

## Filicide: Gender Bias in California Defense Attorneys' Perception of Motive And Defense Strategies

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This study is the first of its kind to evaluate attorneys' perception of motive and defense strategies when presented with a fictional filicide case. A vignette-based survey was designed to elicit data regarding perception of motive and willingness to use various defenses. Participants were more likely to agree that jealousy and retaliation were motivating factors when the perpetrator was male, but agreed more strongly that mental illness was a motivating factor when the perpetrator was female. Male perpetrators were more likely to be encouraged to accept a 15-year prison term, while attorneys were more willing to use insanity and mistake as mitigating defenses when the offender was female. Gender of participants also affected the perception of motive and defense strategies used. Results suggest that female attorneys are more likely to use defenses aimed to negate *mens rea* and female defendants are more likely to be encouraged to use such a defense.

**Key words:** attorney; criminal justice system; defense; filicide; gender bias; law; motive.

The death of a child at the hands of a parent is a disturbing phenomenon, which receives a great deal of public attention in the United States. Children in the United States are at greater risk of death by homicide than children in any other developed nation (Friedman et al., 2005). Parents (including stepparents) who kill their children are responsible for approximately 60% of child homicide victims under the age of 5 (Bureau of Justice Statistics, 2007). Many researchers have developed various categorization systems to gain a better understanding of the motives associated with this phenomenon known as filicide (Alder & Polk, 2001;

McKee, 2006; Meyer & Oberman, 2001; Resnick, 1969, 1970; Wilczynski, 1997).

Filicide offenders are frequently diagnosed with a psychiatric disorder at the time of the crime (Wilczynski, 1997). The most common disorders are psychosis and depressive disorders (Lee-Lau, 2001; Wilczynski). When men and women kill their children, however, they are faced with markedly different legal treatment in the criminal justice system (Wilczynski). These disparities are apparent at all stages of the legal process, from the initial pleas to sentencing. Most female filicide offenders use psychiatric pleas, whereas men tend to use normal pleas (i.e., involuntary

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manslaughter), which do not require an abnormal state of mind (Wilczynski). Although both filicidal women and men appear to be psychiatrically vulnerable in many ways, such factors tend to be inflated for women and minimized for men (Wilczynski).

### ***Classifications of Parental Filicide***

Although filicide has been present in societies throughout history, the systematic and scientific study of this phenomenon is relatively recent. Resnick (1969) conducted the first review of the world's literature on filicide and based his system on cases of both paternal and maternal filicide. He found only 155 published case reports from 1751 through 1967. From these reports he developed the first classification system of parental filicide based on the mother's or father's most apparent motive: altruism, acute psychosis, unwanted child, accident, or revenge against a spouse.

Resnick's research generated the development of many other explanatory systems of parental filicide (Baker, 1991; Bourget & Bradford, 1990; Meyer & Oberman, 2001; Scott, 1973; Wilczynski, 1997). These studies have found additional motivations for child killing based on gender. In 1973, British psychiatrist P. D. Scott suggested parental motives in filicide, including not wanting the children, the belief in "mercy" killings, gross mental pathology in the parent, parental revenge, or victim-precipitated parental frustration (Scott, 1973). d'Orban (1979) later refined Scott's categories to be specific to women, creating the first model of maternal filicide.

A decade passed with no new classification systems. In 1990, Canadian psychiatrists Bourget and Bradford conducted a study of 13 parental filicides (Bourget & Bradford, 1990). They found four likely motives: "accidental" homicides due to abuse and discipline, "pathological" homicides due to the parent's mental illness,

"neonaticide" homicides occurring within 24 hr of birth and "retaliating" homicides due to a parent's wish to punish his or her spouse. The researchers were unable to classify any fathers within their four categories, therefore, they established a separate category of paternal filicide.

In 1991 Australian researcher June Baker conducted a gender analysis of filicide (Baker, 1991). Twenty-four per cent of the women in her study committed neonaticide (no men committed neonaticide). She then identified six major motives for the filicides: altruism, spouse murder and revenge, jealousy and rejection, unwanted child, discipline-related cases, and self-defense. Three of these motives, spouse murder or revenge, jealousy and rejection, and self-defense, were not applicable to the women. Among the women, altruistic motives were slightly more prevalent than discipline-related or unwanted child filicide motives.

The classification scheme of Wilczynski (1997) was based on the parent's alleged primary and secondary motive, because the parent's motives do not always fit into one category. Wilczynski identified 10 categories of parental motives. Two of her categories predominantly reflected male motives: retaliating, and jealousy/rejection. Similarly, three categories predominantly reflected female motives: unwanted child, psychotic parent, and Munchausen's syndrome by proxy.

Recent research on motives for filicide has focused solely on women. Meyer and Oberman (2001) reviewed maternal filicide cases reported from 1990 to 1999 in the NEXIS news database and grouped their sample into five categories: ignored pregnancy (17%), abuse-related filicide (7%), neglect (35%), purposeful filicides (36%) and assisted/coerced filicides (5%). McKee (2006) developed a new classification system of maternal filicide based on his numerous forensic psychological evaluations of adolescent and adult women who

had been criminally charged with the deaths of their children. The McKee (2006) classification includes the following categories: detached mothers, abusive/neglectful mothers, psychotic/depressed mothers, retaliatory mothers, and psychopathic mothers (a new category not previously described in prior systems).

