely to be ordered to pay restitution. Sixth, defendants charged with a serious felony (B) were less likely than defendants charged with a combination of lesser felonies (C, E) or a serious felony and a misdemeanor (B, Misdemeanor) to be ordered to pay restitution. Seventh, the majority of all defendants ordered to pay restitution regardless of the charge(s) against them were ordered to pay terms of restitution in an amount in excess of one million dollars.

**Defendant role in offense impact on judge actions.**

*Co-conspirators (997 of 1162 defendants).* The overwhelming majority of defendants presented before the United States District Court for the Southern District of New York charged with one or more offenses classified as white-collar offenses were classified as co-conspirators in the offense(s). The overwhelming majority of co-conspirators pled guilty to the offense(s) levied against them at the onset of the case with only a small portion of defendants having a bail decision rendered. Only about 1 in 10 co-conspirators were ordered to pay restitution by the judge; however, of that 7 in 10 were ordered to pay restitution in an amount in excess of one million dollars.

*Sole actor (165 of 1162 defendants).* Only a small minority of defendants were classified as sole actors. The overwhelming majority of sole actors pled guilty to the charge(s) against them at the onset of the case with only a small fraction having a bail decision rendered in their case. Close to half of all defendants classified as sole actors were ordered to pay restitution by the judge and half of those defendants ordered to pay

restitution were ordered to pay restitution in an amount in excess of one million dollars.

***Overall trends.*** First, there was no difference in how often defendants classified as sole actors were denied and/or granted bail in comparison to how often defendants classified as co-conspirators were denied and/or granted bail. Second, defendants classified as sole actors were more likely to have restitution imposed upon them by the judge than those defendants who were classified as co-conspirators. Third, despite defendants classified as sole actors being more likely to have restitution imposed upon them by the judge, sole actors were less likely than co-conspirators to have restitution imposed on them in an amount in excess of one million dollars.

**Defendant criminal history impact on judge actions.** Defendants with a criminal history who pled guilty were the group that judges most frequently imposed terms of restitution upon. Second, defendants with a criminal history that involved a prior white-collar crime were more likely to have terms of restitution imposed upon them in contrast to defendants who had a criminal history but not one that involved a white-collar crime.

**Impact of defendant blameworthiness on judge actions.** The seriousness of the offense(s) had an impact on the judge's decision as to whether or not to grant bail. Second, the seriousness of the offense(s) had an impact on the judge's actions in terms of restitution. Third, the bail decision was not impacted by whether the defendant was a sole actor or co-conspirator in the white-collar offense(s). However, the restitution decision was impacted by whether the defendant was a sole actor or a co-conspirator in the offense as to was the judge's decision as to what amount of restitution to levy against

the defendant. Further, the presence of a prior criminal record, particularly one that entailed one or more prior white-collar offenses by the defendant led the judges to be more inclined to impose a term of restitution upon that defendant.

### **Research Question Three**

Research question three asked how might a criminal defendant's blameworthiness affect bail decisions and restitution by a judge?

**How defendant blameworthiness impacted bail decisions.** First, defendants charged with less serious felonies were more likely to be denied bail in contrast to defendants charged with more serious felonies. For example, defendants charged with E felonies, those charged with both C and E felonies, and those only charged with a misdemeanor were the groups most likely to have bail denied to them by the judge. Second, defendant role in offense (co-conspirator vs. sole actor) did not impact the bail decision the judge made in the case. Third, for all the cases involving a defendant who had a prior criminal offense the defendant either pled guilty at the onset of the case or the case had yet to progress to a point where a bail decision had been reached. Overall, the data showed that only one facet of defendant blameworthiness (i.e. seriousness of offense) impacted judge's bail decisions.

**How defendant blameworthiness impacted restitution.** First, the seriousness of the offense(s) the defendant was charged with impacted the likelihood of the judge ordering restitution in the case. Second, the defendant's role in the offense(s) had an impact on the likelihood of the judge ordering restitution in the case and on the amount of restitution that the judge levied upon the defendant. Further, defendant criminal history

had an impact on the likelihood of the judge ordering restitution in the case. Overall, all three facets of defendant blameworthiness (seriousness of offense, role in offense, and criminal history) impacted the actions of judges towards the white-collar defendant.

In terms of likelihood of having restitution imposed upon them, defendants charged with both a C Felony and a D Felony constituted a discrepant case as they were the only category of defendants in which no defendant was ordered to pay restitution. For all other categories of defendants, restitution was imposed on one or more of the defendants. Defendants charged with both a C Felony and an E Felony also constituted a discrepant case as this category of defendant was the only category of defendants where the majority of defendants were ordered to pay restitution.

