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# Blameworthiness and dangerousness: An analysis of violent female capital offenders in the United States and China

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BLAMEWORTHINESS AND DANGEROUSNESS: AN ANALYSIS OF VIOLENT  
FEMALE CAPITAL OFFENDERS IN THE UNITED STATES AND CHINA

by

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Bachelor of Arts  
University of California, Irvine  
2008

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A thesis submitted in partial fulfillment of  
the requirements for the

**Master of Arts in Criminal Justice  
Department of Criminal Justice  
School of Urban Affairs**

**Graduate College  
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THE GRADUATE COLLEGE

We recommend the thesis prepared under our supervision by

**Courtney Brooke LaHaie**

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**May 2010**

## ABSTRACT

### **Blameworthiness and Dangerousness: An Analysis of Violent Female Capital Offenders in the United States and China**

by

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The United States and China represent two of the leading nations that retain the death penalty in both law and practice. Research suggests that judges' sentencing decisions are based primarily on two factors, blameworthiness and dangerousness. Studies involving gender and sentencing in capital punishment cases tend to provide inconsistent findings. The current study uses case narratives to examine the direct and conjunctive effects of various factors on the sentencing decisions of violent female capital offenders in the United States and China. The findings suggest that the concepts of blameworthiness and dangerousness are distinctly defined in the United States and China. The study proposes that the differences observed in the capital offense sentencing practices of these two countries can be attributed to the distinct political, legal and social systems of the United States and China.

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## CHAPTER 1

### INTRODUCTION

Over the past several decades, there has been an international abolitionist movement of the death penalty. According to Amnesty International (1982-2009), the number of countries that have abolished the death penalty in law or in practice has steadily increased over time, from 63 countries in 1981, to 88 countries in 1990, to 108 countries in 2000, and to 137 countries in 2008. Currently, there are more abolitionist countries than retentionist countries globally.

While much progress has been made in abolishing and limiting the scope of the death sentence around the world, death sentences and executions have continuously been used by a substantial number of countries to punish their criminals. The United States and China represent two of the leading nations that retain the death penalty in both law and practice.

In 2008, a total of 8,864 death sentences and 2,390 executions worldwide have been documented by Amnesty International (2009). Nearly 93% of all known executions took place within five countries, among them, the United States and China (Amnesty International, 2009). During 2008, the United States sentenced at least 111 people to death and executed 37 offenders (Amnesty International, 2009). Though none of the executions were female, three of the death sentences in 2008 involved female offenders. In China, at least 1,700 people were executed and about 7,000 were sentenced to death in 2008 (Amnesty International, 2009). Specific information regarding the number of female offenders sentenced to death and executed in China in 2008 is not available.

Given the significant role the United States and China have on the world scene, both in terms of their practices in the death penalty, as well as their political and economic influences, a comparative analysis of the characteristics of violent offenders and the death sentence decisions between these two countries will help shed light on policies, practices and future prospects of the death penalty.

## Research Context

### *United States*

The United States is the third largest country in the world, geographically and by population (U.S. Census Bureau, 2000). The diverse population of the United States is comprised of many ethnic and racial groups, with White/Caucasian Americans making up about 80% of the population and Black/African Americans being the largest minority (12%) (The World Factbook, 2010). The political, social and legal customs of the United States are summarized below.

*Political-Economic System.* The United States of America is a federation, consisting of a constitutional republic and a representative democracy (Scheb & Scheb, 2002). Three levels of government, federal, state and local, exist within the federalist system. The government is generally operated by a two-party system, though several political parties exist. Capitalist market economy represents the hallmark of the U.S. economic system. The United States belongs to the United Nations and is one of the five permanent members of the Security Council.

*Socio-Cultural Traditions.* As a multicultural nation, the United States has a variety of practiced traditions and values. Of the many values and cultural traditions, individualism represents one of the hallmarks of the American culture, and its level and

intensity have far exceeded any other nations in the world (Ralston, Holt, Terpstra, & Kai-Cheng, 1997). Several core values have been traditionally attached to individualism, including self-reliance, natural rights, and freedom (Brown, 1993).

Individualism may have several implications on law and social control. For example, crime rates may be expected to be higher in an individualist society than a communitarian society because social bonds are less important to an individual in this context. Attachment to social groups, however, has been proven to be one of the most salient factors in inhibiting crime (Hirschi, 1963; Sampson & Laub, 1990; Hirschi & Gottfredson, 1995). In addition, an individualist society may place a higher value on formal social control and prefers legal intervention than communal intervention for dispute resolution (Bierbrauer, 1994). Legal sanctions may thus be more punitive because of the lack of alternative punishments (i.e., compensatory, conciliatory sanctions)

*Use of the Death Penalty.* The United States is one of the leading nations for executions and death sentences, and it is the only western developed nation that retains the death penalty. Currently, 35 states and the Federal government retain use of the death penalty (Death Penalty Information Center, 2009). Most of these states are southern, followed by states in the west and Midwest. Most death penalty jurisdictions now follow the guided discretion rule and require aggravating factors when applying the death sentence. Death penalty eligible offenses typically include first-degree murder, felony murder, aggravated rape of a minor, treason, and first-degree kidnapping typically resulting in death. Aggravating factors such as accompanying felony, prior record, especially heinous and cruel methods, and risk to multiple victims are commonly required for the death penalty.

Throughout history, the imposition of the death penalty has generated controversies over capricious and discriminatory practices. Research generally finds that race and gender influence arbitrary sentencing decisions, particularly in capital punishment cases. In the United States, capital sentences are rare for women, with only 2% of death sentences and about 1% of executions being from female offenders (Death Penalty Information Center, 2009). The most recent female execution was in 2005 in Texas.

### *China*

The People's Republic of China is the most populous country in the world and the second largest geographically (Walton, 2001). While several ethnic groups are recognized in China, the largest group is the Han Chinese, which comprises 92% of the total population (The World Factbook, 2010). The political, social and legal traditions of China are summarized below.

*Political-Economic System.* The People's Republic of China is ruled by the Communist Party and is one of the only remaining communist nations in the world. Most of the high-ranking government officials are appointed, not elected, even though the country is moving toward general elections at the grass-roots level. China's economy is transitioning from a state-planned to a market economy where the state-owned sectors coexist with privately run businesses (Liang, 2008). China is part of the United Nations and one of the five permanent members of the Security Council.

*Socio-Cultural Traditions.* China is one of the world's earliest ancient civilizations. Traditional Chinese values are resultant from Confucianism, and to a lesser extent, from conservatism and legalism (De Bary, 1998). Communitarian and collective

principles and values are core to the cultural practices and beliefs. Confucian ideology of hierarchy and group identification makes customary rules (i.e., ritual propriety, clan rules) the guiding principle in maintaining relationships among individuals, their social groups, and the government (Lu & Miethe, 2001). Obedience to the state and family are traditional principles of Chinese culture.

Because of the communitarian and group orientation, the Chinese society has historically regarded the rights of the individual inferior to the rights of the collective. The preference of informal social control and the emphasis of crime control by the criminal justice system represent the key features of the Chinese social control system.

*Use of the Death Penalty.* China is considered to be the leading nation in the practice of the death penalty. It has a long history of capital punishment. Currently, 68 offenses are subject to the death penalty, including a wide range of offenses such as murder, robbery, drug trafficking, corruption, forcing others into prostitution, and theft. In addition, aggravating factors typically are required for the offender to receive the death penalty (i.e., being a ring leader, involving multiple offenders/victims, prior criminal record, lack of remorse). It is rather challenging to conduct research on the death penalty because official data on death sentences and executions have never been released to the public since the establishment of the People's Republic of China in 1949.

*Gender Role.* China is known as a patriarchal society. Confucianism established and reinforced the hierarchical structure of the Chinese society based on age, gender, and class. Women and girls have historically been put at the bottom of the social and family hierarchy, and were given little or no rights to education, employment and/or property. For a long time, women were the property of their husbands, and girls were looked upon

as a burden for the family (Fairbank, 1992). While women's status has been improved dramatically under the PRC, its impact, if any, on women's treatment by the legal system remains largely unclear.

#### Purpose of the Research

Research suggests that judges' sentencing decisions are primarily based on the offenders' blameworthiness and the degree of dangerousness (Steffensmeier, Ulmer, & Kramer, 1998). Both legal and extra legal factors are likely to be used to formulate these assessments. It is the rule, rather than the exception, that sentencing decisions are made arbitrarily and capriciously, including death penalty decisions. In fact, arbitrariness and capriciousness of death penalty decisions prompted the 1972 Supreme Court decision, *Furman v. Georgia*, which imposed a de facto moratorium on the death penalty in the United States. Even in the post Furman era, arbitrary and discriminatory application of the death sentence remains pronounced in death penalty states (Spohn & Beichner, 2000). Studies in the United States typically found arbitrary and capricious use of the death penalty in two areas: race and gender. While studies on racial inequality in death penalty decisions are abundant, studies on gender inequality are relatively rare (Crew, 1991).

Similar empirical evidence also exists in China. For example, research shows that judges' sentencing decisions on theft cases are affected by both legal factors (such as offense severity) and extralegal factors (such as residency status) (Lu & Drass, 2002). Even though systematic empirical studies on death penalty decisions are rare in China, due to the lack of availability of official data on the death penalty, available studies suggest that death penalty decisions are also likely to be imposed in nonsystematic ways, particularly affected by political, social and economic conditions. While race is not a

prominent factor in criminal justice decisions in China, gender inequality has not been a main focus of criminological research when compared with other factors, such as residency or urban/rural status.

