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**PROSECUTORS' CHARGING DECISIONS IN SEXUAL ASSAULT CASES:
A MULTI-SITE STUDY**

FINAL REPORT (DRAFT)

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PROSECUTORS' CHARGING DECISIONS IN SEXUAL ASSAULT CASES: A MULTI-SITE STUDY

CHAPTER ONE LITERATURE REVIEW AND RESEARCH DESIGN

All of the decision makers in the American criminal justice system have a significant amount of unchecked discretionary power, but the one who stands apart from the rest is the prosecutor. The prosecutor decides who will be charged, what charge will be filed, who will be offered a plea bargain, and the type of bargain that will be offered. The prosecutor also may recommend the sentence the offender should receive. As Supreme Court Justice Jackson noted in 1940, "the prosecutor has more control over life, liberty, and reputation than any other person in America" (Davis 1969:190).

None of the discretionary decisions made by the prosecutor is more critical than the initial decision to prosecute or not, which has been characterized as "the gateway to justice" (Kerstetter 1990: 182). Prosecutors have wide discretion at this stage in the process; there are no legislative or judicial guidelines on charging and a decision not to file charges ordinarily is immune from review. As the Supreme Court noted in *Bordenkircher v. Hayes* [(434 U.S. 357, 364 (1978))], "So long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury generally rests entirely in his discretion."

The purpose of this study is to examine prosecutors' charging decisions in sexual assault cases in three large urban jurisdictions. As we explain in greater detail below, our objectives are: (1) to identify the factors affecting charging decisions in sexual assault cases; (2) to test the hypothesis that the effect of victim characteristics is confined to cases of simple rape; (3) to test the hypothesis that charging decisions in sexual assault cases involving strangers will be determined primarily by legally relevant factors and that the effect of legally irrelevant victim characteristics will be confined to cases involving acquaintances, relatives, and intimate partners; (4) to test Frohmann's

(1991) contentions regarding prosecutorial justifications for case rejection; and (5) to examine the impact of a special unit for prosecuting sexual assault cases.

In the sections that follow, we summarize the findings of prior research. We begin by discussing the findings of research examining prosecutors' charging decisions. We then summarize the literature on the effect of victim characteristics on sexual assault case outcomes. We conclude this chapter with description of our research design and with a discussion of the context of case screening in the three jurisdictions included in this study.

PRIOR RESEARCH

Prosecutors' Charging Decisions

Studies of the charging process demonstrate that prosecutors exercise their discretion and reject a significant percentage of cases at screening (Frazier and Haney 1996; Spears and Spohn 1997). This research also indicates that case rejections are motivated primarily by prosecutors' attempts to "avoid uncertainty" (Albonetti 1987) by filing charges in cases where the odds of conviction are good and rejecting charges in cases where conviction is unlikely. These studies suggest that prosecutors' assessments of convictability are based primarily—although not exclusively—upon legal factors such as the seriousness of the offense (Albonetti 1987; Jacoby et al. 1982; Mather 1979; Miller 1969; Myers 1982; Neubauer 1974; Rauma 1984; Schmidt and Steury 1989), the strength of evidence in the case (Albonetti 1987; Feeney et al. 1983; Jacoby et al. 1982; Miller 1969; Nagel and Hagan 1983), and the culpability of the defendant (Albonetti 1987; Mather 1979; Miller 1969; Neubauer 1974; Schmidt and Steury 1989; Swiggert and Farrell 1976).

Several studies conclude that prosecutors' assessments of convictability, and thus their charging decisions, also reflect the influence of legally irrelevant characteristics of the suspect and victim. In deciding whether to go forward with a case, in other words, prosecutors attempt to predict how the background, behavior, and motivation of the suspect and victim will be interpreted and evaluated by other decision makers, and especially by potential jurors. As Frohmann (1997: 535)

notes, "Concern with convictability creates a 'downstream orientation' in prosecutorial decision making—that is, an anticipation and consideration of how others (i.e., jury and defense) will interpret and respond to a case." With respect to suspect characteristics, research has demonstrated that the race of the suspect (Spohn et al. 1987) or the racial composition of the suspect-victim pair (Keil and Vito 1989; LaFree 1980; Paternoster 1984; Radelet and Pierce 1985; Spohn and Spears 1996; but see Kingsnorth et al. 1998) affect the prosecutor's decision to charge; charging is more likely if the defendant is nonwhite, or if the defendant is black and the victim is white. Other research has shown that the defendant's gender (Nagel and Hagan 1983; Spohn et al. 1987) or employment status (Schmidt and Steury 1989) influence the charging decision. Prosecutors are more likely to file charges against men and those who are unemployed.

There is compelling evidence that victim characteristics also play a role in the charging process. According to many prosecutors, a "stand-up" victim is an essential element of a strong case (Stanko 1988). Stanko (1988) defines this as a person whom a judge or jury would consider credible and undeserving of victimization. In assessing victim credibility, prosecutors rely on stereotypes about appropriate behavior; they attribute credibility to victims "who fit society's stereotypes of who is credible: older, white, male, employed victims" (Stanko, 1988 172). Victims who do not fit this image or who engage in "precipatory behavior" (Amir 1971) are deemed less credible.

Another important predictor of charging is the relationship between the victim and the suspect. Several studies have shown that prosecutors are less likely to file charges if the victim knew the offender (Albonetti 1987; Hepperle 1985; Miller 1969; Simon 1996; Stanko 1988; Williams 1978). According to Silberman (1978: 265), "prosecutors distinguish between 'real crimes'--crimes committed by strangers--and 'junk (or garbage) cases'" in which the victim and the offender are acquainted. It has been suggested that a prior relationship with the offender may cause the prosecutor to question the truthfulness of the victim's story and may lead the victim to refuse to cooperate as the case moves forward (Vera Institute of Justice 1981).

Other research confirms the importance of the victim's willingness to cooperate (Hepperle 1985; Myers and Hagan 1979). Silberman (1978:360) asserts that in cases involving a victim, "no single factor has so large an impact on what happens to felons after they have been arrested." Kerstetter's (1990) examination of filing decisions in sexual assault cases revealed that prosecutors were significantly more likely to file charges in cases where victims were willing to cooperate.¹

The findings of these studies suggest that prosecutors' charging decisions, like judges' sentencing decisions, are guided by a set of "focal concerns" (Steffensmeier et al. 1998). According to the focal concerns perspective, judges' sentencing decisions reflect their assessment of the blameworthiness or culpability of the offender; their desire to protect the community by incapacitating dangerous offenders or deterring potential offenders, and their concerns about the practical consequences, or social costs, of sentencing decisions. Because judges rarely have enough information to accurately determine an offender's culpability or dangerousness, they develop a "perceptual shorthand" (Hawkins 1981: 280; Steffensmeier 1998: 767) based on stereotypes and attributions that are themselves linked to offender characteristics such as race, gender, and age. Thus, "race, age, and gender will interact to influence sentencing because of images or attributions relating these statuses to membership in social groups thought to be dangerous and crime prone" (Steffensmeier et al. 1998: 768).

The focal concerns that guide prosecutors' charging decisions are similar, but not identical. Like judges, prosecutors take into consideration the seriousness of the offense, the degree of harm to the victim, and the culpability of the suspect; they are more likely to file charges when the offense is serious, when it is clear that the victim has suffered real harm, and when the evidence against the suspect is strong. Prosecutors, like judges, also are motivated by what Steffensmeier and his colleagues (1998: 767) refer to as the "practical constraints and consequences" of decisions, but the nature of their concerns is somewhat different. Although both sets of officials are concerned about maintaining working relationships with other members of the courtroom workgroup, prosecutors'

concerns about the practical consequences of charging decisions focus on the likelihood of conviction rather than the social costs of punishment. Their "downstream orientation" (Frohmann 1997), in other words, forces them to predict how the victim, the suspect, and the incident will be viewed and evaluated by the judge and jurors. Because these predictions are inherently uncertain, prosecutors develop a "perceptual shorthand" that incorporates stereotypes of real crimes and genuine victims. As a result, prosecutors consider, not only the legally relevant indicators of case seriousness and offender culpability, but also the background, character, and behavior of the victim, the relationship between the suspect and the victim, and the willingness of the victim to cooperate as the case moves forward.

Victim Characteristics and Sexual Assault Case Outcomes

There is a substantial body of research examining case processing decisions in sexual assault cases. This research reveals that sexual assault case outcomes, like outcomes in other types of cases, are strongly influenced by legally relevant factors such as the seriousness of the crime and the offender's prior criminal record. A number of studies also document the influence of victim characteristics. These studies reveal that sexual assault case processing decisions are affected by the victim's age, occupation, and education (McCahill et al. 1979), by "risk-taking" behavior such as hitchhiking, drinking, or using drugs (Bohmer 1974; Kalven and Zeisel 1966; LaFree 1981, McCahill et al. 1979; Nelson and Amir 1975), and by the reputation of the victim (Feild and Bienen 1980; Feldman-Summers and Lindner 1976; McCahill et al. 1979; Reskin and Visher 1986). Sexual assault case outcomes also are affected by the relationship between the victim and the offender; reports of rape by strangers are investigated more thoroughly than reports of rape by someone the victim knows (McCahill et al. 1979). Stranger rapes also are less likely to be unfounded by the police (Kerstetter 1990) or rejected by the prosecutor (Battelle Memorial Institute 1977; Loh 1980; Sebba and Cahan 1973; Weninger 1978; Williams 1978), but are more likely to result in a conviction (Battelle Memorial Institute 1977) or a prison sentence (McCahill et al. 1979).²

Evidence such as this has led to conclusions that the response of the criminal justice system to the crime of rape is predicated on stereotypes about rape and rape victims. LaFree (1989), for example, asserts that nontraditional women, or women who engage in some type of "risk-taking" behavior, are less likely to be viewed as genuine victims who are deserving of protection under the law. Frohmann (1991) similarly maintains that the victim's allegations will be discredited if they conflict with decision makers' "repertoire of knowledge" about the characteristics of sexual assault incidents and the behavior of sexual assault victims. The authors of a recent comprehensive review of research on the treatment of acquaintance rape in the criminal justice system (Bryden and Lengnick 1997: 1326) reach a similar conclusion, noting that "the prosecution's heavy burden of proof has played an important role in the justice system's treatment of acquaintance rape cases, but so have public biases against *certain classes* of alleged rape victims" (emphasis added).³

The Contextual Effect of Victim Factors. Many feminists argue that research documenting the influence of victim characteristics on sexual assault case outcomes generally signals widespread distrust of rape victims and specifically indicates that women who are seen as behaving in sex-inappropriate ways are not given the full protection of the law. Estrich (1987), however, asserts that historically the processing of rape cases has not been characterized by *indiscriminate sexism*. She contends (p. 29) that "all women and all rapes are not treated equally" and suggests that both case law and criminal justice decision makers differentiate between aggravated rapes and simple rapes. In accordance with Kalven and Zeisel (1966), she defines simple rape as a rape by a lone acquaintance with no weapon and no collateral injury to the victim. An aggravated rape, in contrast, involves either an attack by a stranger, multiple assailants, the use of a weapon, or injury to the victim. Estrich asserts that, because of negative presumptions about victims of simple rape, these incidents are less likely to be reported to the police, and if they are reported, they are less likely than aggravated rape cases to result in prosecution and/or conviction.

Estrich's assertions suggest not only that there will be differences in outcomes for simple and aggravated rape cases, but also that the influence of certain victim characteristics on case outcomes will depend on whether a rape is simple or aggravated. Estrich argues that because the essential features of aggravated rape cases meet the requirements of "real rape," there is no inherent reason to distrust the victim in these cases. Thus, "blame and believability" characteristics of the victim—factors that might lead decision makers to blame her for being victimized or to question her credibility—are ordinarily irrelevant to the processing of aggravated rape cases. If, in other words, a woman is raped by a complete stranger who held a gun to her head or a knife to her throat, criminal justice decision makers normally would not be concerned with whether she had been using drugs or was employed as a topless dancer. Because simple rapes are not considered "real rapes," such victim characteristics would play a more important role in determining the outcome of these cases, according to Estrich. If, for example, a woman was raped by a man she was dating, her behavior at the time of the incident, her background, and her "morals" might be taken into consideration in deciding how to handle the case.

Bryden and Lengnick (1997) make a similar argument, but one that focuses more explicitly on the relationship between the victim and the defendant. They note that the defendant in a sexual assault case involving acquaintances typically claims that the victim consented. Consequently, "the woman's character is inevitably a critical issue" (Bryden and Lengnick (1997: 1204). In this type of case, in other words, the jurors have to evaluate the victim's character and behavior at the time of the incident in order to determine whether she fabricated or exaggerated the sexual assault or had a motive to lie about the incident. In contrast, the defendant in a sexual assault involving strangers cannot plausibly claim that the victim consented; instead, he acknowledges that she was sexually assaulted but claims that he was misidentified. Because the defendant denies that he had sexual intercourse with the victim, he does not need to persuade the jury that she is promiscuous, vindictive, or dishonest. Moreover, in a stranger rape, "the possibility that the parties misunderstood each other's signals does not arise. As a result, the woman's character and all the controversial issues of

appropriate sex roles and behavior in dating situations ordinarily are not issues” (Bryden and Lengnick 1997: 1204).