### ***Paternal Filicide and Mental Illness***

There have been few studies evaluating fathers who commit filicide. Although several studies have found that mothers are more likely than fathers to be the perpetrators in child murder (Bourget & Bradford, 1990; d'Orban 1979; Resnick, 1969, 1970), other data show that men are as often or more often the perpetrators (Farooque & Ernst, 2003; Marks & Kumar, 1993, 1996; Somander & Rammer, 1991). Filicide studies, which include perpetrators of familicide, show that paternal child homicide may be more common than once thought.

A forensic pathology study of filicide suggested that psychosis might be the most frequent precipitant among fathers (Adelson, 1961). Many studies, however, also suggested a low prevalence of mental illness among paternal filicide offenders (Alder & Polk, 2001; Scott, 1973). Most studies exclusively examining parental filicide have not used large samples of fathers, limiting the generalizability of their results. Of the 43 fathers in the Resnick (1969) review of filicide, 44% were classified as psychotic and 33% as depressed with psychotic features. Despite the high percentage of mental illness among that sample, the psychoses and psychotic features found in these men did not automatically mean that they were included under the "acutely psychotic" or "altruistic" motives under the Resnick classification system. The classification system was based on the explanation given by the murderer and was independent of diagnosis.

Results of the Bourget and Gagné (2005) retrospective study indicated that more fathers commit filicide than mothers, and 60% of the filicides were followed by the suicide of the perpetrator. The presence of severe psychopathology was present in 60% of fathers. Fifty-two percent of the men were suffering from major depressive disorder, 10% from schizophrenia or other psychoses, and 5% from substance intoxication. The categorization of the Bourget and Gagné (2005) sample indicated that the most frequent classification of these homicides was mentally ill filicide (64% of the cases). Twenty-five percent of the cases were fatal abuse, 4% were retaliatory filicide and 8% were categorized as "other."

Campion, Cravens, and Coven (1998) reviewed hospital records at the Bellevue Hospital Forensic Psychiatric Unit from 1970 to 1982. The majority of fathers who committed filicide suffered from mental impairments due to psychosis, neurological disorders, substance abuse, or mental retardation. Marleau, Polin, Webaneck, Roy, and Laporte (1999) also found a high prevalence of mental illness. All of the 10 men in their study presented with a psychiatric diagnosis at the time of the offense. Similarly, Friedman et al. (2005) found evidence of a psychiatric history of psychosis in 25% and depressive illness in 50% of the 20 fathers who committed filicide-suicide in their sample.

These recent studies suggest that paternal filicide is much more common than previously cited. Mental illness appears to be a common factor among filicidal fathers. Although there is a need for more research, mental illness among both men and women who commit filicide seems relatively common. Does the United States and other justice systems treat men and women similarly when it comes to the adjudication of filicide cases?

### ***Infanticide Laws and the Insanity Defense***

England was the first country to statutorily recognize and favor mothers who kill their young children for psychological reasons by codifying the popular belief that a woman who is capable of killing her baby necessarily suffers from a medical disorder (Barton, 1998). According to England's Infanticide Act of 1922, mothers who can show they suffered from a postpartum mental disorder generally are charged with manslaughter, rather than murder, and the vast majority of such defendants receive probationary sentences and health-care interventions rather than prison sentences (Meyer & Oberman, 2001). The law applies specifically to any willful act or omission by a woman, which causes the death of her child under the age of 12 months (Barton, 1998). She must show at the time of the act or omission that the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child (Barton, 1998). The Act (which continues to be the law) presumes that all women are ill if they kill their infants within the first 12 months of life (Barton, 1998).

Americans have been far more uncertain with regard to adopting a medical model for understanding infanticide (Meyer & Oberman, 2001). Therefore, there are no Federal or State laws governing infanticide. Furthermore, American experts do not agree about the nature of postpartum mental disorders and their capacity to cause infanticide (Meyer & Oberman, 2001). Despite this disagreement and lack of laws in the United States, women often utilize psychiatric pleas as a means to mitigate charges or gain acquittal for the act of filicide.

Multiple insanity defense standards exist in the United States. Some standards, such as the one used in California, are

considered to be stringent. The standard in California states:

... at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of mind, as not to know the nature and quality of the act he was doing; or if he did know it, that he did not know what he was doing was wrong.

Other states, such as Oregon, Connecticut and Arkansas, use more lenient standards that incorporate a volitional prong indicating that the accused was unable to conform his/her conduct to the requirements of the law (Collins, Hinkebein, & Schorgl, 2008).

### ***Gender Bias in the Law***

Gender bias has been identified in a variety of contexts within the judicial process (Hinds & Bradshaw, 2005; Kite & Tyson, 2004). This is particularly true when legal issues evoke gender roles and stereotypes such as discrimination in the work place, domestic violence, rape, and crimes against children (Dalton, Owen, & Todor, 2001; Jacobs, 1998). Furthermore, these biases appear to be present among many, if not all, of the players in the judicial process including judges and attorneys (Orsagh, 1985, Stepnick & Orcutt, 1996). Stepnick and Orcutt (1996) evaluated the impact of biased behavior on the perception and treatment of judges and attorneys. They found that women judges and attorneys were most aware of gender-based behavior toward women. Riger, Foster-Fishman, Nelson-Kuna, and Curran (1995) investigated the importance of gender, role (judge vs. attorney), experience with bias, and age in predicting perceptions of gender bias in the courtroom. Although role, age and experience had some role in explaining the scores on the three dimensions related to bias, gender offered the greatest predictive power.