Using death penalty data from the United States and China, the current study explores the convergent and divergent effects of blameworthiness and dangerousness on the sentencing decisions of violent female capital offenders. It could help identify both the general and unique characteristics and patterns of female criminality. It may also help illuminate the legal and extra-legal factors, which impact sentencing decisions for female offenders, especially with data from two distinctively different political, economic, social, and cultural systems.

## CHAPTER 2

### THEORY AND RESEARCH ON GENDER AND SENTENCING

A growing body of literature has examined gender and its effect on criminal sentencing. While the findings are mixed, and at times contradictory, these studies have helped formulated several important theories about gender and crime, and gender and sentencing. In this chapter, major theories on female criminality and theories on sentencing are reviewed to wholly assess the impact of violent female capital offenders on the criminal justice system.

#### Theories on Female Criminality

Generally, race, gender, and age are the major characteristics contributing to inequality in the criminal justice system. Though gender disparity is prevalent throughout the criminal justice process, it is most clearly identified during sentencing (Steffensmeier et al., 1998). The chivalry/paternalism hypothesis and the evil woman hypothesis predict sentencing of female offenders compared to males. Though the current study does not focus on the effects of the chivalry hypothesis and the evil woman hypothesis on sentencing, these concepts of female criminality and the effects on sentencing are essential to the understanding and study of women in the criminal justice system.

#### *Chivalry Hypothesis and Paternalism*

One of the dominant theories on gender and crime is chivalry/paternalism. This hypothesis suggests that women receive more lenient treatment than men because criminal justice officials tend to protect the weaker sex from harsh punishment, and that women are perceived to be less blameworthy for their crime and to be less dangerous to



the larger community (Moulds, 1978; Nagel & Hagan, 1982; Krohn, Curry, & Nelson-Kilger, 1983).

Though preferential treatment of women in the criminal justice system is generally accepted, research suggests that differences among males and females may actually be minimal. Despite the fact that lenient treatment of women is evident across most offense categories, sex differences tend to be slight, with the exception of incarceration rates (Steffensmeier, 1980). According to Musolino (1988), women may receive preferential treatment during sentencing, but not in the determination of guilt.

Chivalry and paternalistic attitudes are only one aspect of gender effects on sentencing. Steffensmeier (1980) identifies chivalry, perceived permanence of behavior, perception of dangerousness, naïveté, and practicality as inter-related factors that explain preferential treatment. Perceived permanence of behavior and perception of dangerousness are typically high in the case of violent and capital offenders. Therefore, the effects of chivalry should be low in the current study.

#### *Evil Woman Hypothesis*

Contrasting the concept of chivalry/paternalism is the view of the evil woman hypothesis. The evil woman hypothesis suggests that women may be perceived as a worse criminal than men for a similar crime, when their criminal behavior is outside the bounds of traditional sex role expectations (Bernstein, Nagel, Kick, Leung, & Schulz, 1977; Bowker, 1978; Rasche, 1975). Research suggests that women tend to receive fewer incarceration sentences and shorter terms for most offenses, excluding violent crimes (Kruttschnitt, 1984; Kruttschnitt & Green, 1984; Steffensmeier, Kramer, & Streifel, 1993). Women who commit violent crimes infringe on traditional gender

stereotypes, thus instigating the harshest and most extreme forms of punishment (Grabe, Trager, Lear, & Rauch, 2006).

Offenses are often characterized by the gender identities of masculinity and femininity. Women who commit “feminine” crimes, such as larceny, are generally granted leniency, while women who commit “masculine” offenses, like murder, are subjected to harsh punitive consequences (Spohn & Spears, 1997). Therefore, sentencing disparities are less a result of chivalry and more a reaction to traditional sex role expectations (Chesney-Lind, 1978). The current study examines only violent female offenders sentenced to the most severe punishment, the death penalty.

#### Theories and Research on Gender and Sentencing

Research suggests that judges’ sentencing decisions are primarily based on the offenders’ blameworthiness and the degree of dangerousness (Steffensmeier et al., 1998). Both legal and extra-legal factors are likely to be used to formulate these assessments. The effects of gender on sentencing decisions and the consequences of sentencing guidelines on gender are examined using the Focal Concerns of Sentencing perspective.

#### *Focal Concerns and Sentencing*

The Focal Concerns of Sentencing perspective (Steffensmeier & Demuth, 2001; Steffensmeier et al., 1993; Steffensmeier et al., 1998) posits that judges base sentencing on three primary components: offender blameworthiness, offender dangerousness or protection of the community, and the practical constraints and implications. Miller (1958) originally developed focal concerns to explain lower class culture and the motivation of delinquent behavior, specifically that of youth gangs. Focal concerns are “areas or issues which command widespread and persistent attention and a high degree of

emotional involvement” (Miller, 1958). The current study concentrates primarily on the constructs of blameworthiness and dangerousness in sentencing discretion.

*Blameworthiness.* Blameworthiness is legally defined; an offender’s culpability and the degree of injury will cause punishment to escalate accordingly. Culpability and injury generally measure offense severity, which research suggests is the most significant factor in sentencing (Steffensmeier et al., 1998). Blameworthiness is typically consistent with the punishment perspective of retribution. Offense severity, offender prior record, the presence of a co-offender and aggravating and mitigating factors will be used to increase and decrease the level of blameworthiness of an offender during sentencing. These variables will also be used in the current study to measure blameworthiness.

*Dangerousness.* Dangerousness, or protection of the community, is conceptually ascertained based on offense and offender characteristics. The measure of dangerousness allows judges to address two primary sentencing goals, public safety and recidivism (Steffensmeier et al., 1998). Dangerousness is a significant factor in considering gender and sentencing. Judges generally believe that females are less dangerous, are less of a risk to public safety, and that female criminality is a consequence of individual female victimization (Steffensmeier & Demuth, 2006). Similar to blameworthiness, offender criminal history, aggravating, and mitigating factors are important measure of dangerousness. Additionally, weapon use, conviction of an additional felony and offender characteristics are used to determine the level of offender dangerousness.

#### *Sentencing Discretion and Guidelines*

Judicial decision-making is a complex process. The Focal Concerns of Sentencing perspective recognizes the complexities of sentencing discretion and the

restrictions placed on decision makers by limited information. Legal variables generally have the greatest influence on sentencing, but rarely provide a sufficient amount of information to judges regarding each of the focal concerns (Crow & Bales, 2006). Therefore, according to Steffensmeier and associates (Steffensmeier et al., 1993; Steffensmeier et al., 1998; Steffensmeier & Demuth, 2000, 2001), judges and decision-makers utilize “perceptual shorthands” during the sentencing process. The perceptual shorthand will consist of offense and offender characteristics and is created to control the ambiguous and complex information used in sentencing decisions. In addition, sentencing guidelines act as a constraint on sentencing disparity.

The practice of determinate sentencing in the United States has prompted sentencing policy to establish and enforce sentencing guidelines on judicial decision-making (Tonry, 1996). Sentencing guidelines differ considerably in purpose, latitude and content across and within states (Griset, 1991). Since the 1970s, and the start of the determinate sentencing era, sentencing guidelines have been implemented by 25 states and the Federal government (Gillespie, 2003). Sentencing guidelines function as a restriction to sentencing discretion and limit the disparity of judicial decision-making. Guidelines influence the perceptual shorthands of judges and decision-makers by limiting the impact of extra-legal factors, such as race, gender, and age (Crow & Bales, 2006; Engen, Gainey, Crutchfield, & Weis, 2003). Sentencing guidelines that exclude extra-legal factors, however, may cause unfavorable consequences for minority groups, including women. During the determinate sentencing era, female incarceration rates rose dramatically faster than male incarceration rates (Chesney-Lind & Pollack, 1995). The establishment of guidelines represents the formal structure of determinate sentencing and

the lack of disparity in legal factors (Savelsberg, 1992; Engen et al., 2003). Legal criteria are objective and allow very little discretion in sentencing. Focal concerns and perceptual shorthands, however, are frequently influenced by subjective criteria.

Traditional behavior role expectations and legal and social stereotypes are regularly integrated into perceptual shorthands (Crow & Bales, 2006). Focal concerns, specifically blameworthiness and dangerousness, may also be influenced by an offender's social status (Steffensmeier & Demuth, 2006). The reinforcement of extra-legal factors via expectations and stereotypes on perceptual shorthands can become resistant to change over time, even in the presence of sentencing guidelines.

*Gender and Sentencing.* Gender and sentencing practices are typically affected by traditional role expectations. As previously discussed, women are generally considered to be less dangerous than men, as well as a lower risk to community safety. The high social costs of incarcerating women may also result in more lenient sentencing decisions (Steffensmeier et al., 1993; Steffensmeier & Demuth, 2006). Some of the social costs associated with women include childcare and familial responsibilities, along with various health concerns, physically and mentally.

While western research typically concedes that women receive more lenient treatment than men, this claim is particularly evident in the death penalty and execution decisions. Statistics on modern day death sentences and executions in the U.S. suggest women were more likely to be dropped out of the system further along the criminal justice process. For example, women accounted for 10% of murder arrests, 2% of death sentences, 1.4% of offenders on death row, and 1.1% of offenders executed (Death

Penalty Information Center, 2009). Not only are death sentences for women rare, they are also inconsistent (Streib, 2006).