There are several recent studies that explore the effect of victim characteristics on prosecutors’ charging decisions in different types of sexual assaults. These studies generally find little support for the propositions advanced by Estrich (1987) or Bryden and Lengnick (1997). Horney and Spohn, for example, (1996) used data on a sample of sexual assault complaints received by the Detroit Police Department in 1989 to formalize and test Estrich’s (1987) assertions. They hypothesized that the effect of victim characteristics would be greater in simple than in aggravated rapes. Their hypothesis was not confirmed; victim characteristics did not have a greater impact on case outcomes in simple than in aggravated cases. The only exception was that a prompt report to the police increased the odds of prosecution in simple rape cases but had no effect on prosecution in aggravated cases.

Similar results were reported by Spears and Spohn (1997), who explored the effect of victim characteristics on Detroit prosecutors’ charging decisions in sexual assault cases with strong and weak evidence and in simple and aggravated sexual assaults. The authors of this study found that victim characteristics had a significant effect on charging decisions in cases involving adolescent and adult victims; prosecutors were more likely to file charges if there were no questions about the victim’s moral character or behavior at the time of the incident and if the victim reported the crime within one hour. They also found, however, that the victim characteristics included in their model did not have a differential effect on prosecutors’ charging decisions in cases with strong or weak evidence or in aggravated and simple rape cases. These results led Spears and Spohn (1997:520-521) to conclude that “Detroit prosecutors regard the victim’s moral character and behavior at the time of the incident as relevant to convictability in all types of cases.”

Two studies (Kerstetter 1990; Kingsnorth et al. 1999) examined the factors that affect charging decisions in cases involving strangers and nonstrangers. Kerstetter (1990) used data on sexual assaults reported to the police in Chicago to compare the predictors of prosecutors’ decisions

to file felony charges in two types of cases: those in which the assailant's identity was at issue (primarily cases involving strangers) and those in which the complainant's consent was the issue (primarily cases involving acquaintances). He found that the strongest predictors of charging in both types of cases were evidentiary and instrumental variables; victim characteristics did not affect decision making in either type of case. In cases involving strangers, prosecutors were more likely to file charges if the victim reported the crime promptly, could identify the suspect, and was willing to prosecute. In cases involving acquaintances, the only significant predictor was the use of a weapon by the suspect.

Kingsnorth and his colleagues (1999) also compared the factors influencing processing decisions in sexual assaults involving strangers and nonstrangers. They found that while stranger and nonstranger cases were equally likely to be prosecuted, the factors that determined the likelihood of prosecution for each type of case varied. When the victim and the suspect were strangers, prosecution was more likely if the suspect had a prior felony record, if the victim was willing to cooperate in the prosecution of the suspect, and if there were witnesses to support the victim's account. In contrast, when the victim and the suspect were acquaintances or intimates, prosecution was more likely if the victim was injured, if the suspect made incriminating remarks or was charged with more than one crime at arrest, if the victim reported promptly and was willing to cooperate with the prosecution, and if there were witnesses who could corroborate her testimony. Further analysis revealed that only one variable--whether the victim reported the crime promptly--had a significantly different effect on the two types of cases. The fact that a prompt report was relevant only in cases involving nonstrangers prompted Kingsnorth et al. (1999: 290) to conclude that "report time may have less relation to loss of physical evidence than to the victim's perceived credibility."

Limitations of Previous Research

The research reviewed above suggests that definitive answers to questions concerning sexual assault case processing decisions--and, in particular, questions concerning *charging* decisions in

sexual assault cases--remain elusive. Even the most recent and methodologically sophisticated studies reach somewhat different conclusions. These studies indicate that while legal factors--particularly the strength of evidence in the case--play an important role in sexual assault case processing decisions, victim characteristics--particularly the relationship between the victim and the offender and the age of the victim--may also influence these decisions. Some studies conclude that the effect of stereotypes concerning real rapes and genuine victims may not be as pronounced as previous research has suggested, or that the influence of victim characteristics may be conditioned by the nature of the case. Considered together, the results of these studies suggest that additional research designed to untangle the effect of evidence factors and victim characteristics on sexual assault case processing decisions is needed.

It also seems clear that there is a need for additional research focusing explicitly on the prosecutor's initial decision to file charges. This critical and highly discretionary decision has not been studied extensively. Most previous research operationalized charging as the decision to prosecute fully; this research did not differentiate between the initial charging decision and the subsequent decision to dismiss filed charges. These studies seemed to assume that the variables that affect dismissals also affect rejections. This is problematic, given that one study (Spohn et al. 1987) found that defendant race had an effect on the decision to reject charges at the initial screening, but had no effect on the subsequent decision to dismiss the charges. The authors suggested that this reflected the fact that dismissals were more visible and thus were more subject to scrutiny. They concluded that "previous studies which found no discrimination at the dismissal stage may have overlooked discrimination at the earlier screening" (Spohn et al. 1987:187). The effect of other extralegal factors may similarly vary.

There also is a need for additional research that attempts to identify prosecutors' reasons for case rejection. As discussed in more detail below, the only extant research examining prosecutorial accounts of case rejection are Frohmann's (1991, 1997) qualitative studies. Although her work is widely cited, to our knowledge it has not been replicated. There are no other studies that focus

explicitly on the reasons given by prosecutors to justify rejection of charges in sexual assault cases. In addition, Frohmann provides no information on the frequency with which prosecutors used discrepant accounts, ulterior motives, or discordant locales to justify case rejection. She notes that the various explanations often were used in conjunction with one another, but again provides no estimates of the frequency with which this occurred.

A further limitation of existing research is that most of the studies were single-jurisdiction studies that used different models and different statistical techniques to analyze data from the 1970s (or earlier). This is problematic for two reasons. First, it obviously is difficult to generalize from single-jurisdiction studies that vary in methodological sophistication and that reach different conclusions. Second, conclusions drawn from data gathered twenty years ago may no longer be valid. Changes in attitudes toward rape and rape victims, coupled with changes in the laws and rules of evidence relevant to rape, (Spohn and Horney 1992) may have rendered these conclusions invalid. These attitudinal and statutory changes may have resulted in more sensitive treatment of rape victims and may have reduced the likelihood that the character, reputation, and behavior of the victim would affect decision making about rape cases.

This study addresses these limitations. We attempt to overcome some of the problems that have plagued past research by (1) examining charging decisions in three large urban jurisdictions; (2) collecting data on sexual assault cases forwarded to the prosecutor in 1996, 1997, and 1998; and (3) collecting detailed data on victim characteristics, suspect characteristics, and case characteristics.. We also use Dade County (Miami) prosecutors' written closeout memoradums, which provide a detailed description of the case outcome. to replicate and extend Frohmann's research on prosecutorial justifications for charge rejection.

RESEARCH DESIGN

Sampling and Data Collection Procedures

We obtained data on sexual assaults that resulted in an arrest in Jackson County (Kansas City), Missouri, Philadelphia County (Philadelphia), Pennsylvania, and Dade County (Miami), Florida. The criteria for selecting cases and the procedures used to collect data varied in the three jurisdictions. In Kansas City, we selected all cases that met the following criteria: the defendant was arrested in 1996, 1997, or 1998 for rape, forcible sodomy, sexual assault, deviate sexual assault, first degree statutory rape, or first degree statutory sodomy;⁴ the case was referred to the Office of the Prosecuting Attorney for the Sixteenth Judicial Circuit of Missouri by the Kansas City Police Department; and the victim was age 12 or older. In Philadelphia, we selected all cases of rape, involuntary deviate sexual intercourse, and sexual assault⁵ involving victims age 12 or older that resulted in an arrest during 1997. In Miami we obtained data on all sexual battery⁶ cases involving victims over the age of twelve that were cleared by arrest in 1997⁷ from the Sexual Crimes Bureau of the Miami-Dade (Miami, Florida) Police Department.⁸ In all three jurisdictions, we eliminated cases involving male victims and female suspects.⁹ This resulted in a data file that included 259 cases in Kansas City, 267 cases in Philadelphia, and 140 cases in Miami.

The procedures used to obtain the data also varied by jurisdiction. In Philadelphia, we obtained a listing of all sexual assault cases that met our selection criteria from the Sex Crimes Unit of the Philadelphia Police Department. The unit gave us access to their case files and allowed us to use the department's computer, which was linked to the Philadelphia Court of Common Pleas. to determine the final disposition of the case. In Kansas City, we obtained the data from case files maintained by the Sex Crimes Unit of the Office of the Prosecuting Attorney;¹⁰ they provided us with a list of the cases that met our selection criteria and allowed us to examine the files for these cases. In Miami, officials in the Sexual Crimes Bureau of the Miami-Dade Police Department provided us with photocopies of the incident report, arrest affidavit, and closeout memorandum for each case. In each jurisdiction, we read through the documents and reports in the case file and recorded detailed

information about the incident, the victim, the suspect, and the outcome of the case on an optical-scan form designed for the project.

Dependent and Independent Variables

The dependent and independent variables used in the quantitative analysis are presented in Table 1.1. Because, as explained below, the screening procedures varied in the three jurisdictions included in this study, the operational definition of the dependent variable—the decision to file charges—also varies. In Kansas City and Miami, where the charging decision is made by the prosecutor's office, we coded all cases rejected at the initial screening as 0; all cases not rejected at the initial screening were coded 1. In Philadelphia, where the initial charging decision is *pro forma* and where cases undergo a more rigorous screening by the Family Violence and Sexual Assault Unit following the filing of formal charges, we coded all cases rejected at the initial screening or dismissed prior to the preliminary hearing as 0; all cases not screened out at these two stages were coded 1.

(Table 1.1 About Here)

The independent variables included in this study also are listed in Table 1.1. Previous research examining case processing decisions, including the decision to charge or not, typically differentiated between legal and extralegal predictors of decision making. We abandon this dichotomy and instead examine victim characteristics, suspect characteristics, and case characteristics. Our decision is motivated by two concerns. First, although the concepts of legal and extralegal factors have been used extensively by researchers analyzing and predicting the outcomes of criminal cases, they have been neither precisely nor consistently defined. There is disagreement as to the proper categorization of factors even among researchers examining the effect of these factors on the outcomes of sexual assault cases. Some researchers, for example, categorize a prompt report to the police as an extralegal variable, while others contend that its relationship to the preservation of evidence makes it legally relevant (Bryden and Lengnick 1997; Kerstetter 1990).

Second, while many of the extralegal factors traditionally examined by researchers are characteristics of the defendant (for example, race, gender, and social class), in this project we are particularly interested in examining the effect of victim characteristics.

We further subdivide victim characteristics into background factors (i.e., the victim's race and age) and what we refer to as "blame and believability" factors. These are characteristics of the victim that might cause criminal justice officials to blame the victim and/or question her credibility. We control for whether the victim physically resisted her attacker (yes=1; no=0) or made a prompt report to the police (reported in one hour or less=1; reported in more than one hour=0); whether there are questions about the victim's "moral character"; and whether the victim engaged in any type of risk-taking activity at the time of the incident. The moral character variable is coded 1 if the police file contained information about the victim's prior sexual activity with someone other than the suspect, out of wedlock pregnancy or birth, pattern of alcohol and/or drug abuse, prior criminal record, work as a prostitute, or work as an exotic dancer or in a massage parlor. The risk-taking variable is coded 1 if the police file indicated that at the time of the assault the victim was walking alone late at night, was hitchhiking, was in a bar alone, was using alcohol or drugs, willingly accompanied the suspect to his residence, or invited the suspect to her residence.

We also control for the victim-suspect relationship. We classified cases in which the suspect and victim were complete strangers or in which the victim had not met, and could not identify, the suspect as cases involving "strangers." We categorized cases in which the suspect and victim were relatives, friends, or acquaintances or the suspect was either an authority figure the boyfriend of the victim's mother or another relative as cases involving "acquaintances." The final category—"intimate partners"—includes cases in which the victim and the suspect were (or had been) dating, were currently living together, or were (or had been) married to each other. We labeled this category "intimate partners" rather than "partners" because most of the relationships involved prior consensual sexual intercourse; 58 of the 63 (92.1%) victims in Kansas City, 47 of the 53 (88.7%)

victims in Philadelphia, and 43 of the 49 (87.8%) victims in Miami indicated that they had a prior sexual relationship with the suspect.

Three suspect characteristics—the suspect's age, race, and prior criminal record—are included in the analysis.¹¹ Our expectation is that suspects with prior criminal records will be more likely to be charged; prior criminal record is a dichotomous indicator of whether or not the suspect had a prior felony conviction. The suspect's age and race are included as control variables.

The analysis includes several case characteristics that reflect either the seriousness of the offense or the strength of evidence in the case. Measures of offense seriousness include whether the suspect used a gun or knife during the assault (yes=1; no=0) and whether the victim suffered collateral injuries such as bruises, cuts, burns, or internal injuries (yes=1; no=0).¹² The strength of evidence in the case is measured by the existence of a witness to the assault (yes=1; no=0) and the presence of physical evidence, such as semen, blood, clothing, bedding, or hair, that can corroborate the victim's testimony (yes=1; no=0).