Gender bias also impacts upon legal professionals' perceptions of the defendant and/or victim in a case. Orsagh (1985) found judicial bias with regards to gender of a defendant. Other research indicates that professionals involved in the investigation of child sexual abuse cases have differing perceptions of seriousness, punishment and impact on the child, based on the professional's and perpetrator's gender (Kite & Tyson, 2004).

### ***Gender, Filicide, and the Criminal Justice System***

Recently there has been debate in the legal community over whether women and men receive differential treatment in the criminal justice system. Under the chivalry hypothesis women receive more lenient treatment than men when they commit crimes due to paternalistic and non-punitive attitudes (Nagel & Johnson, 1994). Many feminist researchers, however, argue that female offenders are dealt with in a discriminatory manner, and sentenced not only for their crime, but the degree to which they conform to standards of appropriate female behavior (Edwards, 1984). Analysts of filicide observe that filicidal fathers are treated more harshly than filicidal mothers by the criminal justice system (Resnick, 1969; Wilczynski, 1997). In the Resnick (1969) study of 131 filicide cases, he noted: "Fathers were more likely to be executed or sent to prison, whereas mothers were more often hospitalized" (p.332).

Wilczynski (1997) described the very different response of the criminal justice system to men and women who kill children, drawing on data from a British filicide sample. The gender difference was apparent at all stages of the criminal justice process. Women were less likely than men to be prosecuted (46.4% vs. 90%); less likely than men to be prosecuted for or convicted of murder; and more likely to

have psychiatric evidence available for the prosecution decision (51.9% vs. 10%). In addition, women had a greater likelihood of being granted bail (50% vs. none of the men), and receiving psychiatric treatment after the offense, but before the trial (53.6% vs. 30%) (Wilczynski). The pleas used by men and women also differed. Most female filicide offenders (64.3%) used psychiatric pleas, while men used such pleas only 30% of the time. Men tended to utilize normal pleas, which do not require an abnormal mental state. The chief plea used by men was involuntary manslaughter, which requires no intent to kill or seriously injure the victim (Wilczynski).

The contrasting perception of filicidal men and women also followed through to the sentencing stage. Filicidal women usually received psychiatric disposals, whereas men were more likely to receive custodial sentences (Wilczynski, 1997). Filicidal women also tended to be subjected to shorter sentences (Wilczynski). Britain's Infanticide Act, which automatically disposes of men and women differently if the child is killed prior to reaching their first birthday, likely influenced the results relating to gender differences among filicide samples in the Wilczynski study.

Wilczynski (1997) offered a number of possible reasons for the differential treatment of mothers and fathers in the criminal justice system. It was proposed that there is a relative lack of interest in men's psychiatric needs and frailties. Although both filicidal women and men appear to be psychiatrically vulnerable in many ways, such factors tend to be inflated for women and minimized for men (Wilczynski). Wilczynski proposed, as other researchers have suggested (Meyer & Oberman, 2001), that the common stereotypes of women as victims, mad, irresponsible, hormonally disturbed and non-dangerous contribute to the more lenient treatment afforded female offenders (Wilczynski).

The present study evaluated gender bias among attorneys' perception of motive and their defense strategies in response to a fictional filicide case. Gender differences regarding perceived motive were assessed, as well as attorneys' willingness to advise their hypothetical client to plead insanity as a complete defense, accept a plea bargain or use any of three possible mitigating defenses.

To accomplish these goals, a vignette-based survey was designed. Each vignette depicted a filicide followed by identical facts related to the case and possible motive. But for the gender of the perpetrator, each participant received exactly the same vignette followed by a series of questions. The first series of questions was intended to elicit data regarding perception of motive based on classification systems identified by previous research on filicide offenders. The second series of questions addressed the available defenses and the participant's willingness to use them. The following hypotheses were posed: (a) participants will agree more strongly with jealousy, financial gain, and/or retaliation as motivating factors when the fictional perpetrator in the vignette is male, rather than female, (b) participants will agree more strongly that mental illness was a motivating factor for the homicides when the fictional filicide perpetrator is female, rather than male, (c) participants will be more likely to encourage their client to plead insanity as a complete defense when the fictional perpetrator is a female, rather than male, (d) participants will be more likely to encourage their client to accept a plea deal of 15 years in prison when the fictional perpetrator is male, rather than female, (e) participants will be more likely to use the mitigating defense of intoxication when the perpetrator is male and mistake when the perpetrator is female, and (f) participants will be more willing to use the mitigating defense of insanity

when the perpetrator is female, rather than male.

## Method

### *Participants*

The participants in this study were members of the State Bar of California. Their names were obtained from the member list of a non-profit organization, which provides professional, technical and social support networks for criminal defense attorneys, investigators, experts, professors and students. Female participants were overrepresented in the original sample, so male attorneys certified as Legal Specialists in Criminal Law by the State Bar of California, or an organization accredited by the State Bar to certify such attorneys, were also included.

### *Procedures*

A total of 903 members of the State Bar of California were mailed the research materials. A follow-up mailing was conducted 2 months later to potential participants who had not responded to the first mailing. A total of 179 participants responded. The final response rate for this study was 20%. In a cover letter and information form participants were given a brief description of the study, the estimated time it would take to complete the survey, the compensation they would receive for participating and the design precautions taken to assure confidentiality. Potential participants were masked to one purpose of the study: the assessment of attorney gender bias in regards to the hypothetical perpetrator's motive and defenses. They were informed that this was a study designed to assess defense attorney perception of motive in a case involving children who died under the supervision of a parent. The study was approved by the Institutional Review Board of the Pacific Graduate School of Psychology.