In China, studies of nonrandom samples of capital and non-capital cases suggested similar patterns of gender disparity in death sentence decisions, even though women accounted for 9% of all death sentences for violent crimes, far exceeding the proportion represented by their American counterparts (Lu & Miethe, 2007).

The Focal Concerns of Sentencing, blameworthiness, dangerousness, and practical constraints are hypothesized to be universal across sentencing practices. In practice, however, extra-legal variables, such as gender, can have significant effects on sentencing decisions. The implication, precedence, and interpretation of the blameworthiness and dangerousness of an offender may be influenced by social status and public opinion (Steffensmeier & Demuth, 2006). Sentencing guidelines are created to limited disparity in sentencing decisions, but the subjective nature of extra-legal variables is still considered an important element of judicial decision-making.

### Conclusion

The current study only considers violent female offenders who have received the death penalty. The sentencing constructs of blameworthiness and dangerousness will be assessed to evaluate similarities and differences between the United States and China. A comprehensive understanding of the death penalty, in both countries, is essential to the analysis and interpretation of these concepts.

## CHAPTER 3

### DEATH PENALTY LAW

Both the United States and China have legalized and practiced the death penalty for most of their history. Nevertheless, the substantive and procedural laws regarding the death penalty in each country diverge significantly. In this chapter, eligible death penalty offenses, aggravating and mitigating factors, and critical procedural rules regarding the death penalty for each country are examined.

#### Substantive and Procedural Law Regarding the Death Penalty in the United States

The death penalty is one of the most widely debated and legislated issues in the United States. Death penalty laws have been banned, suspended, restricted and expanded in scope throughout the history of the United States. The modern era of death penalty law was established in 1976 with the imposition of guided discretion in death penalty sentencing. Legislative changes, death penalty eligible offenses, and aggravating and mitigating factors in death penalty sentences in the modern era are summarized below.

#### *Changes in Death Penalty Laws after Furman v Georgia*

Although there has been a long history of legalized capital punishment in the U.S., the current laws regarding the death penalty have been mostly shaped since the 1972 Supreme Court ruling in *Furman v. Georgia*. Table 1 presents the major Supreme Court cases regarding the death penalty since 1972.

In 1972, a de facto moratorium was placed on the death penalty as a result of *Furman v Georgia*. The Court evoked the cruel and unusual punishment standard and ruled that arbitrary decision-making in capital cases violated the constitution. In an attempt to reduce arbitrary and discriminatory practices in sentencing, states started to

created new death penalty laws. The death penalty was reaffirmed in *Gregg v Georgia*, in 1976. This case established the guided discretion rule for sentencing in capital cases.

“The concerns expressed in *Furman* that the penalty of death not be imposed in an arbitrary or capricious manner can be met by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance. As a general proposition, these concerns are best met by a system that provides for a bifurcated proceeding at which the sentencing authority is apprised of the information relevant to the imposition of sentence and provided with standards to guide its use of the information” (*Gregg v. Georgia*, 1976).

The guided discretion rule recognized the subjective nature of the sentencing process, and required the courts to identify and regulate extra-legal factors (i.e., offender and victim characteristics) that may contribute to death sentence decisions.

Table 1

*Landmark Supreme Court Death Penalty Rulings*

Case	Year	Ruling
Furman v Georgia	1972	Arbitrariness in death penalty sentencing is unconstitutional and violates the 8th Amendment
Gregg v Georgia	1976	Established guided discretion in death penalty sentencing
Woodson v North Carolina	1976	Mandatory death penalty sentences are unconstitutional
Coker v Georgia	1977	Death penalty for the rape of an adult woman is unconstitutional
Atkins v Virginia	2002	Death penalty for mentally retarded offenders is unconstitutional
Roper v Simmons	2005	Death penalty for juvenile offenders is unconstitutional



In a series of decisions following *Gregg*, the Supreme Court specified and restricted the scope of the death penalty. For example, in the 1976 case, *Woodson v North Carolina*, the court declared mandatory death sentences are unconstitutional. In *Coker v Georgia* (1977) capital punishment for the rape of an adult woman was deemed unconstitutional, though rape of a minor remains death penalty eligible in several jurisdictions. The court ruled the death penalty being unconstitutional for mentally retarded offenders in 2002 (*Atkins v Virginia*) and juvenile offenders in 2005 (*Roper v Simmons*).

#### *Death Penalty Eligible Offenses*

By 2009, in the United States, the death penalty was retained at the federal level and by 35 states. Death penalty eligible offenses vary by jurisdiction. While all jurisdictions that continue to use the death penalty delegate murder as the primary capital offense, several states also include a number of other offenses, such as treason and first-degree kidnapping. Most death penalty jurisdictions follow the guided discretion rule set forth in *Gregg v Georgia*, for sentencing in capital cases. Table 2 presents eligible capital offenses by state as of 2009.

*Aggravating Factors.* Most death penalty jurisdictions require the presence of aggravating factors in conjunction with a specific offense, in order for the offense to be death penalty eligible. Each jurisdiction mandates which relevant circumstances may be considered as aggravating factors. Among the jurisdictions that retain the death penalty, there are 454 total aggravating factors considered in capital punishment cases (Kirchmeier, 1998). For example, the state of Tennessee has the most number of eligible

Table 2

*Capital Offense, by State*<sup>1</sup>

State	Offense
Alabama	Intentional murder with 18 aggravating factors (Ala. Stat. Ann. 13A-5-40(a)(1)-(18))
Arizona	First-degree murder accompanied by at least 1 of 14 aggravating factors (A.R.S § 13-703(F))
Arkansas	Capital murder (Ark. Code Ann. 5-10-101) with a finding of at least 1 of 10 aggravating circumstances Treason
California	First-degree murder with special circumstances Sabotage Train wrecking causing death Treason Perjury causing execution of an innocent person Fatal assault by a prisoner serving a life sentence
Colorado	First-degree murder with at least 1 of 17 aggravating factors First-degree kidnapping resulting in death Treason
Connecticut	Capital felony with 8 forms of aggravated homicide (C.G.S. § 53a-54b)
Delaware	First-degree murder with at least 1 aggravating circumstances (11 Del. C. § 4209)
Florida	First-degree murder Felony murder Capital drug trafficking Capital sexual battery
Georgia	Murder Kidnapping with bodily injury or ransom when the victim dies Aircraft hijacking Treason

Idaho	First-degree murder with aggravating factors First-degree kidnapping Perjury resulting in death First-degree murder with 1 of 21 aggravating circumstances (720 Ill. Comp. Stat. 5/9-1) Murder with 16 aggravating circumstances (IC 35-50-2-9) Capital murder with 8 aggravating circumstances (KSA 21-3439, KSA 21-4625, KSA 21-4636) Murder with aggravating factors Kidnapping with aggravating factors (KRS 32.025) First-degree murder (La. R.S. 14:30) Treason (La. R.S. 14:113)
Illinois	First-degree murder, either premeditated or during the commission of a felony, provided that certain death eligibility requirements are satisfied
Indiana	Capital murder (Miss. Code Ann. § 97-3-19(2))
Kansas	Aircraft piracy (Miss. Code Ann. § 97-25-55(1))
Kentucky	First-degree murder (565.020 RSMO 2000)
Louisiana	Capital murder with 1 of 9 aggravating circumstances (Mont. Code Ann. § 46-18-303) Aggravated sexual intercourse without consent (Mont. Code Ann. § 45-5-503)
Maryland	First-degree murder with a finding of at least 1 statutorily-defined aggravating circumstance
Mississippi	First-degree murder with at least 1 of 15 aggravating circumstances (NRS 200.030, 200.033, 200.035)
Missouri	Murder committed in the course of rape, kidnapping, or drug crimes (RSA 630:1)
Montana	Killing of a law enforcement officer Murder for hire
Nebraska	Murder by an inmate while serving a sentence of life without parole
Nevada	First-degree murder with at least 1 of 17 statutorily-defined aggravating circumstances (Section 30-2-1 A, NMSA)
New Hampshire	First-degree murder with 1 of 13 aggravating factors (NY Penal Law § 125.27)
New Mexico	First-degree murder (NCGS § 14-17)
New York	
North Carolina	

Ohio	Aggravated murder with at least 1 of 10 aggravating circumstances (O.R.C. secs. 2903.01, 2929.02, and 2929.04)
Oklahoma	First-degree murder in conjunction with a finding of at least 1 of 8 statutorily-defined aggravating circumstances Sex crimes against a child under 14 years of age
Oregon	Aggravated murder (ORS 163.095)
Pennsylvania	First-degree murder with 18 aggravating circumstances
South Carolina	Murder with 1 of 12 aggravating circumstances (§ 16-3-20(C)(a)) Criminal sexual conduct with a minor with 1 of 9 aggravators (§ 16-3-655)
South Dakota	First-degree murder with 1 of 10 aggravating circumstances
Tennessee	First-degree murder with 1 of 15 aggravating circumstances (Tenn. Code Ann. § 39-13-204)
Texas	Criminal homicide with 1 of 9 aggravating circumstances (Tex. Penal Code § 19.03)
Utah	Aggravated murder (76-5-202, Utah Code Annotated)
Virginia	First-degree murder with 1 of 15 aggravating circumstances (VA Code § 18.2-31)
Washington	Aggravated first-degree murder
Wyoming	First-degree murder Murder during the commission of sexual assault, sexual abuse of a minor, arson, robbery, escape, resisting arrest, kidnapping, or abuse of a minor under 16

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[1] Bureau of Justice Statistics, Capital Punishment 2008, NCJ 228662

aggravating factors for consideration, totaling at twenty (20), whereas the state of Kansas only provides six (6) aggravating factors for consideration (Kirchmeier, 1998, 2006). The average number of factors per jurisdiction is 12. In addition, while some jurisdictions specify the minimum number of aggravating factors that a case must have in order for the death sentence to be given, other jurisdictions do not have that special stipulation. For example: Pennsylvania requires the presence of 18 aggravating factors; several states, such as Nevada and Texas, require only one aggravating factor; and still a number of states, such as California and Florida, do not specify the presence of any aggravating factors (Snell, 2009). Table 2 identifies the number of required aggravating factors by state, along with death penalty eligible offenses. These factors include, but are not limited to (Kirchmeier, 1998).