THE CONTEXT OF CASE SCREENING

The organization of the prosecutor's office and the procedures used to assign cases to assistant prosecutors vary from one jurisdiction to another. Some jurisdictions assign assistant prosecutors to cases, based on the attorney's expertise and skill; others assign attorneys to courtrooms, either permanently or for a specified period of time. In many large urban jurisdictions, assistant prosecutors are assigned to courtrooms and cases are prosecuted horizontally; different prosecutors handle the case at each stage in the process. In other jurisdictions, cases are prosecuted vertically; each case is assigned to an assistant prosecutor (typically after the decision to charge has been made by the felony review unit), who stays with the case until final disposition.

A number of large jurisdictions combine horizontal and vertical prosecution (Abadinsky, 1988). Routine cases are prosecuted horizontally, while targeted cases (e.g., homicides, sex offenses,

white-collar crimes, cases involving career criminals) are prosecuted vertically. Typically, the targeted cases are assigned to specialized units within the prosecutor's office. In some jurisdictions the prosecutors assigned to the unit will handle the case from arrest through disposition; in other jurisdictions the decision to charge is made by the felony review unit and the case is assigned to the specialized unit after screening.

Researchers assert that case assignment and case screening procedures "can have important consequences for the flow of cases through the system" (Nardulli et al., 1988: 180-181) and can influence case outcomes. Horizontal prosecution produces attorneys who are "experts" at handling cases at particular stages of the criminal justice process, but who may know little about individual cases. It also means that victims or complainants will have to deal with different attorneys at each stage of the process. Vertical prosecution, particularly within a specialized unit, produces attorneys who are especially knowledgeable about certain types of cases and who are more familiar with the cases assigned to them. In addition, "the victim or complainant has the comfort of one assistant throughout the entire judicial process; he or she does not have to discuss the case anew with each new assistant" (Abadinsky, 1988: 125).

These structural and organizational variations have the potential to influence the processing of sexual assault cases. Sexual assault cases raise unique evidentiary issues and may involve victims who are reluctant to prosecute or whose credibility is in question. Prosecutors who "specialize" in these types of cases may handle the cases more efficiently and more effectively, and may treat victims more sympathetically.

Because one of the goals of this research project was to compare case outcomes in jurisdictions with and without specialized units for the prosecution of sexual offenses, we selected jurisdictions that use different procedures for screening and prosecuting sex offenses. Kansas City has a specialized unit that makes the decision to charge and uses vertical prosecution from screening through disposition. Philadelphia has a specialized unit that receives cases *after* a decision to charge has been made. Although there is a Sexual Battery Unit in the Dade County Attorney's Office, this

unit (at least at the time that this study was conducted) primarily handled sexual battery cases involving children; cases involving victims over the age of 12 were screened either by the Felony Division (1st degree felonies) or the Felony Screening Unit (2nd and 3rd degree felonies). The procedures used in these three jurisdictions are described in more detail in the sections that follow.

Case Screening In Kansas City

In Kansas City, sexual assault cases that result in an arrest are assigned to the Sex Crimes Unit (SCU) of the Office of the Prosecuting Attorney for the Sixteenth Judicial Circuit of Missouri.¹³

In 1999 there were six prosecutors assigned to the unit, which handles all cases (i.e., homicide, assault, abuse, sex crimes) involving children as victims and all forcible rape and forcible sodomy cases. Unlike other units within the Office of the Prosecuting Attorney, attorneys assigned to the Sex Crimes Unit do not regularly rotate out of the unit; most attorneys remain at least two years and some stay "more or less permanently." As the unit's trial team leader, stated, "If they're going to get burned out, it typically will happen within the first two years. If they last that long, they will probably stay, at least until a 'better' assignment comes along."

Cases that lead to an arrest are referred to the SCU by the Kansas City Police Department and are then randomly assigned to one of the attorneys in the unit. The attorney to whom the case is assigned decides whether to file charges or not. Although that attorney's decision is final and generally cannot be overruled by other SCU prosecutors, the unit does meet once a week to discuss and evaluate ambiguous cases. If charges are filed, the attorney to whom the case was originally assigned handles the case through final disposition. If charges are declined, the case can either be rejected outright, sent back to the police for additional investigation, or sent to the city attorney for prosecution as a misdemeanor.

According to the SCU's trial team leader, the standard of proof at charging is proof beyond a reasonable doubt. "We file only if we believe that we could take the case to trial and get a conviction," he stated. In addition, the unit's policy is to file charges only if there is some type of

corroboration; the existence of corroboration, however, does not necessarily mean that the unit will file charges in the case. "Corroboration," he stated, "is a necessary but not a sufficient condition for charging." If the attorney handling the case has concerns about its convictability, he/she will schedule a pre-file interview with the victim. The interview is designed to assess the credibility and genuineness of the victim, to evaluate the strength of evidence in the case, and to answer questions that the prosecutor might have about the incident.

Case Screening In Philadelphia

In Philadelphia, sexual assault cases that lead to an arrest are reviewed by the charging unit of the Office of the District Attorney, which operates around the clock.¹⁴ A prosecutor assigned to the unit reviews the information contained in the police report and evaluates the case for legal sufficiency. The screening that takes place at this stage in the process, in other words, focuses on the presence or absence of the statutory elements of the offense and not on the likelihood of conviction at trial. According to the chief of the Family Violence and Sexual Assault Unit (FVSAU) of the Office of the District attorney, the "real screening" takes place in the Sex Crimes Unit (SCU) of the Philadelphia Police Department. As a result, the charging unit rarely declines charges in sexual assault cases.¹⁵

This was confirmed by a lieutenant in the Sex Crimes Unit, who noted that the officers in the unit work closely with prosecutors in the FVSAU, seeking advice from them in ambiguous cases. This officer explained that the SCU uses a more stringent standard than probable cause in making an arrest, adding that the officer investigating the case will not issue an arrest warrant unless the case is solid and the evidence strong. "By the time we get to the point of making an arrest," he said, "questions regarding the credibility of the victim and the strength of evidence in the case already have been answered."¹⁶

After the case has been reviewed by the charging unit and a decision to file charges made, the case is referred to the Family Violence and Sexual Assault Unit (FVSAU) for prosecution. The

FVSAU unit, which includes 15 prosecutors, is responsible for prosecution of all sexual offenses involving adults, physical and sexual abuse cases involving children, and all misdemeanor and felony domestic violence cases. Prosecutors assigned to the unit do not rotate out at regular intervals but remain with the unit as long as they wish; those who leave generally go to a supervisory position or to the homicide unit.

As noted above, the screening standard used by the charging unit is “legal sufficiency” and not “convictability.” Cases assigned to the FVSAU therefore undergo a second screening that focuses on the likelihood of conviction at trial. The attorney reviewing the case can dismiss the charges prior to the preliminary hearing or file a motion to dismiss the case at the preliminary hearing; the attorney also can dispose of the case by agreeing to allow the defendant to plead guilty to a misdemeanor. Although cases assigned to the FVSAU are prosecuted vertically, the attorney who handles the case at the preliminary hearing is not necessarily the attorney who takes the case to trial. The chief of the FVSAU explained that cases bound over for trial following the preliminary hearing are assigned to attorneys in the FVSAU based on the “difficulty” of the case; the more difficult cases are assigned to the more experienced attorneys.

Case Screening in Miami

Sexual battery cases are screened by one of three units in the Dade County State’s Attorney’s Office. The most serious cases (i.e., sexual batteries classified as first degree felonies) are handled by the Felony Division. This division, which is responsible for prosecution of all cases assigned to the Dade County Circuit Court, screens all first degree felonies. If charges are filed, the case is prosecuted vertically. The Sexual Battery Unit technically is responsible for screening and (vertical) prosecution of less serious (i.e., those classified as 2nd and 3rd degree felonies) sexual batteries. However, according to the Chief of the Felony Division of the Dade County State’s Attorney’s Office,¹⁷ the unit primarily handles cases involving children, which tend to be more difficult to prosecute and, thus, more time consuming. Therefore, most arrests for sexual battery are screened

by the Felony Screening Unit (FSU), which reviews and makes charging decisions for all 2nd and 3rd degree felonies. The FSU includes 22 assistant state attorneys, some of whom are assigned permanently and some of whom rotate through the unit. If charges are filed, the case is forwarded to the Felony Division for assignment to one of the circuit judges. The case is then prosecuted by one of the three attorneys assigned to that courtroom.

The prosecutor has a number of options at screening. She can reduce the charge to a misdemeanor, file different (i.e., more serious, less serious, or additional) charges than what is indicated on the arrest affidavit, or file charges identical to those on the arrest affidavit. She also can reject the charges, which in Dade County is reflected in a decision to “no action” the case. Finally, she can send the case back to the police department for further investigation; officially, the case is “no actioned” but it can be re-filed if additional evidence is obtained.

The standard used in screening cases in Dade County is a modified reasonable doubt standard. According to Chief of the Felony Trial Division, “we will not file charges unless we believe in good faith that we can get a conviction.” She also indicated that the office policy is “to file the highest (most serious) charge that we can in good faith file and to file all of the charges that we can legitimately file.” She explained that this policy reflects a belief that it is better to start the plea bargaining process “from a position of strength rather than a position of weakness” and that filing less serious charges in the beginning leaves little room for bargaining at a later stage in the process. As a result, “we do a certain amount of charge bargaining to effectuate guilty pleas.”

In summary, all three of the jurisdictions included in this study base charging decisions in sexual assault cases on a standard of proof beyond a reasonable doubt. The procedures used to screen cases and assess convictability, however, vary. The initial decision to file charges is made by prosecutors assigned to a specialized sex crime unit in Kansas City; in Philadelphia and Miami. on the other hand, the decision is made by prosecutors assigned to the felony review unit, which screens all felonies that result in an arrest.

Organization of the Report

The findings of our study are described in the chapters that follow. Chapter Two presents the results of our analysis of the decision to charge or not in the three jurisdictions included in this study. We begin by discussing the overall results of our analysis; we combine the data for the three cities and we test for the effect of victim, suspect, and case characteristics on the charging decision. We also discuss the results of our analysis comparing the effect of victim characteristics on charging decisions in simple and aggravated rape cases. We then present the results of our analysis of the data partitioned by jurisdiction; we use these data to test our expectations regarding charging decisions in jurisdictions with different case screening procedures. Chapter Three presents the results of our analysis of the contextual effects of victim characteristics on charging decisions in sexual assault cases in Kansas City and Philadelphia. At this stage in the analysis, we partition the data by the victim/suspect relationship and we test the hypothesis that the effect of victim characteristics will be conditioned by the relationship between the victim and the offender. The results of our replication and extension of Frohmann's (1991, 1997) work are presented in Chapter Four. We use information obtained from the case narratives and closeout memorandums for sexual battery cases that were cleared by arrest in Miami to examine prosecutorial justifications for charge rejection. We apply a modified version of Frohmann's typology to categorize cases based on the reason(s) given. We also describe and analyze the characteristics of cases that fall into each category. In Chapter Five we summarize our findings and discuss their implications.

CHAPTER TWO THE PREDICTORS OF PROSECUTORS' CHARGING DECISIONS IN SEXUAL ASSAULT CASES

The research reviewed in Chapter One suggests that definitive answers to questions concerning sexual assault case processing decisions--and, in particular, questions concerning *charging* decisions in sexual assault cases--remain elusive. Even the most recent and methodologically sophisticated studies reach somewhat different conclusions. These studies indicate that while legal factors--particularly the strength of evidence in the case--play an important rôle in sexual assault case processing decisions, victim characteristics--particularly the relationship between the victim and the offender and the age of the victim--may also influence these decisions. Some studies conclude that the effect of stereotypes concerning real rapes and genuine victims may not be as pronounced as previous research has suggested, or that the influence of victim characteristics may be conditioned by the nature of the case. Considered together, the results of these studies suggest that additional research designed to untangle the effect of evidence factors and victim characteristics on sexual assault case processing decisions is needed.

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In this chapter, we present the results of our analysis of charging decisions in Kansas City, Miami, and Philadelphia. We begin with a discussion of the characteristics and outcomes of cases in the pooled data set. The results of our multivariate analysis of the pooled data set and our comparison of the predictors of charging decisions in simple and aggravated sexual assaults are presented next. We then partition the data by type of jurisdiction and compare the effect of victim, suspect, and case characteristics. As is explained in more detail below, we explore the possibility that the predictors of charging decisions will vary depending upon whether the jurisdiction has a specialized unit for the prosecution of sex offenses.