### ***Instruments***

Participants were given a vignette and asked to respond to a series of questions relating to it. They were also asked to complete a background demographic questionnaire. The vignette-based survey contained a 1-page fact pattern detailing a filicide case and a series of 5-point Likert-type questions relating to motives for the filicide and potential defenses. The vignette and survey packets varied by gender of the filicide perpetrator only. Half of the participants received the male version of the packet (perpetrator's name was Anthony), and half of the participants received the female version of the packet (perpetrator's name was Angela).

### ***Statistical Analyses***

The sample was described using descriptive statistics, with categorical data reported as number and percentages. The Mann–Whitney *U* test and Fisher's exact test were used to evaluate the hypotheses, followed by a Spearman correlation coefficient to explore other possible significant relationships among the variables.

## **Results**

### ***Description of Sample***

A total of 179 attorneys responded to the survey request and participated in this study. The sample ranged in age from 26 to 84 years old. Nearly two thirds of the participants were female (66.11%). A vast majority of participants were Caucasian (80.56%). African American (5.56%), Hispanic (5%), Chinese (2.22%) and Bi-racial (2.22%) attorneys made up most of the remainder of the sample.

The participants had a wide range of legal and criminal defense attorney experience. The year of admission to a state bar ranged from 1953 to 2007. Fifty percent of participants had been practicing

law for >18 years. Nearly all of the participants reported that they had at least some experience as a criminal defense attorney (97.19%), with more than half reporting that they have practiced as a criminal defense attorney for >16 years. More than one third of the participants reported that 100% of their caseload was devoted to felony cases. Nearly half of the participants were married (48.33%) and more than half reported that they had at least one child (58%). Of those who had children, 18% had one child, 29% had two children, 6.9% had three children, 3.5% had four children, and 1% had five children (Table 1).

### ***Analyses of Hypotheses***

The first hypothesis indicating that participants would agree more strongly with jealousy, financial gain, and/or retaliation as motivating factors when the fictional perpetrator in the vignette was male was supported for two of the three variables.

Table 1. Participant Information (*N* = 179).

Demographic Variable	<i>n</i>	%
Male	61	33.89
Female	119	66.11
Caucasian	145	80.56
African American	10	5.56
Hispanic	9	5.00
Chinese	4	2.22
Bi-Racial	4	2.22
Native American	1	0.56
Korean	1	0.56
Other Ethnicity	6	3.33
Married	87	48.33
Single	50	27.78
Domestic partnered	18	10.00
Separated	4	2.22
Divorced	15	8.33
Widowed	6	3.33
No Children	71	40.80
1 child	32	18.39
2 children	51	29.31
3 children	12	6.90
4 children	6	3.45
5 children	2	1.15

Significant results were found for jealousy ( $p = .017$ ) and retaliation ( $p = .0023$ ; Table 2). It was also hypothesized that participants would agree more strongly that mental illness was a motivating factor for the homicides when the fictional filicide perpetrator was female. There was a significant relationship between these variables ( $p = .0067$ ) in support of the second hypothesis (Table 2).

The third hypothesis suggested that participants would be more likely to encourage their client to plead insanity as a complete defense when the fictional perpetrator was female. The majority of participants indicated that they would encourage their client to plead insanity as a complete defense (77.1%), although there was no significant relationship between the gender of the fictional perpetrator and willingness to encourage one's client to plea insanity ( $p = .094$ ). A total of 81.3% of those who received the vignette with the female fictional perpetrator, however, reported that they would encourage their client to plead a complete defense of insanity while 72.7% of those who received

the vignette with the male fictional perpetrator reported that they would encourage their client to make such a plea (Table 3). The fourth hypothesis was supported: participants were more likely to encourage their client to accept a plea deal of 15 years in prison when presented with the male fictional perpetrator (Table 3). The majority of participants indicated that they would encourage their client to accept 15 years in prison as a plea deal (75.7%) and they were much more likely to do so when the fictional perpetrator was male (88.4%), rather than female (63.7%). There was a significant relationship between gender of the fictional perpetrator and attorneys' willingness to encourage their client to accept a plea bargain ( $p = .0006$ ; Table 3).

It was hypothesized that participants would be more likely to use intoxication as a mitigating defense when the fictional perpetrator was male, and use mistake as a mitigating defense when the fictional perpetrator was female. No significant relationship was found between gender of the fictional perpetrator and attorneys' willingness to plea voluntary intoxication

Table 2. Perception of Motive vs. Gender of Perpetrator.