- The offense was especially heinous, atrocious, cruel, or depraved
- The capital offense was committed during the commission of, attempt of, or escape from a specified felony
- The defendant has been convicted of, or committed, a prior murder, a felony involving violence, or other serious felony
- In the commission of the offense the defendant knowingly created a grave risk of death to another person or persons in addition to the victim of the offense
- The defendant engaged in terrorism
- The victim was killed because of his or her race, color, religion, nationality, or country of origin

- The victim was a government employee, including peace officers, police officers, federal agents, firefighters, judges, jurors, defense attorneys, and prosecutors, in the course of his or her duties
- The capital offense was committed by a person who is incarcerated, has escaped, is on probation, is in jail, or is under a sentence of imprisonment
- The murder was committed against a witness or potential witness in a criminal or civil legal proceeding because of such proceeding
- The victim was under the age of 12 years

*Mitigating Factors.* Mitigating factors may be related to the offender's character or to the circumstances of the offense. When mitigating factors are present in the case, the sentencing judge may take them into consideration when meting out the death sentence (Kirchmeier, 1998). Common mitigating factors include, but are not limited to (California Penal Code 190.3):

- The circumstances of the crime and the existence of special circumstances
- The presence or absence of violent criminal activity by the defendant
- The presence or absence of any prior felony convictions
- Whether the crime was committed while the defendant was under the influence of extreme mental or emotional disorder
- Whether the victim was a participant in the defendant's homicidal conduct or consented to the killing
- Whether the crime was committed under circumstances, which the defendant reasonably believed to be a moral justification or extenuation for his conduct

- Whether the defendant acted under extreme duress or under the substantial domination of another person
- Whether at the time of the crime the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was impaired as a result of mental disease or defect, or the affects of intoxication
- The age of the defendant at the time of the crime
- Whether the defendant was an accomplice to the crime and his participation was relatively minor

#### *Legal Process in Capital Cases*

A death penalty case typically involves a complex legal process in the U.S. After a defendant is sentenced under the death penalty, there are three general procedures to follow: direct review, state collateral review, and federal habeas corpus.

Direct review is the initial legal appeal that a death penalty case will undergo after sentencing at the trial court level. A death sentence will automatically result in direct review. During the review, evidence and law will be evaluated and the appellate court will affirm the decision, reverse the decision, or acquit the defendant. Approximately 60% of death sentences are affirmed in the direct review process (Freedman, 2006).

After a decision is affirmed on direct review, the defendant may have the opportunity for state collateral review. Collateral review only exists at the state level; federal cases that are affirmed at direct review proceed to habeas corpus. State collateral review is an additional appeals process, in which a defendant may raise new challenges

that could not previously be argued, either at trial court or at direct review. Death sentences are rarely (6%) overturned during collateral review (Freedman, 2006).

Federal Habeas Corpus is typically the final step in the death penalty legal process. After direct review and/or collateral review, a defendant may file for Federal Habeas Corpus, thus transitioning a state-level case to the federal level. Federal Habeas Corpus is a review to ensure state-level decisions are upholding constitutional rights. According to Freedman (2006), about 21% of cases are reversed during the process of Federal Habeas Corpus. Recently, in *Hill v McDonough* (2006), the Supreme Court ruled that should a death sentence be affirmed at Federal Habeas Corpus, a defendant may not challenge the sentence, but may challenge the method of execution via Section 1983 of the Civil Rights Act of 1871.

#### Substantive and Procedural Law Regarding the Death Penalty in China

The Criminal Law of the People's Republic of China (PRC) was first passed in 1979 and was then substantially revised in 1997. Though modified in 2002 and 2005, the 1997 Law contains major clauses regarding the death penalty. The Criminal Procedure Law of the PRC was first passed in 1979 and underwent significant changes in 1996. Below is the description of the substantive and procedural laws regarding the death penalty based on the 1997 Criminal Law and the 1996 Criminal Procedure.

#### *Offenses Eligible for the Death Penalty*

The 1997 Criminal Law has 10 broad crime categories with 451 Articles, including (1) endangering national security; (2) endangering public security; (3) undermining the socialist market economic order; (4) infringing upon the rights of the person and the democratic rights; (5) encroaching on property; (6) disrupting the order of



social administration; (7) endangering the national defense interest; (8) graft and bribery; (9) dereliction of duty; and (10) violating duties by military servicemen. All of the categories, except the category of “dereliction of duty”, carry the death penalty. Table 3 summarizes all capital offenses by these broad categories.

*Sentencing Options and Judicial Discretion.* While numerous offense types may be subject to the death penalty, few crimes in China carry a mandatory death sentence. An offense subject to capital punishment is typically also eligible for a fixed prison sentence of more than 10 years or life imprisonment, some even with a wider sentence range. For example, murder is defined as “anyone who intentionally commits homicide” and may be subject to the death penalty, life imprisonment, or more than 10 years of fixed prison sentence; if circumstances involved were relatively light (*qingjie jiaoqing*), the offender may be subject to a fixed prison sentence between three to ten years (Article 232).

Given the wide range of sentencing options for capital eligible offenses, almost all of these offenses must meet the minimum criteria for the death penalty. Several legal sources including the Criminal Law, the National People’s Congress, Supreme People’s Court, and Supreme People’s Procuratorate, helped define the “minimum criteria”. For example, the 1997 Criminal Law (Article 48) required such offenses to meet “the most heinous crime (*zuixing jiqi yanzhong*)” test, in which both the offense and the offender must be “dangerous” in order to receive the death sentence. Sentencing guidelines typically require aggravating circumstances for the death sentence, even though meeting these aggravating circumstances may not automatically result in the death sentence.

Table 3

*Capital Offenses Stipulated in the 1997 Criminal Law*<sup>2</sup>

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<b>Crimes of Endangering National Security (Article 113, 7 Capital Offenses)</b>
Plotting to jeopardize the sovereignty, territorial integrity and security of the country.
Instigating to split the country.
Organizing, plotting, or carrying out armed rebellions, or armed riots.
Organizing, plotting or acting to subvert the political power of the State.
Espionage.
Stealing, secretly gathering, purchasing by bribery or illegally providing the national secrets or intelligence for foreign institutions.
Providing the enemy with armed equipment or military materials.
<b>Crimes of Endangering Public Security (Articles 115, 119, 121, 125, 127; 14 Capital Offenses)</b>
Arson.
Breaching dikes.
Causing explosions.
Poisoning.
Threatening public security with dangerous methods.
Sabotaging transportation instruments.
Sabotaging transportation infrastructures.
Sabotaging electric power.
Sabotaging inflammable or explosive facilities.
Hijacking an aircraft.
Illegal manufacturing, trading, transporting, and mailing guns, ammunition or explosives.
Illegally trading or transporting nuclear materials.
Stealing or snatching guns, ammunition or explosive materials.
Forcibly seizing guns, ammunition or explosive materials.
<b>Crimes of Undermining the Socialist Market Economic Order (Article 141, 144, 151, 157, 170, 199, 205, and 206; 15 Capital Offenses)</b>
Producing or distributing bogus medicines.
Producing or distributing poisonous or harmful foods.
Smuggling weapons and ammunitions.

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Smuggling nuclear materials.  
Smuggling counterfeited currencies.  
Smuggling cultural relics.  
Smuggling precious metals.  
Smuggling rare plants and their products.  
Counterfeiting currency.  
Illegal fund-raising fraud.  
Financial instrument fraud.  
Letter of credit fraud.  
Credit-card fraud.  
Illegally issuing value-added tax invoices.  
Counterfeiting or selling counterfeited value-added tax invoices.  
**Crimes of Infringing upon the Rights of the Person and the Democratic Rights (Articles 232, 236, 239, and 240; 5 Capital Offenses)**  
Murder.  
Rape.  
Statutory rape.  
Kidnapping.  
Abducting women and children  
**Crimes of Encroaching on Property (Articles 263 and 264; 2 Capital Offenses)**  
Robbery  
Theft  
**Crimes of Disrupting the Order of Social Administration (Articles 295, 317, 328, 347, and 358; 8 Capital Offenses)**  
Imparting criminal methods.  
Organizing a jail break.  
Prison riots using weapons.  
Illegally digging and robbing ancient remains or tombs.  
Illegally digging or robbing fossils of ancient human beings or fossils of ancient vertebrate animals.  
Smuggling, trafficking, transporting or manufacturing narcotics.  
Organizing another person to engage in prostitution.  
Forcing another person to engage in prostitution.