In terms of the amount of bail levied on the defendant, defendants charged with a B Felony and a misdemeanor constituted a discrepant case as they were the only category of defendants in which none of the defendants were ordered to pay restitution in an amount in excess of one million dollars. Defendants charged with combined B and C felonies and a misdemeanor also constituted a discrepant case as they were the only category of defendants where all defendants who were ordered to pay restitution were ordered to pay restitution in an amount in excess of one million dollars.

Table 1		
<i>Themes Judges Comments Regarding Defendant Restitution</i>		
<u>Theme</u>	<u>Number of Times Appeared in Comments</u>	<u>Generalized Theme</u>
Fraud	15	Nature of Offense
Crime	14	Nature of Offense
Theft	10	Nature of Offense
Trust	8	Impact on Society

Brazen Significant	5 5	Impact on Society Significance of Offense
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### Summary

Female defendants were more likely to be presented before a female judge. For female defendants, being presented before a female judge increased the likelihood that restitution would be imposed upon them by the judge. However, in terms of amount of restitution levied; for the female defendant, being presented before a female judge decreased the amount of restitution levied upon them by the judge.

Male defendants were more likely to be presented before a male judge. For male defendants, being presented before a male judge increased the likelihood that restitution would be imposed upon them by the judge. However, if the judge was female, the restitution decision was also impacted by defendant role in offense. Male defendants classified as sole actors presented before a female judge were less likely to be ordered to pay restitution in contrast to male defendants classified as co-conspirators presented before female judge's. Being presented before a female judge also decreased the amount of restitution levied on the defendant.

The seriousness of the offense had an impact on both bail and restitution decisions. Role in offense had no impact on bail decision; however, it did have an impact on restitution decision. Defendant criminal history was also found to increase the likelihood that restitution would be imposed upon the defendant.

In terms of blameworthiness impact on bail decision, only one facet of blameworthiness (i.e. seriousness of offense) had an impact on bail decision. However,

all three facets of blameworthiness (seriousness of offense, role in offense, and criminal history) impacted the restitution decision.

Overall, defendants regardless of gender were more likely to be presented before a judge of the same gender than they were to be presented before a judge of the opposite gender. As to restitution, female judges were hard on female defendants in terms of how often they imposed restitution; however, they were easy on female defendants in terms of the amount of restitution they imposed upon them. Related, defendants regardless of gender being presented before a judge of the same gender increased the likelihood of that defendant having restitution imposed upon them in contrast to instances where the defendant and the judge were of opposite genders. Also, male judges tended to on average order terms of restitution that were larger than those ordered by female judges regardless of the gender of the defendant.

Further, seriousness of offense, role in offense, and criminal history all impacted the judge's restitution decision. Thus, all three facets of defendant blameworthiness had an impact on the judge's restitution decision. However, only seriousness of offense impacted bail decision thus only one component of defendant blameworthiness impacted bail decision.

Several findings were surprising. First, the more serious the offense the more likely restitution to be imposed on the defendant was not the case. Instead, in multiple instances those defendants charged with less serious crime(s) were more likely to have restitution imposed upon them in contrast to defendants charged with more serious crime(s). Second, increasing the number of crimes did not automatically increase the

likelihood of restitution being imposed on the defendant. For example, defendants charged with a B Felony were more likely to be ordered to pay restitution than defendants charged with both a B and a C Felony. Thus, those charged with the most serious crimes were not always the ones most likely to be ordered to pay restitution. Related, the more serious the crime the higher the restitution amount was not the case. For example, defendants charged with a D Felony were more likely to pay restitution over one million dollars in comparison to defendants charged with the more serious B Felony.

Chapter Five will present interpretation of the aforementioned findings. It will also put forth the limitations associated with this study as well as a series of recommendations based on the study's findings. Also discussed are the implications of this study in affecting social change and a concise reflection statement made by myself.

## Chapter 5: Discussion, Conclusions, and Recommendations

### Introduction

The purpose of this study was to examine the impact of defendant gender and blameworthiness on judges' actions towards white-collar crime defendants who appeared in a specific legal jurisdiction. I wanted to illustrate what forms of gender-based differential treatment might be occurring in my study site, the U.S. District Court for the Southern District of New York, its linkage to focal concerns. To answer my research questions, I conducted a content analysis of court case summaries that were published on the court's official website pertaining to white-collar crime court cases adjudicated by this court between 2009 and 2015.