Variable	Gender of Perpetrator	<i>n</i>	<i>M</i>	<i>SD</i>	Mann-Whitney Effect	
					<i>p</i>	Size
Retaliation	Female	91	2.13	1.05	0.0023**	0.45
	Male	87	2.59	0.97		
Unwanted	Female	91	1.47	0.77	0.14	0.26
	Male	88	1.70	0.98		
Child abuse	Female	91	2.98	1.34	0.21	0.19
	Male	86	3.23	1.29		
Jealousy	Female	91	2.26	1.02	0.017*	0.38
	Male	88	2.65	1.05		
Mental illness	Female	91	4.48	0.89	0.0067**	0.32
	Male	88	4.18	0.96		
Financial gain	Female	91	2.07	0.90	0.19	0.25
	Male	87	2.32	1.12		
Neglect	Female	91	1.92	1.08	0.064	0.19
	Male	87	1.71	1.15		
Altruism	Female	90	3.71	0.94	0.19	0.22
	Male	88	3.48	1.12		

Note: \* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$ .



as a mitigating defense ( $p = .82$ ). A significant relationship did exist, however, between gender of the perpetrator and mistake as a mitigating defense ( $p = .0076$ ). Attorneys were more likely to use mistake as a mitigating defense when the fictional perpetrator was female (Table 4). The final hypothesis was also supported. A significant relationship was found between gender of the perpetrator and attorneys' willingness to use insanity as a mitigating defense ( $p = .04$ ). Participants were more likely to use the insanity defense when presented with a female fictional perpetrator (Table 4).

### Exploratory Analysis of Participant Gender and Legal Experience

Following the initial analyses of the hypotheses, the gender of the participant was

compared to the perceived motivating factors and defenses. The results indicated significant relationships between gender of the participant and retaliation ( $p = .0036$ ), unwanted children ( $p = .0030$ ), jealousy ( $p = .0096$ ) and altruism ( $p = .039$ ). Female participants disagreed more strongly than male participants that retaliation, unwanted children, and jealousy were motives for the filicide, regardless of the gender of the fictional perpetrator. Female participants also more strongly agreed with altruism as a motive for the filicides, regardless of the gender of the fictional perpetrator (Table 5). Another significant relationship was found between mistake as a mitigating defense and the gender of the participant ( $p = .0030$ ). Male participants were less likely to use mistake as a mitigating defense (Table 6). In addition, participants' willingness to encourage their

Table 3. Willingness to Plea Insanity or Plea Bargain vs. Gender of Perpetrator.

Variable	Value	Gender of Perpetrator		Total %	<i>p</i>	Effect Size
		Female <i>n</i> (%)	Male <i>n</i> (%)			
NGI plea	Yes	74 (81.3)	64 (72.7)	138 (77.1)	0.094	0.157
	Maybe	6 (6.6)	3 (3.4)	9 (5.0)		
	No	11 (12.1)	21 (23.9)	32 (17.9)		
	Total	91 (50.8)	88 (49.2)	179 (100.0)		
Plea bargain	Yes	58 (63.7)	76 (88.4)	134 (75.7)	0.0006***	0.293
	Maybe	13 (14.3)	4 (4.7)	17 (9.6)		
	No	20 (22.0)	6 (7.0)	26 (14.7)		
	Total	91 (51.4)	86 (48.6)	177 (100.0)		

Notes: NGI = Not Guilty by Reason of Insanity.

\* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$ .

Table 4. Mitigating Defense Strategies vs. Gender of Perpetrator.

Variable	Gender of Perpetrator	<i>n</i>	<i>M</i>	<i>SD</i>	Mann–Whitney Effect	
					<i>p</i>	Size
Voluntary intoxication	Female	90	2.84	1.32	0.82	0.04
	Male	88	2.90	1.40		
Mistake	Female	89	2.37	1.25	0.007**	0.41
	Male	87	1.89	1.10		
Insanity	Female	91	4.27	1.03	0.04*	0.21
	Male	87	4.07	0.91		

Note: \* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$ .

Table 5. Perception of Motive vs. Gender of Participant.

Variable	Gender of Perpetrator	<i>n</i>	<i>M</i>	<i>SD</i>	Mann–Whitney Effect	
					<i>p</i>	Size
Retaliation	Female	117	2.19	1.00	0.0036**	0.46
	Male	61	2.66	1.05		
Unwanted	Female	118	1.45	0.79	0.003**	1.82
	Male	61	3.03	1.00		
Child abuse	Female	117	3.25	1.30	0.28	0.02
	Male	60	3.23	1.35		
Jealousy	Female	118	2.31	1.04	0.0096**	0.40
	Male	61	2.72	1.02		
Mental illness	Female	118	4.41	0.89	0.096	0.23
	Male	61	4.20	1.01		
Financial gain	Female	117	2.19	0.99	0.95	0.01
	Male	61	2.20	1.11		
Neglect	Female	117	1.85	1.12	0.060	0.07
	Male	61	1.77	1.12		
Altruism	Female	118	3.70	1.07	0.039*	0.29
	Male	61	3.40	0.94		

Note: \* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$ .

Table 6. Mitigating Defense Factors vs. Gender of Participant.

Variable	Gender of Perpetrator	<i>n</i>	<i>M</i>	<i>SD</i>	Mann–Whitney Effect	
					<i>p</i>	Size
Voluntary intoxication	Female	118	2.89	1.30	0.82	0.04
	Male	60	2.84	1.47		
Mistake	Female	118	2.32	1.21	0.002**	0.48
	Male	58	1.76	1.08		
Insanity	Female	118	4.24	0.90	0.42	0.19
	Male	60	4.05	1.11		

Note: \* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$ .

client to plead insanity or accept a plea bargain was compared to the gender of the participant. No significant relationships were found between gender of the participants and willingness to encourage their client to plead insanity as a complete defense or accept a plea bargain.

Spearman rank correlation was used to determine if relationships existed between time practicing as a defense attorney and the dependent variables. Time practicing comparisons indicated significant relationships on four dependent variables: unwanted children ( $p = .05$ ), financial benefit ( $p = .03$ ), voluntary intoxication as a

mitigating defense ( $p = .023$ ), and mistake as a mitigating defense ( $p = .0076$ ).