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**Crimes of Endangering the National Defense Interest: (Articles 69 and 370; 2 Capital Offenses)**

Sabotaging military weapons, military installations or military communications.

Knowingly providing unqualified weapons or military installations to the armed forces.

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**Crimes of Graft and Bribery: (Article 383; 2 Capital Offenses)**

Graft.

Bribe-taking.

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**Crimes of Violating Duties by Military Servicemen: (Articles 421, 422, 423, 424, 426, 430, 431, 433, 438, 439, and 446; 13 Capital Offenses)**

Refusing to carry out an order in wartime.

Deliberately concealing military intelligence, furnishing falsified intelligence.

Refusing to disseminate military orders, or falsely disseminated military orders.

Surrendering to the enemy.

Deserting on the eve of a battle.

Obstructing commanding officers or on-duty servicemen from carrying out their duties.

Defecting to a foreign country.

Illegally obtaining military secrets.

Illegally providing military secrets to foreign organs.

Fabricating rumors to mislead people during wartime.

Stealing or robbing weapons or military materials.

Unlawfully selling or transferring military weaponry.

Injuring or killing innocent residents or looting property from innocent residents during wartime.

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2. Source: Wei Luo. The 1997 Criminal Code of the People's Republic of China (Buffalo, NY: William S. Hein & Co., Inc., 1998). Lu, Hong and Terance D. Miethe. China's Death Penalty law and Practice (New York, NY: Roughtledge, 2007).

Even when an offender receives the death sentence, the sentence may not be immediately carried out, because in China, a death sentence may be suspended for two years if “the immediate execution is not essential.” The suspended sentence is typically commuted to life imprisonment at the end of the two-year term of the suspended death sentence unless the offender committed an intentional crime during the two years (Article 50).

While the 1997 Criminal Law did not specify the conditions under which the immediate execution is “not essential,” in practice, several mitigating factors have been identified to guide the judicial sentencing practice. These aggravating and mitigating factors are summarized below.

*Aggravating Factors.* Several legal sources including the criminal law, judicial interpretations, and sentencing practices, have established aggravating factors for meting out both death sentence vs. non-death sentence, as well as death sentence vs. suspended death sentence (Lu and Miethe, 2007). These aggravating factors include:

- Teaching minors under 18 to commit crime (CL Article 29)
- Recidivist (CL Article 65)
- Cruel and unusual methods (i.e., burning, chopping up victim’s body after murder)
- Multiple offenders
- Resulted in the death of multiple victims or victim’s mental illness
- Malicious criminal intent (seeking revenge against a righteous act, fornication and molestation, money, getting rid of competitors, killing victims to erase criminal evidence, interference with freedom of marriage with force)

- Bad attitude (escape after crime, resistant to arrest, fabricating evidence)
- Killing victims of specific groups (a family member or close relatives, foreigner, people from Hong Kong, Macau, and Taiwan, famous politicians or scientist, or special population (i.e., disabled))
- Caused severe societal reaction or public outrage

*Mitigating Factors.* Sentencing research has also identified several mitigating factors including (Lu and Miethe, 2007):

- Minor (under 18 years of age) (Article 17)
- Physical disability (Article 19)
- In the planning stage (Article 22)
- Attempted (Article 23)
- Stopped during the crime (Article 24)
- Excessive defense (Article 20)
- Accomplice (Article 27)
- Voluntarily turned self in to authority and/or performed meritorious services (Article 67)
- Not a gang leader
- Victim shared some blame for the crime
- Offender could serve as live evidence (i.e., offender as member of an organized crime group and maybe potentially useful for testifying against other group members)
- Offender has overseas connections (e.g., the offender or his/her immediate family members were a foreign national)

- Heat of passion, righteousness
- Killing a family or relative for righteous reasons
- Assisted suicide
- Infanticide by parents or close relatives (i.e., could not afford to raise the baby)
- No criminal history
- Death penalty, if imposed, may create negative reaction in society (i.e., peasants' killings in land dispute, migrant workers' killings in dispute with employers, disputes between neighbors, clans, religious groups, ethnic groups)

#### *Legal Process in Capital Cases*

Capital cases typically go through the full trial, a three-tiered process involving a trial of first instance, an appeal, and a final review and approval by the Supreme People's Court. The trial of first instance for capital cases is typically conducted by intermediate courts. These courts are set up at the prefecture level and/or the city level. A death sentence by the intermediate court may be appealed by the defense and/or protested by the procuratorate. In death penalty cases where there is no appeal or protest, a review of the death sentence is mandatory. The hearing of the appeal/review is conducted by the superior court at the provincial level or at the autonomous municipal level. Finally, all death sentences, including death sentences with a two year suspension, are reviewed by the Supreme People's Court (Lu and Miethe, 2007). The review by the Supreme Court is automatic and mandatory for all death penalty cases after 2007. Before 2007, there was a period of approximately two decades when the superior court of each province and autonomous municipality and region was granted the final review and approval authority.

To ensure a speedy trial, the current Chinese laws specify the time limit for various actions taken by law enforcement and judicial agencies. To summarize, a normal criminal proceeding typically takes four months from the day of the arrest to the judicial judgment of the first trial court; one and one-half months between the end of the first trial to the end of the second trial. In complicated cases, the time from the arrest to the announcement of first judgment may take up to nine months and the time from the announcement of first judgment to the second judgment may take up to three months. In cases involving extraordinary circumstances, the time it takes for the completion of first and second trial may be indefinite.

The Chinese laws also specify the amount of (minimum) time to ensure adequate and sufficient preparation for the case. For example, the criminal suspect may retain a lawyer after twenty-four hours of the approved arrest; special circumstances may warrant a postponement of a trial; and both the defense and the procuratorate have up to ten days to appeal or protest a judgment of the first and second trial in capital cases.

The length of a criminal proceeding is an important measure of justice in and of itself regardless of the substantive rulings to ensure the due process rights of a defendant. However, these minimum and maximum time requirements set forth by laws in China were bypassed during the strike-hard campaigns (i.e., the time limit for appeals was reduced at varying times from the legally stipulated ten days to three days) to facilitate total social control.



## CHAPTER 4

### THE CURRENT STUDY

Using 101 case narratives of executed and non-executed female capital offenders from the U.S. and China since 1976, the current study examines the direct and conjunctive effects of the legal and extra-legal factors on sentencing decisions. In particular, focusing on the constructs of blameworthiness and dangerousness, this study attempts to contextualize the similarities and differences among violent female capital offenders in the United States and China. The purpose of the study is not to assess the disparity between capital and non-capital offenders, but rather to consider two distinctively different political, economic, social and cultural conditions that may differentially affect the perceptions and assessments of violent female capital offenders. Accordingly, this study attempts to address the following interrelated questions:

- 1) Are there country differences in the prevalence of particular types of factors in capital convictions for female violent offenders in the United States and China?
- 2) Is the prevalence of particular measures of blameworthiness and dangerousness similar or context-specific among these capital crimes for women in the United States and China?

### Methodology

#### *Data Sources and Sample*

In the current study, case narratives were utilized to assess offender, offense, and legal characteristics for female capital offenders in the U.S. and China. Three main sources were used to gather data for the United States. The Death Penalty Information center ([www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org)) has a complete roster of female capital offenders

executed (a total of 11 offenders since 1976) and currently on death row (a total of 53 offenders). All of them are included in this study. Court case documents were retrieved from Lexis Nexis and were the primary source for coding offender, offense, and legal characteristics. Another source came from the website of the Clark County, Indiana prosecutor. This site provides an in-depth overview of offender, offense and legal characteristics for capital punishment cases in Indiana and surrounding areas, which serves as useful supplements for several case narratives.

Chinese cases were obtained from two sources: published court case documents and websites. Given the different crime definitions and numerous types of crimes (i.e., theft, corruption, forcing others into prostitution) subject to capital punishment in China, only cases involving violent crimes were included in the analysis to make the Chinese cases comparable with the U.S. counterparts. A total of 37 cases of violent crimes committed by female offenders who received a death penalty or a suspended death penalty sentence were identified. More specifically, 16 cases were obtained from published court case documents (10 involved execution and 6 cases involved suspended death) and 21 cases (13 were executions and 8 suspended death) were obtained from various official judicial websites such as the Supreme People's Court's website at [www.chinacourt.org](http://www.chinacourt.org), provincial and municipal level judicial websites, as well as other websites retrieved based on keyword searches such as "death penalty (sixing)" and "death penalty case (sixing an)" using the most popular search engine in Chinese (baidu.com).

#### Variables and Measures

Case narratives from Lexis Nexis and other sources were obtained for the U.S. cases. These narratives were typically excerpts from the official legal rulings and/or

reports. Each case narrative contains detailed information about the offender, offense, and case process characteristics. Case narratives obtained for the Chinese cases were all from the official judicial rulings. A typical judicial ruling in China contains basic information of the offender and offense characteristics and documents the legal process.

The dependent variable in this study involves whether a convicted female violent capital offender is in the United States (1) or China (0). About 63% of offenders in the sample were in the United States and about 37% are from China.