ANALYSIS OF THE POOLED DATA SET

Case Characteristics and Case Outcomes

We examine the effect of victim characteristics, suspect characteristics, and case characteristics on charging decisions in sexual assault cases. As shown by the descriptive data presented in Table 2.1, prosecutors filed charges in just over half (54.5 percent) of the cases that resulted in an arrest in these three jurisdictions. The typical victim was a non-white female in her mid-twenties; the typical suspect was a non-white male in his early thirties. Only one in five (19.7 percent) of the victims included in this study was attacked by a complete stranger; most were assaulted by an acquaintance or relative (55.5 percent) or by an intimate partner (24.8 percent). Questions about the victim's moral character and behavior at the time of the incident surfaced in just over a third of the cases. There was evidence that the victim physically resisted the suspect in over two-thirds of the incidents and one third of the assaults were reported to the police within an hour. The data displayed in Table 2.1 also indicate that most of these cases did not involve collateral injury to the victim or a suspect who used a gun or knife during the incident. Physical evidence that could connect the suspect to the crime was found in over half of the cases and a witness who could corroborate the victim's testimony was found in about 42 percent of the cases.

(Table 2.1 About Here)

Considered together, these data suggest that a substantial number of the sexual assaults included in this study were, to use Estrich's (1987) terms, "simple" rather than "aggravated" rapes. In accordance with Kalven and Zeisel (1966), Estrich defines simple rape as a rape by a lone acquaintance with no weapon and no collateral injury to the victim. An aggravated rape, in contrast, involves either an attack by a stranger, multiple assailants, the use of a weapon, or injury to the victim. In order to determine the proportions of simple and aggravated rapes in these three jurisdictions, we created a new variable--AGGRAPE--that was coded "1" if the case included any of the four characteristics of aggravated rape and "0" if the case included none of these characteristics.

As shown in Table 2.2, just over half of these sexual assaults were simple rapes and just under half were aggravated rapes. Moreover, this pattern is consistent across the three jurisdictions.

(Table 2.2 About Here)

The outcomes of the cases in the pooled data set are presented in Figure 2.1. Just over half of the cases were rejected at screening (45.5 percent) or dismissed prior to trial (6.6 percent). Most of the cases that were fully prosecuted resulted in a conviction, typically as a result of a guilty plea. Only 21 (3.1 percent) of the cases that were prosecuted resulted in a not guilty verdict. Of the 298 defendants who were convicted, over half (52.3 percent) were sentenced to prison, 41.3 percent were placed on probation, and 6.4 percent were sentenced to jail. The median probation sentence was 36 months; the median jail/prison sentence was 60 months.

(Figure 2.1 About Here)

The outcomes of the aggravated and simple rapes are displayed in Table 2.3. Contrary to Estrich (1987) and others (LaFree 1989), who assert that aggravated rapes will be taken more seriously—and therefore treated more harshly—than simple rapes, there are no differences in the proportions of cases in each group that are rejected/dismissed, fully prosecuted, or convicted. Aggravated rapes are somewhat less likely than simple rapes to result in a guilty plea, somewhat more likely than simple rapes to result in a trial. Although offenders convicted of aggravated rape face somewhat higher odds of incarceration than offenders convicted of simple rape, the differences are not statistically significant. In fact, the only significant difference between the two groups is the length of the jail/prison sentence: the mean sentence imposed on offenders convicted of aggravated rape was 212.59 months, compared to 117.41 months for offenders convicted of simple rape.

(Table 2.3 About Here)

The descriptive data discussed thus far indicate, first, that a significant number of the cases included in this data set are simple rapes and, second, that, with one exception, the outcomes of simple rapes are very similar to those of aggravated rapes. These findings suggest that simple rapes

are not treated differently than aggravated rapes in these three jurisdictions. The degree to which different factors predict the likelihood of charging in each type of case is addressed below.

The Predictors of Charging Decisions

The results of the logistic regression analysis, which are presented in Table 2.4, reveal that prosecutors' charging decisions are determined by a combination of case and victim characteristics. Charging is substantially more likely if the victim suffered some type of collateral injury, if the suspect used a gun or knife during the assault, and if there is physical evidence to connect the suspect to the crime. Charging also is more likely if the victim reported the crime promptly and if there are no questions about the victim's moral character or behavior at the time of the incident. The likelihood of charging is enhanced, in other words, if the crime is serious, the evidence is strong, and the victim appears credible and blameless.

(Table 2.4 About Here)

Several of our findings are inconsistent with the findings of prior research. As we explained in Chapter One, previous research has demonstrated that the relationship between the victim and the offender is a strong predictor of sexual assault case outcomes and that charging decisions are affected by the victim's age, the victim's race, and the suspect's race. We found that the odds of charging were no greater in cases involving strangers than in cases involving either acquaintances/relatives or intimate partners. In addition, neither the victim's nor the suspect's background characteristics affected charging decisions in these three jurisdictions.

Somewhat different results emerged when we tested for the effect of the racial makeup of the victim/suspect dyad and for differences between younger and older victims. To test for the effect of victim/suspect race, we created three dummy variables--black suspect/white victim; black suspect/black victim; and white suspect/white victim; because there were only 11 cases involving white suspects and black victims, we eliminated these cases from the analysis. We then ran the analysis substituting these variables for the original race-of-victim and race-of-suspect variables:

black offender/white victim was the reference category. To test for differences between younger and older victims, we created a new variable that was coded "1" if the victim was between 13 and 16 and "0" if the victim was older than 16.

Consistent with the sexual stratification hypothesis (LaFree 1989; Spohn and Spears 1996; Walsh 1987), which suggests that the law will be applied most harshly to blacks accused of raping whites and least harshly to blacks accused to raping other blacks, we found that prosecutors were more than twice as likely to file charges against black men accused of raping white women as against black men accused of raping black women ($B = -.74$; $SE = .32$; Odds Ratio = 0.48). There were, on the other hand, no differences in the likelihood of charging between black men arrested for assaulting white women and white men arrested for assaulting white women ($B = -.42$; $SE = .35$). We also found that men accused of sexually assaulting young teenagers were twice as likely as those accused of assaulting older teenagers and adults to be charged ($B = .69$; $SE = .24$; Odds Ratio = 1.99). These results suggest that prosecutors view rapes of white women by black men and rapes of young teenage girls as more serious crimes.

Aggravated Versus Simple Rapes. The results discussed thus far indicate that prosecutors' charging decisions in sexual assault cases reflect the influence of legally irrelevant victim characteristics as well as legally relevant evidentiary factors and case characteristics. As explained in Chapter One, Estrich (1987) contends that the effect of victim characteristics is not invariant. She argues that criminal justice officials, including prosecutors, differentiate between aggravated and simple rape cases. She asserts that because of negative presumptions about victims of simple rape, these incidents are less likely to be reported to the police, and if they are reported, they are less likely to result in arrest, prosecution and/or conviction. Estrich's assertions suggest not only that there will be differences in outcomes for simple and aggravated rape cases, but also that the influence of victim characteristics on case outcomes will depend on whether the rape is simple or aggravated. According to Estrich (1987: 17-18), "the crime-related factors which influence the disposition of

rape cases are those which distinguish the jump-from-the-bushes rape from the simple and suspect rape . . ."

We use the data collected for this study to formalize Estrich's assertions and test the hypothesis that victim characteristics--especially those relating to blame and believability--will be more likely to influence charging decisions in simple than in aggravated rape cases. More specifically, we test the hypothesis that in a simple rape case, prosecutors will be more likely to file charges if the victim made a prompt report to the police or physically resisted the suspect; they will be less likely to file charges if there is evidence of risk-taking behavior by the victim or evidence questioning her moral character. Our expectation (based on Estrich's assertions) is that these factors will not affect charging in aggravated rape cases.

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To test these assertions, we partitioned the data by type of case and re-ran the logistic regression analysis. As shown in Table 2.5, the variables included in the two models are somewhat different. Because of the way in which simple rapes were defined, there were no simple rape cases in which the victim and the suspect were strangers, the victim was injured, or the suspect used a gun or knife. We therefore eliminated these variables from the analysis of simple rapes. To determine whether the independent variables had significantly different effects on the two types of cases, we calculated z tests for the equality of regression coefficients (Paternoster et al. 1998).¹⁸

(Table 2.5 About Here)

The data presented in Table 2.5 provide little support for Estrich's (1987) assertion that the effect of victim characteristics will be confined to simple rape cases. Charging in aggravated rape cases was affected by three victim characteristics; prosecutors were significantly more likely to file charges if the victim was white, if the victim did not engage in any risky behavior at the time of the incident, and if the victim reported the crime promptly. In the less serious simple rapes, charging was more likely if the victim was younger, if the victim was an acquaintance or relative rather than an intimate partner, and if there were no questions about the victim's moral character or behavior at the time of the incident. As indicated by the z values, risk-taking behavior had a nearly identical

effect on the two types of cases and questions about the victim's moral character did not have a significantly greater effect on simple than on aggravated rapes. In fact, only two of the victim characteristics had significantly different effects on the two types of cases and one of these effects was the opposite of what was predicted. Consistent with Estrich's arguments, the age of the victim came into play only in cases of simple rape: the odds of charging decreased as the victim's age increased. Contrary to predictions, on the other hand, the race of the victim came into play only in cases of aggravated rape; in these more serious cases, prosecutors were more likely to file charges if the victim was white.

To further explore the effect of the victim's age, we substituted the variable measuring whether the victim was between the ages of 13 and 16 for the interval level age variable. Consistent with the results presented in Table 2.4, we found that this variable affected charging decisions in simple cases ($B = 1.53$; $SE = .28$; Odds Ratio = 2.87) but had no effect on charging decisions in aggravated cases ($B = -.27$; $SE = .40$). Moreover, the difference in the effects was statistically significant (z value = 2.70). In simple rape cases, then, prosecutors are significantly more likely to file charges if the victim is a young teenager rather than an older teen or an adult.

To further explore the effect of the victim's race, we re-ran the analysis of aggravated rape cases using the race of suspect/race of victim dummy variables; black suspect/white victim was the reference category. (We could not perform this analysis on the simple rapes because of the fact that there were only 22 simple rape cases in which the suspect was black and the victim was white.) We found that the victim's race interacted with the suspect's race. In these more serious aggravated cases, the odds of charging were substantially greater if the suspect was black and the victim was white than if both the suspect and the victim were black ($B = -1.36$; $SE = .49$; Odds Ratio = 0.26). There were, on the other hand, no differences between cases in which the suspect was black and the victim was white and cases in which both the suspect and the victim were white.

ANALYSIS OF DATA PARTITIONED BY JURISDICTION

One of the objectives of this project is to evaluate the impact of a specialized unit for the prosecution of sex offenses. As explained in more detail in Chapter One, although most large urban jurisdictions assign cases to courtrooms and prosecute cases horizontally, many prosecutors have established specialized units or bureaus to handle certain types of cases, including sex offenses. This reform appears to be motivated by a belief that some types of cases are more difficult or time-consuming to prosecute, coupled with a belief that prosecutors assigned to specialized units will handle cases more effectively and treat victims more sympathetically.

Predictions concerning the impact of these units are largely untested. The one exception is a study by LaFree (1989), who compared police decision making in rape cases in Indianapolis before and after the creation of a sex offenses unit. Although LaFree found differences in attitudes toward rape and rape victims between officers assigned to this unit and officers assigned to the homicide and robbery unit, he did not find that arrest and felony filing rates increased following the creation of the unit. He also found little support for the hypothesis that extralegal variables would have a reduced effect on decision making in the post-reform period. LaFree concluded (1989: 88) that "some factors are difficult to change no matter how enlightened or motivated the public official. Arrest and felony screening require elements, such as a reasonable suspect and a victim willing to testify, that are often beyond the police officer's ability to influence."

We take this research one step further by comparing case outcomes in jurisdictions with and without specialized units for the prosecution of sexual offenses. As explained in Chapter One, the three jurisdictions included in this study use different procedures for screening and prosecuting sex offenses. The Dade County (Miami) State's Attorney's Office has a specialized sex offense unit but the unit focuses almost exclusively on cases involving children; sexual battery cases involving teenagers and adults, which are the focus of this study, are screened initially by either the Felony Division (1st degree felonies) or the Felony Screening Unit (2nd and 3rd degree felonies). The Philadelphia County District Attorney's Office has a specialized unit that receives cases *after* a

decision to charge has been made and that prosecutes cases vertically. In contrast, the Office of the Prosecuting Attorney for the Sixteenth Judicial Circuit of Missouri (Kansas City) has a specialized unit that makes the decision to charge and uses vertical prosecution from screening through disposition.

In the sections that follow, we describe the characteristics and outcomes of sexual assault cases in each of the three jurisdictions. We compare case outcomes in the three jurisdictions to determine if there are variations in the likelihood of charging or the criteria used in making the decision to charge or not. We expect that the odds of charging will be greater in the jurisdiction (Kansas City) that uses a specialized unit for screening; we also expect that legally irrelevant victim characteristics will be less likely to predict charging in this jurisdiction.

Case Characteristics and Case Outcomes

The frequency distributions for the dependent and independent variables for each jurisdiction are presented in Table 2.6. These data reveal inter-jurisdictional similarities as well as differences. In general, there are more similarities than differences for the case characteristics; regardless of jurisdiction, most cases involve some type of physical evidence, fewer than half have witnesses or involve injury to the victim, and very few involve a suspect who used a gun or knife during the assault. There are, on the other hand, some inter-jurisdictional differences in the characteristics of victims and suspects. Not surprisingly, given the racial makeup of the general population in each city, there are substantially more white victims and suspects in Kansas City and, to a lesser extent, Miami than in Philadelphia. The proportions of cases involving strangers, acquaintances/relatives, and intimate partners is similar in Kansas City and Philadelphia; there are, on the other hand, fewer cases involving strangers and more cases involving partners in Miami than in either of the other two jurisdictions.