I found that the majority of defendants were presented before a judge of the same gender. Restitution was also most frequently levied against defendants when judge and defendant were of the same gender thus supporting the assertion that being presented before a judge of the same gender increased the likelihood of the judge imposing restitution on the defendant. However, defendants regardless of gender who were presented before female judges paid less restitution than defendants presented before male judges.

The seriousness of the offense(s) committed by the defendant impacted both the judge's bail and restitution decisions. The defendant's role in the offense(s) impacted the judge's restitution decision but not the judge's bail decision. The presence of a prior criminal record was also found to increase the likelihood of judge's imposing restitution

on the defendant.

Overall, only one facet of defendant blameworthiness (i.e. seriousness of offense) had an impact on judge's bail decisions. However, all three facets of defendant blameworthiness (seriousness of offense, role in offense, and criminal history) impacted the restitution decision.

#### Interpretations of the Findings

The majority of white-collar defendants presented before the United States District Court for the Southern District of New York were presented before a judge of the same gender. Further, that when judge and defendant were of the same gender that the chance of restitution being imposed on the defendant was higher than in instances where the judge and defendant were of opposite genders. In addition, being presented before a female judge decreased the monetary amount of restitution imposed on the defendant regardless of defendant gender. Also noteworthy was that defendant role in offense had the most impact in situations where the defendant was male and the judge was female.

These findings align with those of Albonetti (1998), Gottschalk (2013), and Holtfreter (2013) who all found that the gender of white-collar defendants led to differences in how the defendant came to be treated by the judge. These findings provide mixed support for Jeffries et al. (2003) assertion that female defendants were treated more leniently in contrast to male defendants. I found that being presented before a female judge decreased the amount of restitution paid by female defendants. My finding aligns with that of Jeffries et al. (2003). However, my finding that gender of a criminal defendant increased the chance of some amount of restitution being imposed by the judge

somewhat contradicts Jeffries et al. (2003).

This study contradicts the prior work of Boyd et al. (2010) and Collins and Moyer (2007), both of whom found no significant difference in how judges treated male versus female defendants. More importantly, however, the findings contradict the work of Collins et al. (2010) who stipulates that in cases involving economic matters that there was no difference in the actions of male versus female judges towards the defendant. As white-collar crime constitutes an economic crime and I observed differences in my data, my findings do not align with those of Collins et al. (2010).

In addition, seriousness of offense impacted both judge's bail and restitution decisions. A defendant's role in an offense was found to only impact the judge's restitution decision. Furthermore, defendant criminal history increased the likelihood of the judge ordering that defendant to pay restitution.

In their studies, Demuth and Steffensmeier (2004a), Kramer and Ulmer (2002), Steffensmeier and Demuth (2001), Steffensmeier et al. (1993), and Steffensmeier et al. (1998) established that defendant blameworthiness impacted a host of judge's actions towards the defendant. My findings expand the pool of existing knowledge on the impact of defendant blameworthiness on judge's actions by showing how defendant blameworthiness impacts judge's bail and restitution decisions.

With regard to the third research question, not all facets of defendant blameworthiness impacted judge's bail decision. In fact, only one facet of defendant blameworthiness (i.e. seriousness of offense) impacted judge's bail decision. However, judge's restitution decision was impacted by all three facets of defendant

blameworthiness (i.e. seriousness of offense, role in offense, and criminal history).

In their studies, Demuth and Steffensmeier (2004a), Kramer and Ulmer (2002), Steffensmeier and Demuth (2001), Steffensmeier et al. (1993), and Steffensmeier et al. (1998) all established that defendant blameworthiness impacted one or more actions taken by the judge towards the defendant. However, these studies shared one commonality; none showed how defendant blameworthiness impacted the judge's bail and restitution decisions. This study established how judge's bail and restitution decisions are impacted by defendant blameworthiness thus expanding the existing pool of knowledge surrounding the impact of defendant blameworthiness on judge's actions. Further, none of these studies showed how defendant blameworthiness impacted judge's bail and restitution decisions in a specific court. This study showed how defendant blameworthiness impacted judge's bail and restitution decisions in a specific court (United States District Court for the Southern District of New York) thus expanding the existing pool of knowledge on defendant blameworthiness impact on judge's actions towards the defendant.

#### Limitations of the Study

First, as this study dealt with recent cases (i.e. cases from 2009 to 2015), a sizable portion of the cases were ongoing at the time of the study thus when interpreting and applying these findings it is crucial to understand that the findings were in part based on cases that were only partially completed. Second, this study derived all of its data from the case summaries. Albeit a reliable source, any actions of judges towards defendants not disclosed by the author of the case summary were in no way reflected in the findings

of this study nor is it possible to determine what if any impact such additional actions would have had on the findings of this study.