## Discussion

The present study is the first of its kind to evaluate defense attorneys' perception of motive and defense strategies when presented with a fictional filicide case. Defense attorneys play an integral role in the United States criminal justice system. Previous research has found gender bias at all stages of the criminal justice process (Wilczynski, 1997). The present study aimed to determine if perception of motive

and subsequent legal decision-making by defense attorneys was influenced by the gender of the defendant. Wilczynski described the very different response that the English criminal justice system had toward men and women who kill their children. This study attempted to determine if similar tendencies exist in California despite different laws governing filicide cases.

There were five significant findings. First, participants agreed more with jealousy and retaliation as motivating factors when the fictional perpetrator in the vignette was male. These findings are consistent with the Wilczynski (1997) research. Wilczynski found that two of her categories almost exclusively reflected male motives. These were also retaliation and jealousy/rejection. Similarly, Baker (1991) found no support for spouse murder or revenge, jealousy and rejection, or self-defense as motivating factors among the female subjects in that study. These categories were applicable only to the male perpetrators. The finding that certain motives, namely retaliation and jealousy, are more likely to be perceived as male versus female motives suggests that stereotypes regarding gender roles may effect attorneys' perception of motive. Wilczynski suggested that the difference in gender motives might reflect exaggerations in gender roles in her own research. Kite and Tyson (2004) found that the gender of the perpetrator also influenced officers' perception of child sexual abuse, with a gender bias in favor of the female perpetrator. Previous research, as well as the present study's findings, suggest that gender influences perception of motive.

Second, participants agreed more strongly that mental illness was a motivating factor for the homicides when the fictional filicide perpetrator was female. Although research indicates that mood disorders are more prevalent in female subjects, the literature is unclear on the

prevalence of mental illness among male subjects who commit filicide. Some studies evaluating male perpetrators of filicide found mental illness to be extremely prevalent in the majority of samples (Adelson, 1961; Bourget & Gagné, 2005; Campion et al., 1998; Friedman et al., 2005; Marleau et al., 1999; Resnick, 1969). Many studies, however, also suggested a low prevalence of mental illness among paternal filicide offenders (Alder & Polk, 2001; Scott, 1973). Unfortunately, most studies exclusively examining parental filicide have not used large enough samples of fathers, limiting the ability to generalize their results.

These differing perceptions on the basis of gender can lead to difficulties in the criminal justice system, thereby creating different outcomes for the same crime based on the gender of the perpetrator. In the United States criminal justice system, where gender neutrality is a valued and sought after characteristic, these assumptions and stereotypes may ultimately affect the outcome of a case. Despite the absence of written laws in the United States (similar to those in England that psychiatrically dispose of women who commit infanticide), the assumption that women are motivated by mental illness may pervade the criminal justice system.

Just as the perception that men are more likely to be motivated by retaliation and jealousy increases their perceived culpability, the perception that women are motivated by mental illness decreases the likelihood that they will be perceived as culpable. Mental Illness can eliminate the *mens rea* necessary to convict an individual of first- or second-degree murder. Therefore, if women are more likely to be perceived to be motivated by mental illness, they are more likely to be precluded from convictions requiring them to have the intent and malice aforethought necessary to convict, such as is necessary for first- or second-degree murder.

Third, participants were much more likely to accept a 15-year prison term when the fictional filicide perpetrator was male. (The 15-year sentence was chosen for this survey item because it was equivalent to the minimum sentence a defendant could receive for second-degree murder.) Attorneys do not generally encourage their clients to accept plea deals unless they believe that they cannot do better at trial. This finding suggests that attorneys who had male defendants may have believed that they were less likely to succeed on a complete insanity defense or successfully mitigate the first-degree murder charge. This result is consistent with the Wilczynski (1997) study, which found that women were more likely to have psychiatric evidence available for the prosecution decision (in the British criminal justice system). The pleas used by men and women in the British sample also differed markedly. Most female filicide offenders used psychiatric pleas, while men tended to utilize pleas that do not require an abnormal mental state (Wilczynski). Studies in other countries have found similar results concerning the differing disposals of male and female filicide offenders (Baker, 1991; Marks & Kumar, 1993; Resnick, 1969; Somander & Rammer, 1991).

No significant relationship between perpetrator gender and participant willingness to encourage their client to plead a complete defense of insanity was found, but nearly 10% more of the participants who received the female vignette reported that they would encourage their client to use the insanity defense as a complete defense. Despite the lack of a significant relationship, the findings suggest that there is a higher likelihood that the insanity plea will be encouraged when the defendant is female. Some researchers (Meyer & Oberman, 2001) have suggested that the common stereotypes of women as victims, mad, irresponsible, hormonally disturbed, and non-dangerous contribute to the more

lenient treatment afforded female offenders (Wilczynski, 1997). The perception that women are more likely to be motivated by mental illness among attorneys may cause them to be more inclined to pursue a defense requiring mental disease or defect when confronted with a female defendant.

The hypothesis indicating that participant attorneys were more likely to use the defense of mistake when the perpetrator was female was also supported. The mistake-of-fact defense is sometimes allowed as a valid defense because, although the defendant has committed the *actus reus* (guilty act) of the offense, he or she may honestly believe in a set of facts that would prevent him or her from forming the requisite *mens rea* required to constitute the crime. Under the facts of the fictional filicide case, the mistake defense was not well supported. Attorney participants generally reported that they would not raise the defense of mistake. Perhaps attorneys were more willing to consider a mistake defense when faced with a female filicide perpetrator because they thought a jury would believe that a woman was more capable of making such a mistake of fact. Again, this defense would negate the mental state needed to be culpable of first- and second-degree murder.