(Table 2.6 About Here)

The data displayed in Table 2.6 also reveal that the odds of charging are similar across jurisdictions: they ranged from 49.4 percent in Philadelphia to 57.5 percent in Kansas City to 58.6 percent in Miami. These differences are not statistically significant.¹⁹ The post-charging case outcomes, on the other hand, do vary by jurisdiction. As shown in Table 2.7, there are substantial inter-jurisdictional differences in the guilty plea rate,²⁰ the incarceration rate,²¹ and the mean jail/prison sentence.²² Offenders were significantly more likely to plead guilty in Kansas City and Miami than in Philadelphia. Offenders convicted in Philadelphia faced significantly higher odds of incarceration in jail or prison (74.1 percent) than those convicted in either Kansas City (56.4 percent) or Miami (37.5 percent). Considering only those offenders who received a prison sentence, offenders in Kansas City were nearly four times more likely than those convicted in Miami to be sentenced to prison, while offenders in Philadelphia were five times more likely than those convicted in Miami to be sentenced to prison. Jail/prison sentences were significantly longer in Kansas City than in either of the other two jurisdictions.

(Table 2.7 About Here)

As noted above, the bivariate results revealed that there were no significant differences in the likelihood of charging in the three jurisdictions. This is confirmed by the results of the multivariate analyses discussed previously. We included a control for jurisdiction in our analysis of the pooled data (see Table 2.4) and in our analysis of charging decisions in simple and aggravated rape cases (see Table 2.5). We found that prosecutors were not more likely to file charges in Kansas City, the jurisdiction that uses a specialized unit for screening and prosecution of sexual offenses, than in Philadelphia or Miami.

This was true for all sexual assaults, for simple assaults, and for aggravated assaults.

Victim Characteristics and Charging Decisions in Three Jurisdictions

Although the findings discussed thus far provide little support for assertions that case outcomes will differ in jurisdictions with and without specialized sex offense units, it is possible that

prosecutors in the three jurisdictions use different criteria in deciding whether to charge or not. We hypothesized that victim characteristics would have a stronger effect on charging in Miami and Philadelphia than in Kansas City. We reasoned that the prosecutors assigned to the Sex Crimes Unit in Kansas City would have more experience in handling sexual assault cases and thus would be less skeptical of the claims of victims whose background or behavior did not conform to sex-role stereotypes.

To test this hypothesis, we ran a separate logistic regression analysis on the data for each jurisdiction. To determine whether the set of blame and believability factors influenced charging, we performed a stepwise logistic regression analysis. We first estimated a model that included the offender's race and age, the victim's race and age, and the case characteristics. We then added the blame and believability factors (as a block) to the model. Our expectation was that the addition of these factors would result in a significant improvement in the model chi-square in Philadelphia and Miami but not in Kansas City. In fact, we found that adding the blame and believability factors improved the model in Miami (chi-square = 20.13; df = 6; P = 0.003) and Kansas City (chi-square = 49.15; df = 6; P = 0.00) but not in Philadelphia (chi-square = 6.91; df = 6; P = 0.33).

The results of the logistic regression analysis are presented in Table 2.8. We found that different variables affected charging decisions in each jurisdiction. In terms of the legally relevant case characteristics, the likelihood of charging was enhanced by injury to the victim in Miami, by the suspect's use of a weapon in Philadelphia and Miami, and by the presence of physical evidence in Kansas City and Philadelphia. The victim characteristics that affected charging in the three jurisdictions were similarly variable. In Kansas City, prosecutors were substantially less likely to file charges if the victim engaged in risky behavior at the time of the incident or, somewhat surprisingly, if the victim physically resisted the suspect. In Philadelphia, the only victim characteristic that came into play was the victim's race; prosecutors there were more likely to file charges if the victim was white. In Miami, four victim characteristics had a significant effect on the decision to charge or not. In this jurisdiction, the likelihood of charging decreased as the victim's

age increased; prosecutors also were more likely to file charges if the victim and suspect were acquaintances or relatives rather than strangers, if there were no questions about the victim's moral character, and if the victim reported the crime promptly.

To determine whether the victim, suspect, and case characteristics had significantly greater effects in one jurisdiction than in the others, we calculated z values. We found that the victim's race was a significantly better predictor of charging decisions in Philadelphia than in Kansas City ($z = 2.57$), that the relationship between the victim and the suspect had a significantly greater effect on charging in Miami than in Kansas City ($z = 2.28$), and that risk-taking behavior by the victim was a significantly better predictor of charging in Kansas City than in Philadelphia ($z = 2.81$). Injury to the victim had a significantly greater effect on charging decisions in Miami than in either Philadelphia ($z = 2.28$) or Kansas City ($z = 2.05$), while the presence of physical evidence to connect the suspect to the crime had a significantly more pronounced effect on charging in Kansas City than in Philadelphia ($z = 2.09$) or Miami ($z = 1.97$).

In sum, while we did find that the effect of victim (and case) characteristics was not invariant, we did not find the predicted pattern of results. Although the strength of evidence in the case had a more pronounced effect on the decision to charge or not in the jurisdiction (Kansas City) with a specialized sex offense unit, evidence of risk-taking behavior on the part of the victim played a more important role in this jurisdiction than in either of the two jurisdictions without a specialized unit. Moreover, adding the victim characteristics resulted in a significant improvement in the models for Kansas City and Miami, but not for Philadelphia.

CONCLUSION

Feminists contend that legally irrelevant victim characteristics influence decision making in sexual assault cases. They argue that criminal justice officials, using stereotypes of real rapes and genuine victims, base their decisions on the victim's background and reputation, the victim's

relationship to the accused, and the victim's behavior at the time of the incident. In other words, they argue that in a rape case the focus shifts from the offender to the victim.

The findings of our study suggest that the explanation is more complex. Charging decisions in these three jurisdictions were determined by a combination of legally relevant case characteristics and legally irrelevant victim characteristics. Charging was more likely if the victim was injured, if the suspect used a gun or knife, or if there was physical evidence that could connect the suspect to the crime. Although the relationship between the victim and the suspect did not affect the likelihood of charging, the victim's age, race, character, and behavior at the time of the incident did play a role. Moreover, the effect of these victim characteristics was not confined to the less serious and more discretionary simple rapes. Contrary to the predictions of Estrich (1987), risk-taking behavior by the victim had a nearly identical effect on charging decisions in simple and aggravated sexual assaults and the racial makeup of the victim/suspect pair affected charging decisions only in cases of aggravated sexual assault. These results indicate that prosecutors attempt to avoid uncertainty by filing charges where the odds of conviction are high and by rejecting charges when conviction seems unlikely, that there are both legal and extralegal sources of uncertainty, and that legally irrelevant victim characteristics increase uncertainty for both simple and aggravated sexual assaults.

The results of our study also fail to support assertions that prosecutors assigned to specialized sex crimes units will handle cases more effectively and treat victims more sympathetically. The likelihood of charging did not vary among the three jurisdictions included in this study and the effect of victim characteristics did not vary in the predicted way. Although it is certainly possible that sexual assault victims will be viewed less skeptically and more sympathetically by prosecutors assigned to a specialized unit, our results suggest that legally irrelevant victim characteristics will nonetheless enter into their assessments of victim credibility and case convictability.

CHAPTER THREE

PROSECUTING SEXUAL ASSAULT: A COMPARISON OF CHARGING DECISIONS IN SEXUAL ASSAULT CASES INVOLVING STRANGERS, ACQUAINTANCES, AND INTIMATE PARTNERS

The research reviewed in Chapter One provides somewhat contradictory evidence concerning the factors that affect prosecutors' charging decisions in sexual assault cases. Although there is general agreement that prosecutors' attempts to "avoid uncertainty" (Albonetti 1986, 1987) and "downstream orientation" to judges and juries (Frohmann 1997) lead them to file charges only when the odds of conviction at trial are high, there is less agreement on the factors that define or determine "convictability." Most empirical studies of charging decisions in sexual assault cases find that legally relevant factors—particularly the strength of evidence in the case—play an important role. The evidence concerning the role played by legally irrelevant characteristics of the victim, on the other hand, is mixed. Some studies conclude that victim characteristics—particularly the relationship between the victim and the suspect and the victim's behavior at the time of the incident—play either a primary or a secondary role, while other studies conclude that victim characteristics are largely irrelevant.

Some commentators contend that these inconsistent results reflect a failure to differentiate between aggravated and simple rapes or between cases involving strangers and nonstrangers. They argue that victim characteristics will come into play primarily in the "less serious" simple rapes—that is, cases in which the victim and the suspect are acquainted, the suspect did not use a weapon, and the victim did not suffer collateral injury. Although this proposition is consistent with prior research exploring the effect of legally irrelevant factors on decision making by juries and judges and with anecdotal evidence regarding prosecutorial charging decisions, it is not supported by the findings of empirical research designed to test its applicability to charging decisions in sexual assault cases. As noted above, these studies generally conclude that the effect of victim characteristics is not conditioned by the nature of the case or by the relationship between the victim and the suspect.

We suggest that these negative findings may reflect the fact that researchers typically classify the relationship between the victim and the suspect into only two categories—strangers and nonstrangers. Doing so ignores the diversity in these relationships and, as Decker (1993: 585) asserts, “mask[s] important within-group differences.” The “nonstranger” category, which includes both close and distant relationships, is particularly problematic; it includes victims and suspects who are intimate partners, relatives, good friends, and casual acquaintances. Although it is certainly true that consent is substantially more likely to be the defense in each of these types of nonstranger cases than in cases involving strangers, it does not necessarily follow that legally irrelevant victim characteristics will play an identical role in each type of case. The fact that the victim invited the suspect to her apartment, for example, might have little bearing on the decision to charge or not in cases in which the victim and suspect had an on-going sexual relationship, but might be an important consideration if the victim and suspect were casual acquaintances. Similarly, the fact that the victim failed to report the crime promptly might influence charging decisions in cases in which the victim and the suspect were neighbors or co-workers but not in cases in which the victim and suspect were closely related.

We attempt to improve on past research by defining more precisely the nature of the victim/suspect relationship and by using current data on sexual assaults that resulted in an arrest in two large urban jurisdictions. We categorize the relationship as one involving strangers, acquaintances, or intimate partners, and we examine the effect of victim, suspect, and case characteristics on prosecutors’ charging decisions in each type of case. We test the hypothesis that the effect of victim characteristics is conditioned by the relationship between the victim and the suspect. We predict that victim characteristics will not affect charging decisions in cases involving strangers and will have inconsistent effects on charging decisions in cases involving acquaintances and intimate partners.

RESEARCH DESIGN

We analyze data on sexual assaults that resulted in an arrest in Kansas City and Philadelphia; because there were only 18 cases in which the victim and the offender were strangers in the Miami data file, at this stage of the analysis we do not include Miami.

Dependent and Independent Variables

The dependent and independent variables used in this study, which are discussed in detail in Chapter One, are displayed in Table 3.1. We present separate data for each of the three relationship types.

(Table 3.1 About Here)

The primary objective of this stage of the analysis is to compare the predictors of charging decisions in cases involving strangers, acquaintances, and intimates. We initially classified the relationship between the victim and the suspect into 11 categories: stranger; not met, but have seen before; authority figure; boyfriend of mother, other relative; acquaintance or friend; prior dating or sexual relationship; current dating or sexual relationship; relative; living together as boyfriend and girlfriend; former spouse; and spouse. Because of the small number of cases in several of the categories, we reclassified the 11 relationship types into three categories.

We classified cases in which the suspect and victim were complete strangers (n=82) or in which the victim had not met, and could not identify, the suspect (n=31) as cases involving "strangers." We categorized cases in which the suspect and victim were relatives (n=57), friends or acquaintances (n=202), or the suspect was either an authority figure (n=8) or the boyfriend of the victim's mother or another relative (n=30) as cases involving "acquaintances." The final category—"intimate partners"—includes cases in which the victim and the suspect were (or had been) dating (n=89), were currently living together (n=16), or were (or had been) married to each other (n=11). We labeled this category "intimate partners" rather than "partners" because most of the relationships involved prior consensual sexual intercourse; 58 of the 63 (92.1%) victims in Kansas

City and 47 of the 53 (88.7%) victims in Philadelphia indicated that they had a prior sexual relationship with the suspect.