#### *Major Independent Variables*

The major independent variables involve offense characteristics such as offense severity, level of planning, weapon use, prior record, co-offender, number of victims, offender-victim relationship, conviction of an additional felony, and aggravating and mitigating factors.

*Measures of Blameworthiness.* Blameworthiness is classified by culpability and injury, which are often measured to determine the level of offense severity (Steffensmeier et al., 1998). Offense severity is defined by extent of death and injury, where death involves fatal harm to a victim and injury signifies serious harm caused to a victim who does not meet the criteria for death. Offense severity is coded as either minor (0) or major (1). A minor level of severity indicates that an offense included no death or a single death and either no additional injuries or one additional injury. A major level of severity is defined as either one death with multiple additional injuries or two or more deaths.

Additional measures of blameworthiness include offender prior record, level of planning and whether a co-offender was involved. Offender criminal history is

determined by the presence (1) or absence (0) of a prior record of conviction. Similarly, the level of planning of the offense is categorized as either planned (1) or no planning (0). The variable Co-offender identifies if each case involves a single offender (0) or multiple offenders (1).

*Measures of Dangerousness.* In sentencing, dangerousness generally addresses issues of public safety and recidivism. In the current study, dangerousness will be measured based on weapon use, the number of victims, the offender-victim relationship, and whether the capital case included the conviction of an additional felony. These variables are all similarly measured. Weapon use is determined by the presence (1) or absence (0) of a weapon and conviction of an additional felony is ascertained by whether the capital case was tried with (1) or without (0) an accompanying felony. Number of victims is measured as either a single victim (0) or multiple victims (1). Finally, the offender-victim relationship, in this study, is categorized by whether the offender was a stranger to the victim (0) or known to the victim (1).

*Additional Measures.* The presence and absence of aggravating and mitigating factors can be used to supplement the measures of both blameworthiness and dangerousness. The variable Aggravating Factor is measured as an ordinal variable with (0) representing no aggravating factors, (1) representing 1 aggravating factor, and (2) representing 2 or more aggravating factors recognized by the court. The variable Mitigating Factor was similarly coded as an ordinal variable.

Variables tapping offender characteristics include age and race. Offender age is a continuous variable measuring the actual age of the offender at the time of crime commission. Offender race is defined by whether an offender is either White/Caucasian

or Han (0) or any other race (1). “Other” races include, but are not limited to, Black/African American, Hispanic, and various Chinese minority ethnicities.

In addition, length of time at critical stages of the criminal justice system and execution status, were also included as control variables. The length of time, in days, was determined for each case from crime commission to death sentence. Also, the total time, in days, from crime commission to execution was identified for all cases where the offender has already been executed. Finally, execution status was measured to identify offenders who have been executed (1) versus those offenders on death row/with a suspended sentence (0).

#### Data Analysis

The current study will involve three types of analysis. Univariate and bivariate analyses will be used to assess the distribution of the variables and the association between the independent variables and the dependent variable, respectively. Conjunctive analysis will be used as the multivariate analysis in the current study. Conjunctive analysis is used to assess whether the prevalence of particular measures of blameworthiness and dangerousness are similar or different across countries (Miethe, Hart, & Regoeczi, 2008). In particular, this analysis will determine whether or not particular combinations of these variables are relatively unique or common in capital cases in the United States and China. By focusing on whether or not particular independent variables are more or less important in China than the United States, this conjunctive analysis will identify the sources of these context specific effects.

## CHAPTER 5

### RESULTS

To examine the convergent and divergent patterns of female violent capital offenders and offenses in China and the U.S., several analyses were conducted including univariate, bivariate, and conjunctive analyses. Major findings from these analyses are summarized below.

#### Results of Univariate Analysis

Table 4 presents results of overall frequency distributions and means of major variables. A total of 101 cases were involved in the analysis. The majority of these cases were from the United States (63.4%) and the remaining cases were from China (36.6%). The disproportionate representation of U.S. cases is largely due to the lack of availability of female violent capital cases in China.

Two-thirds of the cases involved female violent offenders who were either on death row (in the United States) or given the suspended death sentence (in China) (66.3%), and only one-third of the cases involved execution. A slight majority of the cases (52.5%) were defined as relatively more serious (i.e., one death with multiple additional injuries or two or more deaths) than less serious (i.e., no death or a single death and either no additional injuries or one additional injury). Most of the female violent capital offenders in the samples committed the capital offense with some planning (82.2%) and only a small percent (17.8%) committed the crime in the heat of passion. The great majority of the cases involved a weapon (i.e., knife, gun, poison, or strong acid) during crime commission (78.2%) and most offenders did not have a prior criminal record (80.2%). A slight majority of cases involved multiple offenders (55.4%) and

multiple victims (57.4%) rather than a single offender (44.6%) and a single victim (42.6%). Almost all of these female violent capital offenses involved at least one aggravating factor (96%). In particular, 41.6% of these offenses were convicted of a capital crime with an additional felony. In contrast, the majority of these offenses did not involve any mitigating factors (65.3%).

Consistent with the literature that violent crimes typically involve offenders and victims who know each other (Kaukinen, 2004); the data in this study indicates that most of the offenders and victims are acquaintances (71.3%), rather than strangers (28.7%). Most of the offenders were either white (in the United States) or belonged to the Han ethnicity (in China), and the average age of the offenders during crime commission was about 33 years old.

#### Results of Bivariate Analyses

Two separate bivariate analyses were conducted. Pearson's  $r$  correlation coefficient analyses were performed for China and the U.S. data separately to examine the internal validity of the variables and correlations among major variables. In addition, Chi-Square was used to discern any country differences across these variables (see table 4).

Table 5 presents results of the bivariate correlation between all variables for China and the United States separately, based on Pearson's correlation coefficient ( $r$ ). Several significant bivariate relationships were found in the Chinese sample. For example, this analysis indicates that offenders with a prior criminal record were less likely to use a weapon in crime commission. In the Chinese cases, the primary choice of

Table 4

*Frequencies for All Variables*

	<b>Overall</b>	<b>China</b>	<b>United States</b>
	N = 101	n = 37	n = 64
<b><u>Country</u></b>			
China (0)	36.6%	100.0%	***
United States (1)	63.4%	***	100.0%
<b><u>Execution Status*</u></b>			
Death Row/Suspended Sentence (0)	66.3%	37.8%	82.8%
Executed (1)	33.7%	62.2%	17.2%
<b><u>Offense Severity*</u></b>			
Minor Severity (0)	47.5%	81.1%	28.1%
Major Severity (1)	52.5%	18.9%	71.9%
<b><u>Level of Planning*</u></b>			
No Planning (0)	17.8%	2.7%	26.6%
Planned (1)	82.2%	97.3%	73.4%
<b><u>Weapon Use</u></b>			
No Weapon (0)	21.8%	21.6%	21.9%
With Weapon (1)	78.2%	78.4%	78.1%
<b><u>Prior Record</u></b>			
No Prior Record (0)	80.2%	89.2%	75.0%
With a Prior Record (1)	19.8%	10.8%	25.0%
<b><u>Co-Offender</u></b>			
Single Offender (0)	44.6%	51.4%	40.6%
Multiple Offenders (1)	55.4%	48.6%	59.4%
<b><u>Number of Victims*</u></b>			
Single Victim (0)	42.6%	***	67.2%
Multiple Victims (1)	57.4%	100.0%	32.8%
<b><u>Conviction of an Additional Felony*</u></b>			
Without Additional Felony (0)	58.4%	75.7%	48.4%
With Additional Felony (1)	41.6%	24.3%	51.6%
<b><u>Offender-Victim Relationship</u></b>			
Stranger (0)	28.7%	32.4%	26.6%
Known Offender (1)	71.3%	67.6%	73.4%
<b><u>Number of Aggravating Factors*</u></b>			
No Aggravating Factors (0)	4.0%	10.8%	***
1 Aggravating Factor (1)	33.7%	32.4%	34.4%
2 or More Aggravating Factors (2)	62.3%	56.8%	65.6%
<b><u>Number of Mitigating Factors*</u></b>			
No Mitigating Factors (0)	65.3%	81.1%	56.2%
1 Mitigating Factor (1)	29.7%	16.2%	37.5%
2 or More Mitigating Factors (2)	5.0%	2.7%	6.2%
<b><u>Race*</u></b>			
White or Han (0)	76.2%	91.9%	67.2%
Other (1)	23.8%	8.1%	32.8%
<b><u>Age</u></b>			
Average age at crime commission	33.32	35.65	31.97

\* Chi-Square P&lt;.05



weapons are poison or drugs, a hammer or battering object, knife, gun, strong acid, and explosive chemicals. Offenders who committed the crime alone, typically committed the offense against someone they knew (i.e., an acquaintance, a spouse, or a relative) and used a weapon/tool to assist the crime. Planned offenses generally result in a greater number of aggravating factors and a greater number of aggravating factors are associated with an offender being executed, rather than receiving a suspended sentence. Offenders are also more likely to be executed when committing an offense against a stranger.