The fifth and final significant result indicated that participants were more willing to use insanity as a mitigating defense when the fictional filicide offender was female. Again, a successful mitigating defense of insanity would prove to the jury that the defendant did not have the requisite mental state to commit first- or second-degree murder. Attorneys are more likely to use defenses negating *mens rea* when the defendant is female. Research conducted in other countries found gender discrepancies at all stages of the criminal justice system including sentencing (Baker, 1991; Somander & Rammer, 1991; Wilczynski, 1997). The current study provides support for the chivalry hypothesis,

which asserts that women receive more lenient treatment than men when they commit crimes due to paternalistic and non-punitive attitudes (Nagel & Johnson, 1994). Many feminists researchers have argued, however, that female offenders are dealt with in a discriminatory manner, and sentenced not only for their crime, but the degree to which they conform to standards of appropriate female behavior (Edwards, 1984). Many analysts of filicide have observed that filicidal fathers are treated more harshly by the criminal justice system (Resnick, 1969; Wilczynski). Importantly, the present results are consistent with Wilczynski, and also support the Resnick (1969) findings indicating that "Fathers were more likely to be executed or sent to prison, whereas mothers were more often hospitalized" (p.332).

An exploratory statistical analysis indicated significant relationships between the gender of the participant when compared to perceived motives and defense strategies. Female participants more strongly disagreed with retaliation, unwanted children and jealousy as motivating factors, and agreed more strongly with altruism as a motive for the filicides, regardless of the gender of the filicide offender. This is consistent with other studies, which found that a professionals' gender influenced perception (Kite & Tyson, 2004). Research conducted in Canada, the United States, and England all found that professionals involved in the investigation of child sexual abuse cases had differing perceptions of seriousness, punishment, and impact on the child based on the professional's and the perpetrator's gender (Kite & Tyson, 2004).

Similar to the above findings identifying gender bias relating to gender of the perpetrator, the finding that an attorney's gender influences their perception of motive further supports the potential gender bias in the criminal disposition of filicide offenders. Retaliation, jealousy

and unwanted children all imply intent to harm. Altruism means a selfless concern for the welfare of others. The perceived motive of altruism is one that can potentially negate *mens rea*. For a person to believe that they were acting for the general welfare of another, they cannot possibly know that what they are doing is wrong. Female attorneys are more likely to perceive altruism to be a motive for filicide, which suggests that they will be more likely to believe that a motive that negates *mens rea* contributed to the crime. Male attorneys, on the other hand, are more likely to perceive motives that imply intent to harm, and are less likely to perceive a motive negating *mens rea*. The present results suggest that male participants were less likely to use mistake as a mitigating defense; therefore, a female attorney may better serve defendants of filicide. Female attorneys' perception of motive may make them more likely to use defense strategies aimed at negating *mens rea*.

### ***Contributions, Limitations and Future Research***

This study provided unique information about the discrepancy of criminal disposition that filicide offenders might receive in the California criminal justice system on the basis of gender. It identifies specific differences in the perception of motive among defense attorneys based on both the gender of the participant and the gender of the perpetrator. Furthermore, it provides evidence that differences in perception of motive may influence attorneys' decision-making process. Bias that affects perception of motive based on the gender of the perpetrator has significant ramifications. These results suggest that exaggerated gender roles may influence the criminal justice process. Defense attorneys play an integral role in this process and their perceptions could influence many aspects of the criminal justice system.

If the California criminal justice system is to become more gender neutral, cultural awareness education, which includes gender discrimination and bias, should be required as part of all training for professionals involved. Attorneys must be educated on how gender stereotypes and exaggerated gender roles can affect their legal judgment. If they are presented with data that explain how bias is a negative aspect of our culture and are given methods to combat it, our criminal justice system is likely to operate in a more gender-neutral manner.

There are a number of limitations to this study. Male attorneys tended to be older and more experienced. Therefore, male participants' age and experience may have influenced some of the findings. A sample of participants with groups matched by gender, age and experience may yield different results. Caution should be taken when generalizing these findings. Although these results support previous findings in the United States and other countries' criminal justice systems, there were significantly more women than men in this study. Women made up twice as many participants as they represented in the Bar and men made up half as many participants as were represented by the Bar. Therefore, caution should be taken when interpreting these results and generalizing them to the entire California Bar, United States or other countries.

Previous researchers identified motives almost completely specific to gender, such as retaliation and jealousy for male perpetrators. Perhaps similar biases exist and need to be identified in the psychological research. The majority of recent studies have examined only female filicide offenders. Including familicide in the research may identify more men who commit filicide and may allow for comparisons based on motive with an awareness of the potential for gender bias. Another direction in which to focus is the criminal adjudication and

disposition of parents who kill their children in California. By using legal databases and search engines, future research may gather data about actual defense strategies used in these types of cases and their disposal based on gender of the defense attorney and defendant. Findings from such a study could yield results that strengthen the findings of this study.

In sum, the present study is a unique contribution to the literature because it is the first designed to evaluate perception of motive, defense strategy and gender. The majority of hypotheses were supported and research provides valuable data, which can be used to educate attorneys about gender roles and bias.