### Recommendations

Several groups of individuals should pay special attention to the findings of this study. First, the judges serving on the United States District Court for the Southern District of New York should review these results as the aforementioned findings were derived entirely from an examination of their actions towards the white-collar crime defendant. Understanding these findings will allow judges to make modifications to their behavior in an attempt to lessen the differences in actions towards defendants outlined previously.

Second, the President of the United States, currently Barack Obama, should be aware of the findings of this study as it is the Presidents duty to nominate judges to this district court. Further, members of the United States Senate should pay attention to the findings of this study as this body of individuals is responsible for confirming judges nominated by the President for appointment to this particular district court.

Results of this study were disseminated via publication of this dissertation. In addition, a brief presentation of the key points and findings of this study was generated that could be provided to any or all of the aforementioned entities so they can quickly and easily see the take away points from this study.

In the future, it would prove beneficial to the scholarly community to replicate this study when more of the cases in this dataset (i.e. cases between 2009 and 2015) are wholly complete. Future scholars might also consider supplementing the dataset upon

which these results were based with court transcripts pertaining to the case brought against the defendant to bolster the amount of commentary garnered from the judges regarding their actions towards the defendant.

### Implications

Before this study was conducted, no prior research had applied focal concerns theory to white-collar defendants within a specific court nor had any study examined whether defendant blameworthiness impacted judge's actions outside the realm of sentencing (Holtfreter, 2013). This study applied focal concerns theory to white-collar defendants within the context of a specific court and provided evidence that one facet of defendant blameworthiness, seriousness of offense impacted judge's bail decisions. Evidence was also provided which showed that judge's restitution decisions were impacted by all facets of defendant blameworthiness.

Judges being made aware of and understanding the aforementioned trends allows for these individuals to adopt a better decision making model. The organization as a collective (i.e. the district court) also benefits from a firm understanding of the findings of this study as the organization strives to provide equality under the law and understanding of these findings would enable a better decision making model to further the aforementioned goal.

Previous research on the applicability of focal concerns theory, more specifically defendant blameworthiness always examined the applicability of the theory to judge's actions for courts in general or courts at one particular level (Holtfreter, 2013). This made it difficult to elicit positive social change in specific courts as none of the findings

generated were court specific. This study honed in on one court, the United States District Court for the Southern District of New York and provided findings pertaining solely to the actions of the judges in the aforementioned court towards a single collective of defendants (i.e. white collar defendants) in a set timeframe (2009 to 2015). With court specific results, practitioners are now better equipped to pursue positive social change in this court.

I recommend for eliciting positive social change that the aforementioned entities work to develop a better decision making model based off of the findings of this study. The development of this better decision making model should encompass members of all the aforementioned groups and be geared at reducing the impact of gender based differential treatment and defendant blameworthiness on the treatment of defendants.

#### Reflection of the Researcher

I possessed several preconceived notions/ideas at the onset of and during the course of this study. First, I entered the process in the mindset that female defendants would be treated more leniently in contrast to male defendants based on prior personal educational experiences. Second, I believed at the onset of the project that some form of gender based differential treatment would be found when this study was conducted. Third, I believed that restitution would be frequently levied against this pool of defendants.

As to my effect on participants, this study entailed a content analysis of court case summaries with no direct interaction between myself and participants thus I had minimal to no impact on participants. Looking back on this study, I underwent two key changes

in thinking. First, I no longer believe that the majority of white-collar defendants pay restitution and now understand that most of these defendants are not ordered to pay restitution. Second, I now understand that despite conscious efforts by this court and other entities to decrease gender based differential treatment that this problem still persists and in the future additional efforts will need to be made to continue to work to decrease and ultimately eradicate this issue.

### Conclusion

Overall, what is essential to understand is that defendants being presented before a judge of the same gender increases the likelihood of their being ordered to pay restitution in contrast to defendants presented before a judge of the opposite gender. It is also critical to understand that for white-collar defendants presented in this court that being presented before a female judge leads to a reduction in the monetary amount of restitution imposed upon them by the judge.

Further, it is imperative to understand that seriousness of offense has an impact on both bail and restitution decisions. Further, that role in offense has no impact on bail decision but does impact the restitution decision. Thus one needs to understand that only one facet of blameworthiness (i.e. seriousness of offense) impacts bail decisions while all facets of blameworthiness impact the restitution decision.

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