The bivariate analyses also generated a number of significant correlations between major variables in the United States. For example, older offenders were less likely to be convicted of an additional felony, and more likely to be known to the victim (i.e., spouse, children, or acquaintances). On the other hand, offenders with a prior record or who worked with a co-offender were more likely to commit a crime against a stranger. Offenders with a prior criminal history are also more likely to be executed, rather than on death row. If an offense was committed against multiple victims, the offender was more likely to be convicted of an additional felony. Conviction of an additional felony, as well as multiple victims, is also considered to be more severe. Committing an offense against a known victim is also associated with an increase in severity. Finally, planned offenses are generally associated with a larger number of aggravating factors and a lower number of mitigating factors.

Chi-Square analyses were also conducted to discern any convergent and divergent offender and offense characteristics between China and the United States. The results are presented in table 4. As discussed in the literature, offenders who received the death sentence in China and the United States may not be executed because the system allows

Table 5

*Bivariate Correlation Matrix*

	United States												
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1. Offender Age at Crime	1	-.206	-.163	-.081	-.068	.270*	-.283*	.085	.049	-.041	.131	-.222	.126
2. Offender Race	.087	1	.134	-.100	.008	-.182	.078	-.182	.209	-.007	-.162	-.245	-.142
3. Prior Record	.320	-.103	1	-.110	-.019	-.306*	.054	-.061	-.044	-.040	.157	-.059	.311*
4. Co-offender	-.178	.107	.184	1	-.032	-.281*	.153	.079	.024	-.022	.096	.104	-.213
5. Number of Victims	. <sup>a</sup>	. <sup>a</sup>	. <sup>a</sup>	. <sup>a</sup>	1	-.032	.344*	-.032	-.033	.289*	.207	-.190	.123
6. Offender-Victim Relationship	.200	-.217	-.317	-.596* <sup>a</sup>	1	-.229	.119	.024	.253*	.001	-.087	.086	
7. Additional Felony	.006	.062	.005	.204 <sup>a</sup>	-.280	1	.125	-.059	.298*	.235	.128	-.221	
8. Level of Planning	.101	.050	.058	.162 <sup>a</sup>	-.115	-.294	1	.195	.096	.393*	-.260*	.086	
9. Weapon Use	-.181	-.085	-.451*	-.408* <sup>a</sup>	.478*	.298	-.088	1	.173	.103	-.185	.141	
10. Offense Severity	-.074	.109	-.168	-.194 <sup>a</sup>	-.108	.048	.081	.254	1	.208	-.114	-.083	
11. Aggravating Factors	.201	.090	.021	.058 <sup>a</sup>	-.041	.172	.357*	.161	-.022	1	-.061	.038	
12. Mitigating Factors	-.064	.074	-.159	-.216 <sup>a</sup>	.195	-.126	-.276	.240	.071	-.057	1	-.034	
13. Execution Status	.014	.232	.092	.202 <sup>a</sup>	-.421*	.312	.214	-.274	.092	.444*	-.233	1	

\*p &lt; .05

<sup>a</sup>. Cannot be computed because Number of Victims is constant

for a suspended death sentence (with a two year stay) if immediate execution is not deemed necessary (i.e., offender confessed) in China, and lengthy appeals and clemency that may result in a reversal of the death sentence to an acquittal or a reduced sentence in the United States. Because of these country differences in the death penalty systems, a direct comparison of the execution status between China and the United States may not be appropriate. Nevertheless, our data shows that an overwhelming majority of the female violent capital offenders were on death row in the United States, whereas only about a third of the Chinese sample was given the suspended death sentence.

In addition, our analyses suggest that significant differences existed in several offender and offense characteristics between China and the United States, including: offense severity, level of planning, number of victims, other criminal circumstances (i.e., accompany felony, number of aggravating and mitigating factors), and offender's race.

More specifically, offenses were much more severe in the United States than in China, as more than 85% of the offenses that result in either one death with multiple additional injuries or two or more deaths occur in the United States. This is compared with over 60% of the cases that involved no death or a single death and either no additional injuries or one additional injury that occur in China. While the majority of cases include a planned offense, over 90% of the cases that involve no planning occur in the United States. Similarly, cases that do not include the conviction of an additional felony are nearly equally likely to occur in China (48%) and the United States (52%), but over 75% of the cases that do include the conviction of an additional felony occur in the United States. The number of victims also produced a significant relationship, which could be a function of the sample, as single victims only appear in cases from the United

States. Overall, however, about two-thirds (67%) of the cases from the United States include only a single victim and the percentage of cases involving multiple victims in China (64%) exceeds that of the United States (36%). Regarding aggravating factors, cases in the United States and China generally involved 1 or more aggravating factors, though cases that do not include any aggravating factors only occur in China. Similarly, cases in the United States and China typically do not include any mitigating factors, but 80% of cases involving 1 mitigating factor and 80% of cases involving 2 or more mitigating factors occur in the United States. Finally, offenders commonly identify as White/Caucasian in the United States (56%) and Han in China (44%). However, over 85% of the cases involving minorities occur in the United States.

The analyses also suggest some similarities of offender and offense characteristics between the two countries. For example, there were no statistically significant differences in weapon use, offender's prior record, co-offender, offender-victim relationship, and offender's age. More specifically, most offenses involved a weapon (i.e., poison, gun, or knife), few offenders had a prior criminal record, about half of the offenders committed the crime with a partner, and the majority of offenders knew their victim, for both countries. The average age of offenders at crime commission was in the early to mid 30s in both countries.

One of the research questions attempted to address whether the concepts of blameworthiness and dangerousness have similar or different meanings in the United States and China. These univariate and bivariate analyses provided some preliminary evidence that the degree of blameworthiness for a capital conviction (partially measured by offense severity in the current study) is significantly lower in China than in the United

States. Differences in the legal processes of the two countries are evident in the presence and absence of aggravating and mitigating factors, but also in the execution status of the offenders.

### Conjunctive Analysis

Conjunctive analysis is used in this study to examine whether the relative prevalence of measures of blameworthiness and dangerousness is similar or distinct in capital convictions for female violent offenders in the United States and China. This type of multivariate analysis will explore the extent to which combinations of measures of these two concepts are found to be either relatively unique to U.S. capital cases, relatively unique to China, or common across both countries. The particular combinations or profiles unique and common to both countries will be identified and discussed in terms of their relevance to capital cases involving female violent offenders in these countries.

For this analysis, blameworthiness is determined by the joint impact of offense severity, presence of a co-offender, offender prior record, and level of planning, whereas dangerousness is assessed by the combined interaction of weapon use, conviction of an additional felony, number of victims and offender-victim relationship. The conjunctive analysis will consider the simultaneous effects of these variables in order to identify the context specific effects of blameworthiness and dangerousness in the United States and China.

Tables 6 and 7 present the qualitative comparative analysis (Ragin, 1989) of country differences in blameworthiness and dangerousness, respectively. There are 16 possible combinations of variables for both blameworthiness and dangerousness. Of these, 15 configurations or situational contexts are present for each. Due to small sample

size, all configurations were included in the analysis, regardless of number of cases. Additionally, configurations and cases are represented using both the absolute rule and the relative rule of 10% difference (Miethé & Drass, 1999). In the current study, the relative rule of 10% difference is based on the overall rate of U.S. capital cases in the sample (63%). Cases that are “unique to the U.S.” have a proportion at least 10 percentage points higher than the overall rate for the U.S. capital cases, “common or contradiction” cases refer to relative proportions that are within 10% of the overall rate, and cases that are “unique to China” involve proportions that are at least 10 percentage points below the overall rate for U.S. capital cases.

#### *Situational Contexts for Blameworthiness*

Table 6 displays the qualitative comparative analysis of country differences in blameworthiness. Panel A identifies the configurations and cases based on the absolute rule, whereas Panel B classifies the configurations and cases using the relative rule of 10% difference. Panels C and D list the unique profiles of blameworthiness for the United States and China and the common profiles found in both countries, respectively.

Conclusions about general patterns, as well as the influence of specific variables, can be drawn from the results presented in table 6. Visual examination and comparisons among the unique profiles within the table provide the basis for these conclusions.

First, profiles of blameworthiness vary considerably between the United States and China. A substantial number of cases are found to have situational contexts that are relatively unique to the United States (45%) and relatively unique to China (43%). Only 12% of cases contain common characteristics found in both countries, indicating a clear

distinction between the United States and China in the relative prevalence of measures of blameworthiness in the situational context.

Second, individual variables reveal that some measures of blameworthiness diverge across situations, while others remain consistent. For example, major severity is never found in offense profiles that are relatively unique to China, but it is found in two-thirds of the offense profiles unique to the United States. Furthermore, prior record is far more prevalent in offense profiles unique to the United States, than to China. On the other hand, planning is more common in offense profiles relatively unique to China, than the United States. Finally, the prevalence of multiple offenders is similar for offender profiles in each country. When looking at the combined measures of blameworthiness, U.S. cases are far more likely to be represented by offense profiles with at least three or more measures of blameworthiness, than China.

Overall, the results of table 6 suggest that some elements of blameworthiness are more prevalent in the U.S. (i.e. major severity, prior record), some elements are more prevalent in China's cases (i.e. planning), and other element are equally prevalent in both countries (i.e. multiple offenders). Considered as a group, however, measures of blameworthiness are more commonly found in capital cases in the United States than China. This distinction is likely a function of political and legal variation between the United States and China, specifically evident in the vast difference in death penalty eligible offenses in the two countries.