## References

- Adelson, L. (1961). Slaughter of the innocents: A study of forty-six homicides in which the victims were children. *New England Journal of Medicine*, 133, 809–813.
- Alder, C., & Polk, K. (2001). *Child victims of homicide*. Cambridge: Cambridge University Press.
- Baker, J.M. (1991). *You can't let your children cry: Filicide in Victoria 1978–1988*. MA thesis. University of Melbourne, Australia.
- Barton, B. (1998). When murdering hands rock the cradle: An overview of America's incoherent treatment of infanticidal mothers. *SMU Law Review*, 51, 591–625.
- Bourget, D., & Bradford, J.M.W. (1990). Homicidal parents. *Canadian Journal of Psychiatry*, 35, 233–238.
- Bourget, D., & Gagné, P. (2005). Paternal filicide in Québec. *Journal of the American Academy of Psychiatry and the Law*, 33, 354–360.
- Bureau of Justice Statistics, U.S. Department of Justice (2007). *Homicide trends in the United States: Infanticide*. Retrieved 17 August 2007, from <http://www.ojp.gov/bjs/homicide/children.htm>
- Campion, J.F., Cravens, J.M., & Coven, F. (1998). A study of filicidal men. *American Journal of Psychiatry*, 145, 1441–1444.
- Collins, K., Hinkebein, G., & Schorgl, S. (2008). *The John Hinckley trial and its effect on the insanity defense*. Retrieved 12 August 2008, from <http://www.law.umkc.edu/faculty/projects>

- Dalton, D.R., Owen, C., & Todor, W.D. (2001). Gender bias in workplace sanctions: A reassessment. *Journal of Social Psychology, 126*, 811–812.
- d'Orban, P.T. (1979). Woman who kill their children. *British Journal of Psychiatry, 134*, 560–571.
- Edwards, S.S. M. (1984). *Women on trial: A study of the female suspect, defendant and offender in the criminal law and criminal justice system*. Manchester: Manchester University Press.
- Farooque, R., & Ernst, F.A. (2003). Filicide: A review of eight years of clinical experience. *JAMA, 95*, 90–94.
- Friedman, S.H., Hrouda, D.R., Holden, C.E., Noffsinger, S.G., & Resnick, P.J. (2005). Child murder committed by severely mentally ill mothers: An examination of mothers found not guilty by reason of insanity. *Journal of Forensic Science, 50*(6), 1–6.
- Hinds, R.W., & Bradshaw, E.R. (2005). Gender bias in lawyer's affidavits to the family court in Australia. *Family Court Review, 43*, 445–453.
- Jacobs, M.S. (1998). Requiring battered women die: Murder liability for mothers under failure to protect statutes. *The Journal of Criminal Law & Criminology, 88*(1), 579–660.
- Kite, D., & Tyson, G.A. (2004). The impact of perpetrator, gender on male and female police officers' perceptions of child sexual abuse. *Psychiatry, Psychology and Law, 11*, 308–318.
- Lee-Lau, M.F. (2001). *Female filicide offenders: A descriptive Rorschach and MMPI-2 Study*. (Doctoral Dissertation, California School of Professional Psychology, 2001). Proquest Dissertations and Theses Full Text, UMI Microform 3009235.
- Marks, M.N., & Kumar, R. (1993). Infanticide in England and Wales. *Medicine, Science and the Law, 33*, 329–339.
- Marks, M.N., & Kumar, R. (1996). Infanticide in Scotland. *Medicine, Science and the Law, 36*, 299–305.
- Marleau, J.D., Polin, B., Webaneck, T., Roy, R., & Laporte, L. (1999). Paternal filicide: A study of 10 men. *Canadian Journal of Psychiatry, 44*, 57–64.
- McKee, G.R. (2006). *Why women kill*. New York: Oxford University Press.
- Meyer, C., & Oberman, M. (2001). *Mothers who kill their children: Understanding the acts of moms from Susan Smith to the "prom mom"*. New York: New York University Press.
- Nagel, I.H., & Johnson, B.L. (1994). The role of gender in a structured sentencing system: Equal treatment of female offenders under the United States sentencing guidelines. *Journal of Criminal Law and Criminology, 85*, 181–221.
- Orsagh, T. (1985). The judicial response to crime and the criminal: A Utilitarian perspective. *Journal of Quantitative Criminology, 1*, 369–386.
- Resnick, P. (1969). Child murder by parents: A psychiatric review of filicide. *American Journal of Psychiatry, 126*, 325–334.
- Resnick, P. (1970). Murder of the newborn: A psychiatric review of neonaticide. *American Journal of Psychiatry, 126*, 1414–1420.
- Riger, S., Foster-Fishman, P., Nelson-Kuna, J., & Curran, B. (1995). Gender bias in courtroom dynamics. *Law and Human Behavior, 19*, 465–480.
- Scott, P.D. (1973). Parents who kill their children. *Medicine, Science, and the Law, 13*, 120–127.
- Somander, L.K.H., & Rammer, L.M. (1991). Intra- and extra-familial child homicide in Sweden 1971–1980. *Child Abuse and Neglect, 15*, 45–55.
- Stepnick, A., & Orcutt, J.D. (1996). Conflicting testimony, judges' and attorneys' perceptions of gender bias in legal settings. *Sex Roles, 34*, 567–579.
- Wilczynski, A. (1997). *Child filicide*. London: Greenwich medical Media.

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