RESULTS

Means for all variables are presented in Table 3.1 for each victim/suspect relationship type.²³

These data indicate that the prosecutor filed charges in slightly more than half of the cases in each relationship category. They also indicate that the typical victim, regardless of the relationship between the suspect and victim, was a black woman in her mid- to late-twenties and that the typical suspect was a black male in his early thirties.²⁴

There are some differences in the characteristics of cases in each category. A higher proportion of victims were engaged in some form of risk-taking behavior at the time of the incident in cases involving strangers than in cases involving acquaintances or intimate partners. Evidence questioning the victim's moral character also was more common in cases involving strangers and intimate partners than in cases involving acquaintances. In addition, sexual assaults involving strangers had a considerably higher proportion of prompt reports than sexual assaults involving acquaintances or partners.²⁵ Moreover, stranger cases more often had physical evidence or a witness who could corroborate the victim's allegations. Suspects in cases involving strangers also were more likely than those in the two other categories to have used a gun or knife during the assault and to have at least one prior felony conviction. Somewhat surprisingly, victims in cases involving intimate partners had a higher rate of collateral injury than victims in cases involving strangers or acquaintances.²⁶

To effectively model the relationship between victim, suspect, and case characteristics and the decision to file charges in sexual assault cases, we employed a general linear model. Given the binary outcome measure (i.e., charges filed=1, charges not filed=0), we estimated binary logistic regressions. To test for the effect of type of relationship, we first estimated a model for the entire sample. At this stage in the analysis we included two dummy variables (ACQUAINTANCE and

INTIMATE PARTNER) measuring the type of relationship between the victim and the offender: STRANGER is the omitted category. To test our hypothesis concerning the contextual effects of victim characteristics, we then estimated separate logistic regression models for each of the three types of relationships.

(Table 3.2 About Here)

The results of our analysis of the decision to charge or not using the entire sample of cases are presented in Table 3.2. In contrast to previous research (Albonetti 1987; Hepperle 1985), we found that the type of relationship between the victim and the suspect did not affect the likelihood of charging. Prosecutors were *not* more likely to file charges in cases involving strangers than in cases involving acquaintances/relatives or intimate partners. Instead, charging was more likely if there was physical evidence that could corroborate the victim's testimony, if the suspect had previously been convicted of a felony, if the victim did not engage in any type of risk-taking behavior at the time of the incident, and if there were no questions about the victim's moral character. In these two jurisdictions, then, charging decisions reflected a combination of legally relevant suspect and case characteristics and legally irrelevant victim characteristics.

The results of our analysis of the data partitioned by the victim/suspect relationship, shown in Table 3.3, indicate that the presence of physical evidence to connect the suspect to the crime had a strong and statistically significant effect on charging in all three types of cases. To determine whether the magnitude of the effect of physical evidence varied depending upon the type of relationship, we calculated the z test for the equality of regression coefficients (Paternoster et al. 1998). We found that physical evidence had a stronger effect on cases involving strangers than on cases involving acquaintances ($z = 2.01$); the effect of physical evidence did not vary, on the other hand, between cases involving strangers and those involving intimates ($z = 0.89$) or between cases involving acquaintances and those involving intimates ($z = 1.21$).

(Table 3.3 About Here)

The results presented in Table 3.3 also support our hypothesis that the effect of victim characteristics would be confined to cases involving acquaintances and intimates and that charging decisions in cases involving strangers would be determined primarily by legally relevant factors. Consistent with our hypothesis, when the victim and the suspect were strangers, prosecutors were more likely to file charges if there was physical evidence to connect the suspect to the crime and if the suspect used a gun or knife during the assault. In fact, as indicated by the odds ratios, prosecutors were nearly eight times more likely to file charges if there was physical evidence and over five and a half times more likely to file charges if the suspect used a gun or knife during the assault. Somewhat surprisingly, charging decisions in cases involving strangers also were affected by the race of the victim; prosecutors were four and a half times more likely to file charges if the victim was white.

The results of our analysis of the two nonstranger categories also are consistent with our hypothesis. As predicted, victim characteristics came into play in each of these types of cases. In cases involving acquaintances/relatives, for example, prosecutors were significantly less likely to file charges if the victim engaged in any type of risk-taking behavior at the time of the incident or if there were any questions about the victim's reputation or "moral character." In these types of cases, charging also was more likely if the suspect had a prior felony conviction. In cases involving intimate partners, two victim characteristics influenced the decision to file charges. In these types of cases, prosecutors were less likely to file charges if the victim engaged in risk-taking behavior²⁷ or if the victim resisted her attacker. Prosecutors also were more likely to file charges in these types of cases if the victim suffered some type of collateral injury during the assault.

The patterns revealed by our analyses are illustrated more clearly by the information presented in Figures 3.1 through 3.3. Using the formula suggested by Liao (1994: 12), we converted the logistic regression coefficients to predicted probabilities. We set all variables, with the exception of the variables of interest, at their mean. The formula used to calculate the predicted probabilities was:

$$P_1 = \exp(Z_1) / (1 + \exp(Z_1)) \text{ where}$$

$$Z_1 = \sum_k B_k X_{1k}$$

Figure 3.1 displays the predicted probabilities of charging in cases involving strangers. Because the race of the victim and the use of a gun or knife during the assault were significant predictors of charging in these types of cases, we estimated probabilities for four race of victim/weapon combinations: black victim/no weapon, black victim/weapon, white victim/no weapon and white victim/weapon. As shown in Figure 3.1, prosecutors were least likely to file charges in cases in which the victim was black and the suspect did not use a weapon; they were most likely to file charges if the victim was white and the suspect did use a weapon. The probability of charging in the other two types of cases also was high: 70 percent for white victim/no weapon cases and 75 percent for black victim/weapon cases. Use of a gun or knife, then, increases the probability of charging twofold in cases involving black women, but has a more modest effect on the probability of charging in cases involving white women.

(Figure 3.1 About Here)

The probabilities presented in Figure 3.2 reflect an interaction between the two legally irrelevant victim characteristics that were significant predictors of charging in sexual assaults involving acquaintances or relatives—risk-taking by the victim at the time of the incident and questions about the victim’s moral character. The predicted probabilities of charging were very similar if there was evidence that the victim had engaged in some type of risky behavior at the time of the incident (predicted probability = .55) or there were questions about the victim’s reputation or character (predicted probability = .57). The presence of both of these factors substantially reduced the likelihood of charging, while the absence of both significantly increased the odds of charging.

(Figure 3.2 About Here)

For cases involving intimate partners, we calculated predicted probabilities based on two of the significant variables in the model—whether the victim engaged in risky behavior and whether the victim suffered some type of collateral injury during the assault. As shown in Figure 3.3, prosecutors

were nearly three times more likely to file charges if the victim did not behave in a risky manner and was injured (predicted probability = .90) than if the victim did engage in risk-taking behavior and was not injured (predicted probability = .33). In these types of cases, the victim's behavior at the time of the incident has a more pronounced effect on the predicted probability of charging than injury to the victim does. This is reflected in the fact that the odds of charging are relatively high, regardless of victim injury, in cases in which the victim did not engage in any risky behavior; they are relatively low, again regardless of victim injury, in cases in which the victim did behave in a risky manner.

(Figure 3.3 About Here)

DISCUSSION

Our examination of prosecutors' charging decisions in sexual assault cases confirms that the "prosecutor controls the doors to the courthouse" (Neubauer 1988:200). Only about half of the sexual assault cases that resulted in an arrest in the two large urban jurisdictions included in this study were prosecuted. Our results also confirm that the decision to charge or not is based on a combination of victim, suspect, and case characteristics. Prosecutors were more likely to file charges if there was physical evidence to connect the suspect to the crime, if the suspect had a prior criminal record, and if there were no questions about the victim's character or behavior at the time of the incident. This suggests that prosecutors' concerns about convictability lead them to file charges when the evidence is strong, the suspect is culpable, and the victim is blameless.

The results of our study also reveal that the relationship between the victim and the suspect had no effect on the decision to charge or not. Although this finding is consistent with the results of one recent study of sexual assault case processing decisions (Kingsnorth et al. 1999), it is inconsistent with the assertions of Black (1976) and others, who contend that the victim-suspect relationship is an important predictor of case outcomes and that crimes between intimates are

perceived as less serious than crimes between strangers. Silberman (1978: 265), for example, asserts that "prosecutors distinguish between 'real crimes'--crimes committed by strangers--and 'junk (or garbage) cases'" in which the victim and the suspect are acquainted.

The fact that the victim/suspect relationship did not affect charging is particularly surprising, given our operational definition of the relationship between the victim and the suspect. Unlike previous research, which dichotomized the relationship as one involving strangers or non-strangers, we differentiated among crimes involving strangers, acquaintances/relatives, and intimate partners. We reasoned that cases involving intimate partners were qualitatively different from those involving friends, relatives, and acquaintances. We anticipated that prosecutors would be most likely to file charges in cases involving strangers, least likely to file charges in cases involving intimate partners. Our finding that the likelihood of charging did not vary by relationship type suggests that prosecutors in these two jurisdictions do not automatically classify cases involving non-strangers as "junk or garbage cases."

The fact that prosecutors were equally likely to file charges in all three types of cases does not mean, however, that they used the same criteria to determine the likelihood of conviction for sexual assault cases in each category. Although the presence of physical evidence to connect the suspect to the crime had a strong and statistically significant effect on charging in all three types of cases, it had a more pronounced effect in cases involving strangers than in cases involving acquaintances or relatives. Moreover, the other predictors of charging were not invariant. Consistent with our hypothesis, in cases involving strangers, the decision to charge or not was determined primarily by legally relevant factors; in these cases, the odds of charging were increased if there was physical evidence and if the suspect used a gun or knife. Our findings regarding the influence of victim characteristics also are generally consistent with our hypothesis. With the exception of the victim's race, which influenced the decision to charge or not if the victim and suspect were strangers, victim characteristics affected charging only in cases involving non-strangers. In cases involving friends, acquaintances, and relatives, prosecutors were significantly less likely

to file charges if the victim engaged in risk-taking behavior at the time of the incident or if there were questions about her reputation or character. And if the victim and suspect were (or had been) intimate partners, prosecutors were less likely to file charges if the victim engaged in risky behavior or physically resisted the suspect; they were more likely to file charges if the victim was injured.

These results lend credence to the assertions of Estrich (1987) and Bryden and Lengnick (1997), who contend that legally irrelevant victim characteristics are more likely to influence sexual assault case outcomes if the victim and the suspect are non-strangers. As they note, the suspect in a case involving complete strangers cannot logically argue that the victim consented. In assessing the likelihood of conviction in this type of case, then, prosecutors do not have to worry that evidence concerning the victim's character or behavior at the time of the incident will lead jurors to conclude that she fabricated the assault, was biased against the defendant, or had a motive to lie. Because the defendant in a case involving strangers will most likely argue that he was misidentified, in other words, convictability hinges largely on the ability of the prosecutor to prove that he was not. In sexual cases involving non-strangers, on the other hand, the defendant is likely to claim that the incident was fabricated or that the victim consented. The prosecutor's evaluation of convictability in these cases thus may depend on the presence or absence of evidence that will cause potential jurors to blame the victim or question her credibility.

Our conclusion that victim characteristics affect the decision to charge or not only in sexual assault cases involving acquaintances, relatives, and intimates is strengthened by the fact that evidence concerning the victim's character and risk-taking behavior at the time of the incident was more prevalent in cases involving strangers than in cases involving non-strangers. As shown in Table 1, there was evidence of risky behavior on the part of the victim in 48 percent of the stranger cases, but only 39 percent of the acquaintance cases and 33 percent of the intimate partner cases. Similarly, questions regarding the victim's moral character surfaced more frequently in cases involving strangers (41 percent) than in cases involving acquaintances (29 percent). Our finding that these negative victim characteristics did not affect charging in cases in which the victim and suspect

were strangers, then, cannot be attributed to their absence in these cases. Rather, damaging evidence regarding the victim's character and behavior at the time of the incident *was* present in a substantial number of these cases, but it did not affect the prosecutor's decision to charge or not.

Our conclusion is further strengthened by evidence concerning the *types* of risk-taking behavior and the *types* of moral character questions that were found in each of the three categories. Our measures of the victim's risky behavior and moral character reflected the presence or absence of nine types of victim behavior and eight character issues. With respect to the risk-taking behaviors, very similar proportions of the victims in each group either accompanied the suspect to his residence or invited him to hers; the figures were 21.2 percent for cases involving strangers, 21.6 percent for cases involving acquaintances or relatives, and 20.7 percent for cases involving intimate partners. The proportions of victims in each group who had been using alcohol or drugs prior to the assault also were similar: they ranged from 18.9 percent (intimates) to 20.4 percent (strangers) to 26.9 percent (acquaintances). Victims who were assaulted by strangers, on the other hand, were substantially more likely than those who were assaulted by non-strangers to be walking alone late at night, hitchhiking, or in a bar alone; 34 (30%) of the women who were attacked by strangers engaged in these types of risky behavior, compared to only eight (2%) of the women who were assaulted by non-strangers. Women assaulted by strangers, in other words, were more likely than those assaulted by non-strangers to engage in just the types of risky behaviors that might lead jurors to conclude that they precipitated or were to blame for the sexual assault. To test the possibility that these *particular* types of behavior affected the likelihood of charging in cases involving strangers, we re-ran the analysis, using three different measures of risk-taking behavior: the victim invited the suspect to her residence or went to his; the victim used drugs or alcohol prior to the incident; and the victim was walking alone late at night, hitchhiking, or in a bar alone. We found that none of these types of risk-taking behavior affected the decision to charge or not if the victim and suspect were strangers.³⁸

When we examined the frequency distributions for the eight items that comprised the moral character variable, we found that the proportions of victims who had engaged in premarital or extramarital sexual intercourse with someone other than the suspect or who had a history of drug or alcohol use were very similar for each type of relationship. The figures for prior sexual history were 8.0 percent (strangers), 10.3 percent (intimates), and 10.8 percent (acquaintances); the percentages for a history of drug or alcohol use were 13.3 percent (strangers), 14.7 percent (intimates), and 15.8 percent (acquaintances). In contrast, evidence suggesting that the victim was a prostitute or indicating that she worked as a stripper, exotic dancer, or masseuse was found in significantly more of the cases involving strangers (20 percent) than in cases involving non-strangers (less than 3 percent). Again, these may be just the types of characteristics that incline jurors to blame the victim or to question her credibility.