Table 6

*Qualitative Comparative Analysis of Country Differences in Blameworthiness*

		Configurations		Cases	
		N	%	N	%
Panel A: Configurations and Cases (Absolute or Deterministic Rule)					
Number of Profiles Observed					
	Profiles Unique to United States	15		101	
	Profiles Unique to China	8	53.4%	26	25.8%
	Contradictions (Common Profiles/Cases) for both Countries	1	6.6%	1	0.9%
		6	40.0%	74	73.3%
Panel B: Configurations and Cases (using Relative Rule of 10% Difference)					
Number of Profiles Observed					
	Profiles Unique to United States	15		101	
	Profiles Unique to China	9	60.0%	46	45.0%
	Contradictions (Common Profiles/Cases) for both Countries	5	33.3%	42	42.5%
		1	6.7%	13	12.5%
Panel C: Profiles of Blameworthiness					
United States		Total N	% U.S.	QCA Classification	
				Absolute Rule	Relative Rule
1. Minor Severity	Single Offender	1	100%	No Planning	U.S.
2. Minor Severity	Multiple Offenders	3	100%	No Planning	U.S.
3. Minor Severity	Multiple Offenders	2	100%	No Planning	U.S.
4. Major Severity	Single Offender	5	100%	No Planning	U.S.
5. Major Severity	Single Offender	2	100%	No Planning	U.S.
6. Major Severity	Single Offender	4	100%	Planned	U.S.
7. Major Severity	Multiple Offenders	4	100%	No Planning	U.S.
8. Major Severity	Multiple Offenders	5	100%	Planned	U.S.
9. Major Severity	Multiple Offenders	20	90%	Planned	U.S.
				Common	U.S.



		QCA Classification				
		Total N	% U.S.	Absolute Rule	Relative Rule	
<b>China</b>						
1. Minor Severity	Single Offender	2	50%	Common	China	
2. Minor Severity	Single Offender	17	29%	Common	China	
3. Minor Severity	Multiple Offenders	18	28%	Common	China	
4. Minor Severity	Multiple Offenders	4	25%	Common	China	
5. Minor Severity	Single Offender	1	0%	China	China	

Panel D: Common Profiles of Blameworthiness for Each Country

		QCA Classification		
		Total N	% U.S.	Relative Rule
<b>Both United States and China</b>				
1. Major Severity	Single Offender	13	62%	Common

Table 7

*Qualitative Comparative Analysis of Country Differences in Dangerousness*

		Configurations		Cases	
		N	%	N	%
Panel A: Configurations and Cases (Absolute or Deterministic Rule)					
Number of Profiles Observed					
Profiles Unique to United States		15		101	
Profiles Unique to China		9	60.0%	47	46.5%
Contradictions (Common Profiles/Cases) for both Countries		2	13.3%	3	3.0%
		4	26.7%	51	50.5%
Panel B: Configurations and Cases (using Relative Rule of 10% Difference)					
		Configurations		Cases	
		N	%	N	%
Number of Profiles Observed					
Profiles Unique to United States		15		101	
Profiles Unique to China		9	60.0%	47	46.5%
Contradictions (Common Profiles/Cases) for both Countries		5	33.3%	43	43.0%
		1	6.7%	11	10.5%
Panel C: Profiles of Dangerousness					
United States		Total N		QCA Classification	
		N	% U.S.	Absolute Rule	Relative Rule
1. No Weapon	No Additional Felony	1	100%	U.S.	U.S.
2. No Weapon	No Additional Felony	4	100%	U.S.	U.S.
3. No Weapon	Additional Felony	2	100%	U.S.	U.S.
4. No Weapon	Additional Felony	2	100%	U.S.	U.S.
5. No Weapon	Additional Felony	4	100%	U.S.	U.S.
6. Weapon	No Additional Felony	3	100%	U.S.	U.S.
7. Weapon	No Additional Felony	18	100%	U.S.	U.S.
8. Weapon	Additional Felony	5	100%	U.S.	U.S.
9. Weapon	Additional Felony	8	100%	U.S.	U.S.

		QCA Classification			
		Total N	% U.S.	Absolute Rule	Relative Rule
<b>China</b>					
1. Weapon	Additional Felony	10	50%	Common	China
2. Weapon	No Additional Felony	23	17%	Common	China
3. No Weapon	No Additional Felony	7	14%	Common	China
4. No Weapon	No Additional Felony	2	0%	China	China
5. Weapon	No Additional Felony	1	0%	China	China

Panel D: Common Profiles of Dangerousness for Each Country

		QCA Classification			
		Total N	% U.S.	Absolute Rule	Relative Rule
<b>Both United States and China</b>					
1. Weapon	Additional Felony	11	64%	Common	Common

### *Situational Contexts for Dangerousness*

Table 7 presents the qualitative comparative analysis of country differences in dangerousness. The data is displayed in the same format as table 6. Visual inspection and comparison are used to evaluate the patterns and specific variables associated with the situations presented.

First, there is variability across the profiles of dangerousness between the United States and China. 47% of cases are relatively unique to the United States and 43% of cases are relatively unique to China. Only a small percentage of cases (10%) are common across both countries, demonstrating a difference between the United States and China in the relative prevalence of measures of dangerousness in the situational context.

Second, individual variables suggest that some measures of dangerousness are distinct across situations, while others converge. For example, multiple victims are rarely found in offense profiles that are relatively unique to the United States, but are always found in offense profiles relatively unique to China. Conversely, conviction of an additional felony is rarely found in offense profiles unique to China, but is found in the majority of profiles unique to the United States. The prevalence of weapon use is slightly more likely in offense profiles unique to China, than profiles unique to the United States. Similarly, it is slightly more likely for offense profiles relatively unique to China to involve a stranger, than the United States.

Overall, the results of table 7 suggest that some elements of dangerousness are more prevalent in China (i.e. multiple victims, weapon use, stranger) and some elements are more prevalent in the United States (i.e. conviction of an additional felony). The results suggest that particular measures of dangerousness are context specific in terms of

their prevalence across countries, indicating that perceived dangerousness is assessed differently in the United States and China.

In sum, the univariate, bivariate and conjunctive analyses suggest that elements of blameworthiness and dangerousness are distinctively defined in the United States and China. Some measures of blameworthiness are more prevalent in the United States (i.e. major severity, prior record), some measures are more prevalent in China (i.e. planning), and other measures are equally prevalent in both countries (i.e. multiple offenders). When considered as a group, however, measures of blameworthiness are more commonly found in the United States than in China. The findings also suggest that particular measures of dangerousness are context specific in terms of their prevalence across countries. Though similarities exist, the analyses suggest that the distinct political, legal and social systems of the United States and China affect capital offense sentencing practices, specifically regarding the measures of blameworthiness and dangerousness.

## CHAPTER 6

### DISCUSSION AND CONCLUSION

The United States and China are two of the leading nations regarding use of the death penalty. The current study explores the role of women and capital punishment in the two countries, specifically examining the function of blameworthiness and dangerousness in sentencing. This study attempts to ascertain whether the distinct political, economic, social and cultural differences of the United States and China create convergent or divergent sentencing effects, specifically in the case of violent female capital offenders.

Because of the small sample size and non-random sampling strategies used in generating the data for this study, any findings derived from the current study must be interpreted in the specific research context. Nevertheless, given the explorative nature of the study and the lack of existing research in this area, any findings may help shed light on theory and research.

According to the Focal Concerns of Sentencing perspective, sentencing decisions by judges are determined, in part, by measuring offender blameworthiness and dangerousness (Steffensmeier et al., 1998). The findings of the current study suggest that the concepts of blameworthiness and dangerousness operate with both convergent and divergent patterns in sentencing decisions in the U.S. and China. For example, major measures of blameworthiness (i.e., offense severity, offender criminal history, level of planning, and presence of a co-offender) and dangerousness (i.e., use of a weapon, conviction of an additional felony, the number of victims, and offender-victim relationship) showed, with some degree of consistency, that female violent offenders who

are regarded as more blameworthy and dangerous are more likely to receive the death sentence and execution in both of these countries.

Nevertheless, the country differences remain salient. Findings of this comparative research suggest that a higher degree of blameworthiness is generally required in the United States than in China when meting out the death sentence and execution. In addition, offenders' perceived dangerousness is assessed differently in the United States and China.

Theories on female criminality generally ascertain that women are treated more leniently by the criminal justice system, unless their behavior violates traditional sex role expectations. The current study only considers violent female capital offenders; therefore theories on female criminality are not challenged. Findings from the study, however, may be used to support the evil woman hypothesis and imply the relative importance of perceived blameworthiness and dangerousness when considering the inter-related factors on capital sentencing decisions.

## APPENDIX 1

### LIST OF CASE COLLECTIONS

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Degrees:

Bachelor of Arts, Criminology, Law and Society, 2008  
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Publications:

LaHaie, Courtney B., Terence D. Miethe, Ph.D., and Timothy C. Hart, Ph.D.,  
Arson Trends in Nevada, 1997 - 2006, State Data Brief, CACS 2009-01-01EN,  
July 2009

Hart, Timothy C., Ph.D., Morgan McGaha, and Courtney B. LaHaie, Crime  
Victimization in Nevada, 2008, State Data Brief, CACS 2009-01-05EN, October  
2009

Thesis Title: Blameworthiness and Dangerousness: An Analysis of Violent Female  
Capital Offenders in the United States and China

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