Considered together, these results provide compelling evidence that prosecutors' charging decisions in sexual assault cases involving strangers are not affected by legally irrelevant indicators of the victim's character or behavior at the time of the incident. Despite the fact that the behavior of women who were assaulted by strangers might be viewed as more risky than the behavior of women who were assaulted by non-strangers and that the evidence concerning the moral character of women who were assaulted by strangers might be viewed as more damaging than the evidence concerning the moral character of women who were assaulted by non-strangers, neither of these victim characteristics affected the likelihood of charging when the victim and suspect were strangers.

We cannot conclude, however, that victim characteristics played no role in charging decisions in cases involving strangers; in these cases, prosecutors were more likely to file charges if the victim was white. This finding is both contrary to our hypothesis and inconsistent with the results of previous research, which demonstrates that the effect of legally irrelevant suspect and victim characteristics is confined primarily to less serious cases in which decision makers have more discretion in determining the appropriate outcome (see Kalven and Zeisel 1966; Spohn and Cederblom 1991). We speculated that this race-of-victim effect might be attributed to differences

in the racial makeup of the suspect/victim dyad. Although the majority of the cases in each category were intraracial assaults, a larger proportion of the stranger cases (21.2 percent) than of the acquaintance (5.4 percent) or intimate (7.8 percent) cases involved a sexual assault by a black man on a white woman. Since prior research has demonstrated that black-on-white sexual assaults are treated more harshly (LaFree 1989; Spohn and Spears 1996; Walsh 1987) and since these cases occurred more frequently in our group of stranger rapes, in other words, the effect we uncovered might actually be a race of victim/race of suspect interaction effect.

To test this possibility, we re-ran the analysis of stranger rapes, substituting two dummy variables—black suspect/black victim and white suspect/white victim—for the original race of victim and race of suspect variables; black suspect/white victim was the reference category (there were no cases involving white suspects and black victims). We found that neither blacks who assaulted other blacks ($b = -1.103$; $SE = .76$) nor whites who assaulted other whites ($b = 1.12$; $SE = .92$) were less likely than blacks who assaulted whites to be charged. In these two jurisdictions, then, prosecutors were more likely to file charges against men who assaulted white women who were strangers to them than against men who assaulted black women who were strangers to them. The fact that this effect did not appear in the other two relationship categories suggests that prosecutors view aggravated sexual assaults on white women as particularly serious crimes.

Our findings regarding the factors that affect charging decisions in cases involving intimate partners also merit comment. Although we were not surprised that risk-taking behavior on the part of the victim influenced charging decision in these types of cases, we were somewhat surprised to find that injury to the victim had a positive effect on charging but resistance by the victim had a negative effect. These results suggest that prosecutors believe that some type of injury may counteract jurors' skepticism regarding a woman's allegation of sexual assault by her boyfriend, lover, or spouse. In these types of cases, which are inherently ambiguous, the victim's credibility may be particularly important. The victim may be deemed more believable if she has injuries that can corroborate her assertion that the sexual intercourse was nonconsensual. Given this, it seems

inconsistent that prosecutors would be *less likely* to file charges against women who physically resisted their attackers. Although we can only speculate, it may be that physical resistance on the part of the victim may be seen as evidence of "mutual combat" between the suspect and the victim and that this, coupled with the prior consensual sexual relationship between the victim and the suspect, raises doubts about the validity of the sexual assault complaint in the mind of the prosecutor.

A final comment concerns our finding that the relationship between the victim and suspect did not affect the likelihood of charging: prosecutors were no less likely to file charges if the victim and suspect were acquaintances, relatives, or intimate partners than if the victim and suspect were complete strangers. This finding clearly contradicts assertions that sexual assaults involving acquaintances are not regarded as "real rapes" (Estrich 1987) and that women victimized by these crimes are not regarded as "genuine victims" (LaFree 1989). We suggest that this result may be attributed at least in part to the rape law reforms enacted during the past three decades. Beginning in the mid-1970s, most states, including the two states represented in this study, adopted reforms designed to shift the focus in a rape case from the character and behavior of the victim to the behavior of the offender (see Estrich 1987; Spohn and Horney 1992). The most common reforms included changes in the definition of rape, elimination of the resistance and corroboration requirements, and enactment of rape shield laws designed to preclude the use of testimony concerning the victim's sexual history. As Spohn and Horney (1992) note, these reforms were designed primarily to increase the odds of successful prosecution in cases in which the victim and the suspect were acquainted and the suspect claimed that the victim consented. Although research evaluating the impact of the rape law reforms generally concludes that the statutory changes did not produce the widespread instrumental changes that reformers anticipated, there is evidence that the reforms did encourage arrest and prosecution in "borderline cases." Spohn and Horney (1996: 874), for example, found that the proportion of simple rape cases bound over for trial in Detroit increased from 17.6 percent in the pre-reform period to 24.4 percent in the post-reform period. Our

finding that prosecutors were no more likely to screen out cases involving acquaintances and intimate partners than cases involving strangers is consistent with this.

CHAPTER FOUR

PROSECUTORIAL JUSTIFICATIONS FOR SEXUAL ASSAULT CASE REJECTIONS: GUARDING THE "GATEWAY TO JUSTICE"

The notion that decisions in rape cases are affected by the "typifications of rape held by processing agents" (LaFree 1989: 241), plays a central role in the research conducted by Frohmann (1991, 1997). In contrast to the studies discussed in Chapter One, most of which are statistical analyses of the factors associated with sexual assault case processing decisions, Frohmann's qualitative research used data gathered during observations of the case screening process and interviews with prosecutors to analyze prosecutorial explanations of and justifications for case rejection. According to Frohmann (1991: 214), "Examining the justifications for decisions provides an understanding of how these decisions appear rational, necessary, and appropriate to decision-makers as they do the work of case screening."

Frohmann (1991) suggests that prosecutors' concerns about convictability lead them to question the credibility of the rape victim and the veracity of her story. She suggests that "prosecutors are actively looking for 'holes' or problems that will make the victim's version of 'what happened' unbelievable or not convincing beyond a reasonable doubt" (Frohmann 1991: 214). This focus on victim credibility reflects prosecutors' orientation toward potential jurors. Thus, "the ability to construct a credible narrative for the jury and the jurors' ability to understand what happened from the victim's viewpoint are pivotal in prosecutors' assessment of case convictability" (Frohmann 1997: 536).

Frohmann's observations and interviews led her to conclude that prosecutors use a variety of techniques to discredit victims' accounts of sexual assault and, thus, to justify case rejections. One technique, which Frohmann (1991) labels "discrepant accounts," involves using inconsistencies in the victim's story or incongruities between the victim's account and prosecutors' beliefs about "typical" rapes to justify case rejection. The victim's credibility, in other words, will be called into question if her story changes with each re-telling or is contradicted by the version told by the suspect

or other witnesses. Her account also may be discredited if it conflicts with prosecutors' "repertoire of knowledge" about the characteristics of sexual assault incidents and the behavior of sexual assault victims. These beliefs, which Frohmann (1991: 217) refers to as "typifications of rape-relevant behavior," are further subdivided into the following categories:

- (1) **typifications of rape scenarios:** the victim's version of what happened in a particular type of sexual assault is inconsistent with the prosecutor's beliefs about what *typically* happens in this type of sexual assault (e.g., the typical kidnaping-rape involves a variety of sexual acts and the victim states that the assault included only forced intercourse) or her behavior at the time of the assault raises questions about her character (e.g., the fact that she was walking alone late at night suggests that she is a prostitute);
- (2) **typifications of post-incident interaction:** the behavior of the victim of an acquaintance rape is incongruent with the behavior of the typical victim (e.g., she has consensual sexual intercourse with the suspect following the alleged incident);
- (3) **typifications of rape reporting:** the victim failed to make a prompt report and her reasons for late reporting are inconsistent with officially acknowledged and legitimate reasons (e.g., the victim did not report the crime for several days and there is no evidence that her failure to report was motivated by physical injury or psychological trauma);
- (4) **typifications of victim's demeanor:** the victim's facial expressions, mannerisms, and body language are inconsistent with those of a typical rape victim and/or suggest that the victim is not telling the truth.

As Frohmann (1991) notes, incongruities between the victim's version of the alleged assault and these official typifications can be used to discredit the victim's account and to justify case rejection.

A second technique used by prosecutors to discredit victims' allegations of sexual assault, according to Frohmann (1991), is to impute ulterior motives to the victim. Prosecutors use their knowledge about the victim's current circumstances, relationship with the suspect, and behavior at the time of the incident to question her assertion that the sexual activity was nonconsensual and/or to suggest that she had a reason to file a false complaint. Evidence that the victim was attempting to cover up nonmarital sexual activity or illegal behavior or to explain away a pregnancy or sexually transmitted disease, in other words, can be used to justify case rejection or to bolster the argument for rejection based on "discrepant accounts."

In a later study, Frohmann (1997) identified an additional method—the “construction of discordant locales”—used by prosecutors to account for sexual assault case rejection. Frohmann argued that legal agents, including prosecutors, tend to ascribe the stereotypical features of a neighborhood to the victims, suspects, and jurors who live or pass through there. Because victims and suspects typically reside in racially mixed, lower-class neighborhoods that differ significantly from the white middle- and upper-class neighborhoods inhabited by potential jurors, the likelihood of conviction rests to some extent on potential jurors’ ability to understand, interpret, and make sense of the behavior of the victim and suspect. According to Frohmann (1997: 552), “Categorization of places as discordant locales is a justification for case rejection.” Cultural differences in the places where victims and jurors live, in other words, “lead to misinterpretation by jurors of victims that would result in ‘not guilty’ verdicts if the cases were forwarded.”

Although Frohmann’s research on prosecutorial accounts of case rejections is widely cited, to our knowledge it has not been replicated. There are no other studies that focus explicitly on the reasons given by prosecutors to justify rejection of charges in sexual assault cases. In addition, Frohmann provides no information on the frequency with which prosecutors used discrepant accounts, ulterior motives, or discordant locales to justify case rejection. She notes that the various explanations often were used in conjunction with one another, but again provides no estimates of the frequency with which this occurred.

In this chapter, we replicate and extend Frohmann’s important work. Using data on cases that were cleared by arrest in Miami, we examine prosecutorial accounts of case rejection. We apply a modified version of Frohmann’s typology to categorize cases based on the reason(s) given. We also describe and analyze the characteristics of cases that fall into each category.

RESEARCH DESIGN

As explained in Chapter One, we obtained data on all sexual battery cases (N = 140) involving victims over the age of twelve that were cleared by arrest in 1997 from the Sexual Crimes

Bureau of the Miami-Dade (Miami, Florida) Police Department. Officials in the Sexual Crimes Bureau provided us with photocopies of the incident report, arrest affidavit, and closeout memorandum for each case. The incident report, which is the document prepared by the police officer who took the complaint, includes a description of the crime, statements made by victims and witnesses at the time the initial complaint was made, and a narrative description of the investigation conducted by the officer from the Sexual Crimes Bureau who was assigned to the case. The narrative of the investigation includes statements made by the victim, by witnesses, and by the suspect during the course of the investigation. The arrest affidavit contains information about the background characteristics of the defendant and the charges filed at arrest. The closeout memorandum, which was prepared by the state's attorney to whom the case was assigned, summarizes the disposition in the case. For cases in which charges were not filed by the state's attorney, the closeout memo also includes a statement of the reasons for case rejection.

We use the information included in the closeout memorandums to examine and categorize prosecutorial justifications for charge rejection. Although Frohmann (1997) argues that the official reason given to explain case rejection may not always be the "real" reason, the closeout memorandums in these cases generally included a detailed rationale for case rejection. There were very few cases, in other words, where the state's attorney indicated that the case was "no actioned" and then simply provided a cryptic reason, such as "victim refused to cooperate" or "insufficient evidence to prove allegations beyond a reasonable doubt." More typical were the following written justifications:

No actioned. State has insufficient evidence to file. I talked to the defendant. The defendant declared (as he has since arrest) that he had consensual sex with the victim. Victim claimed defendant kidnaped her, took her to his apartment, took condoms out of a drawer full of condoms, and raped her. CW1 (witness) claimed she saw defendant abduct the victim and called police. CW1 said she talked to the police. Detective investigated and found no 911 or dispatch records and no O.I. reports. Detective talked to local officers, all of whom denied responding. I talked to CW2, who said that he sold defendant condoms at 1:00, which corroborates the defendant's story that he bought condoms at that time (and contradicts CW1).

Victim's and her mother's credibility questionable. Victim and her mother have given three different accounts of incident to officer on scene, detective, and myself.

Victim's father is upset that victim is pregnant and want somebody "to pay for it." Victim has mental health problems and is presently attending New Horizons. Unable to reach victim or her mother since pre-file conference. Per victim's uncle, he threw them out of his house and doesn't know their whereabouts.

We contend that the detailed descriptions of the reasons for case rejection, coupled with the written case narratives, some of which were over 100 pages long, provide sufficient information on which to base conclusions regarding the prevalence of various types of prosecutorial justifications for case rejection.

We supplement the information obtained from the case narratives and the closeout memorandums with information about the charging process obtained from interviews with prosecutors in the Dade County State's Attorney's Office. The principal investigator interviewed seven of the prosecutors whose names appeared on the closeout memos for the 1997 cases. Prosecutors were not asked about specific cases. Rather, the interviews, which were anonymous and confidential, focused on such things as the factors that generally influence decision making in sexual assault cases, how attorneys evaluate victim credibility and the strength of evidence in the case, the types of cases that are most (and least) likely to be prosecuted successfully, and the reasons why victims would report a sexual assault and then decide not cooperate. We use the attorney's answers to these questions to illustrate and elaborate upon our findings regarding the justifications for charge rejection.

FINDINGS

The Decision To Charge or Not

Consistent with previous research, Dade County prosecutors rejected charges in more than one third of the sexual battery cases that resulted in an arrest during 1997. As shown in Table 4.1, which displays the final disposition for each case included in the data file, 58 of the 140 cases (41.4%) were rejected by the prosecutor at the initial screening. Charges were filed and then later dismissed by the prosecutor in an additional 16 (11.4%) cases. The remaining 66 cases (47.1%) were fully prosecuted; of these, all but two resulted in a conviction, either by plea or at trial. The most

serious charge at arrest and the most serious charge filed in cases that were prosecuted also are shown in Table 4.1

(Table 4.1 About Here)

Prosecutorial Justifications for Charge Rejections

We used the following procedures to categorize the justifications for charge rejection. The PI and two research associates independently read and categorized the written reasons for case rejection provided in the closeout memorandums. In classifying the justifications, we used Frohmann's (1991) categories of "discrepant accounts" and "ulterior motives," plus three additional categories—the victim failed to appear for the prefile interview or could not be located, the victim refused to cooperate in the investigation or asked that the case be dropped, and the victim recanted her testimony. Although our initial classifications were remarkably similar, there were several cases where we disagreed. We discussed these cases, re-read relevant portions of the case narratives, and resolved the discrepancies.

The types of reasons used to justify case rejection in these sexual battery cases are presented in Table 4.2. Although we attempted to put each case into a single category, there were a number of cases in which prosecutors gave more than one type of reason. In one case, for example, the closeout memo stated in part:

... there are lots of reasonable doubts arising from the victim's story to R.T.C. (the rape treatment center), to the detective, and to me. Furthermore, there appears to be a motive for the victim to fabricate. . . Victim clearly indicated that she has always disliked suspect, who was mother's live-in boyfriend. . .

Because the closeout memorandum mentioned both inconsistencies in the victim's story to the rape treatment center, the detective, and the state's attorney and the fact that the victim had a motive to fabricate the allegations, this case was included under discrepant accounts and ulterior motives. A few additional cases were similarly "double-categorized."

(Table 4.2 About Here)

As shown in Table 4.2, most of the justifications for charge rejection did not involve either discrepant accounts or ulterior motives. Rather, in 30 of these cases charges were rejected because the victim failed to appear for the prefile interview or could not be located, because the victim was unwilling to cooperate and/or asked that charges be dropped, or because the victim recanted her testimony. Prosecutors used discrepant accounts to justify charge rejection in 24 cases; most of these involved inconsistencies in the victim's and suspect's accounts of the incident. In seven cases, the decision to reject the case was based on the victim's motive to lie or bias against the suspect.

In the sections that follow, we describe the justifications included in each category in more detail. Using information provided in the case narratives as well as the closeout memos, we also discuss the types of cases that fall into each category.

Case Rejection Based on Discrepant Accounts

As previously mentioned, a common justification for rejection of a sexual assault case is the detection of inconsistencies, either in the victim's recounting of events or between her statements and statements made by the suspect or witnesses. The following cases provide examples of this type of justification. Each case will begin with a brief description of the assault, based on the victim's statements to police, and conclude with the prosecutor's written justification for dismissal.

One discrepant account case involved a white female victim and a white male suspect, who were ex-boyfriend and ex-girlfriend. The victim reported that the suspect came to her residence in an attempt to reconcile the relationship. Although the victim asked the suspect to leave the residence, he pushed his way into her apartment and refused to leave, despite numerous requests by the victim. The suspect subsequently held the victim against her will and would not allow her to leave the premises. He then bound her arms behind her back with duct tape and sexually assaulted her. Following the assault, the suspect unbound the victim and apologized for his actions. He then began to bang his head against the wall and later attempted to jump from an exterior stairwell. The victim stopped him from jumping, but during the struggle, the suspect fell down a flight of stairs.

At this point, the victim telephoned police. The suspect was arrested and taken into police custody outside of the victim's residence. Following review of the case, the ASA decided not to charge, using the following justifications:

There is insufficient evidence to convince a jury beyond a reasonable doubt that a sexual battery and burglary with assault were committed by the defendant. The victim made *inconsistent statements* as to whether or not the defendant penetrated her. She told fire rescue that he didn't penetrate her and she told the uniformed officer that he did penetrate her. *Additionally, the allegation is that the defendant bound the victim prior to the rape. The victim indicated during her prefile conference that she has permitted the defendant to bind her and have sexual intercourse with her in the past. She indicated that the defendant has a video of this. The defendant told the officers that this was consensual sex. The duct tape used to bind the victim was kept in her home (in her bedroom closet). Additionally, after the act, the victim calls 911 and doesn't report the rape. She reports that the defendant might have injured himself because she saw him lying in the stairwell. Also the victim declined to go to the rape treatment center on the day of rape so there is no DNA evidence. The victim also said that a couple of days before the assault, she and the defendant had consensual sex although they had broken up. For the foregoing reason it is the undersigned belief along with the chief of the domestic crimes unit that there is insufficient evidence to file the case.*

In this justification, the prosecutor points out that the victim provided different accounts of the assault to the fire rescue team and to the investigating police officer. Additionally, the prosecutor discredits the victim's allegation of rape based on her prior relationship with the suspect and based on the similarities between the alleged assault and prior consensual sexual relations between the victim and the suspect. Thus the victim's consensual relationship with the suspect in the recent past and the suspect's claim that the act was consensual, coupled with the victim's late reporting and inconsistent statements, provides adequate justification for the prosecutor to refuse to file charges in the case.

In a second case highlighting the discrepant accounts justification, the victim, a 30-year-old white female, stated that her husband sexually assaulted her. According to the victim's statements to the police, the victim and suspect were in their bedroom and got into a fight about their relationship. The suspect allegedly became increasingly hostile, hit the victim in the face two to three times with an open hand, and then proceeded to silence her by covering her mouth with his hand. At this point, according to the victim, the suspect sexually assaulted her. The victim got away

from the suspect and locked her son and herself into the master bedroom. The next morning the victim reported the crime to the police. The prosecutor's closeout memorandum read:

I had taken sworn testimony from victim and [concluded] that based upon *the inconsistencies between her testimony to me and in conjunction with the inconsistencies in her statements to the two police agencies involved*, I did not have the proof necessary to file a sexual battery charge. I would be unable to file a charge of simple battery absent corroborating testimony from the victim's son. [Attorney A] met with [Attorney B] at the Domestic Crimes Unit on 10/97. [Attorney A] presented an affidavit written in English which had been signed and notarized on 10/97. The affidavit says the defendant called the victim's father on or about 9/97 in Brazil and admitted that he had sexually battered his daughter. It also says that the defendant said that he struck the victim on several occasions against her will and inserted his fingers in her anus causing serious bodily harm. In addition to the facts concerning *the victim's untimely revelation concerning the defendant's alleged confession* there is another fact, brought to the attention of [Attorney B] by [Attorney A], which makes the facts set forth in the affidavit suspect. Apparently the funds deposited in an offshore account in the defendant's name were originally given to the victim by her father to put into an account for his future use. The victim gave the money to the defendant, who deposited it into an offshore account in his name only. Because of the fact that *the victim in this case has given multiple inconsistent statements* in conjunction with a lack of corroborative evidence either in the form of witnesses or medical evidence there is insufficient evidence to prove this case beyond a reasonable doubt.

The preceding case justification indicates that the victim gave multiple inconsistent statements and that the prosecutor suspects that the affidavit from the victim's father was fabricated. There also is evidence that the prosecutor believed the victim's allegations were the product of a financial dispute.

Case Rejection Based on Typifications of Rape-Relevant Behavior

The next two cases illustrate prosecutorial case rejection based on incongruities between the victim's version of events and the prosecutor's existing knowledge of typical behavior in rape case scenarios. As Frohmann (1991: 217) notes, "In the routine handling of sexual assault cases prosecutors develop a repertoire of knowledge about the features of these crimes." If the victim's account contradicts this "repertoire of knowledge," the prosecutor may conclude that the victim is not credible and the case, as a result, not convictable.

The victim in the first case is a white, 17-year-old female who made allegations of "date rape" against a black male teacher's aide at her high school. According to the victim's report to police, she accompanied the suspect to his residence to watch a movie. She stated that she and the suspect watched the movie while lying on his bed, during which time they engaged in consensual foreplay. Subsequently, the suspect attempted to convince the victim to engage in sexual intercourse. After the victim refused the suspect's requests, he attempted to force intercourse on her. The victim then demanded that the suspect take her home and he complied. The victim reported the incident nearly two weeks later by submitting an anonymous letter to the school principal. The prosecutorial rejection read:

This case was not actioned because it is in this ASA's opinion that the charge of sexual battery by physical force cannot be proven beyond a reasonable doubt because there were several facts that would prevent the state from *showing the defendant was on notice that his actions were against the victim's consent*. See note in file regarding these actions by the victim. *At no time during the alleged incident did the defendant threaten physical harm or prevent the victim from leaving the apartment.*

The note alluded to in this justification provides fifteen additional actions by the victim which are inconsistent with this ASA's construction of a genuine rape scenario:

1. In her letter, the victim *admits to flirting* with the defendant and finding him attractive.
2. In the telephone call leading up to the incident, the defendant had told the victim "that he was going to come over, pick [the victim] up and kidnap [her] and [he] made some sort of sexual remark after that", according to the victim's sworn statement to police. The victim responded in the following manner, "I laughed sarcastically and *said this sounded good* up to that part referring to, as it sounded good to go out with him somewhere."
3. *The victim allowed the defendant to remain in the room wearing nothing other than boxer shorts.*
4. *The victim laid on the defendant's bed.*
5. Prior to the start of the movie, *the victim asked the defendant for a hug and received a hug.*
6. *The victim allowed the defendant to touch her* throughout the beginning of the movie. While she kept her hand on top of his to guide his hand, *at no time did she remove his hand so that it wouldn't be touching her.*
7. *The defendant was allowed to kiss the victim.*
8. Even when the victim realized that the kisses were becoming more involved, *the victim left to go to the bathroom but then came back, sat on top of the defendant and continued to kiss him.*
9. In response to the defendant's questions about the color of her underwear, *the victim showed him the top of her underwear.*

10. In response to his requests to remove her pants, *the victim indicates in her written letter that she "put up a little struggle but it was very little."*
11. Due to his repeated requests, *the victim allowed the defendant to kiss her breast.*
12. *After the defendant first kissed the victim's vagina, the victim remained in the room, on the bed, partially undressed.*
13. *Even after the defendant's first attempt at penetration, the victim remained in the room partially undressed and complied with his request to stand by the chair and his request to walk back again to the bed.*
14. *The victim allowed the defendant to drive her home.*
15. Despite the requests of her ex-boyfriend, *the victim did not immediately call the police* and instead waited for a full disclosure until she was upset that the defendant had not been fired from the school.

According to the extensive written justification presented above, the prosecutor believed that the sexual acts between the victim and the defendant were consensual; she notes that the victim allowed the suspect to engage in certain types of activities and made no attempt to flee when he demanded more. The language used by the prosecutor—"the victim *asked for* a hug," "the victim *allowed* the defendant to touch her . . . [and] kiss her," "the victim *remained* in the room . . . and *complied with his request*"—implies that the victim subtly encouraged, or at the very least did not object to, the defendant's behavior. The prosecutor's written justification also suggests that the victim's general behavior during and after the incident was inconsistent with the behavior of a typical rape victim. The prosecutor notes, for example, that the victim allowed the defendant to drive her home after the incident. All of these facts, considered together, lead the prosecutor to conclude that she would not be able to prove that the sexual contact was nonconsensual.

A second case that was rejected because it conflicted with the prosecutor's "repertoire of knowledge" about typical sexual assaults involved a 19-year-old African-American female who claimed that her ex-boyfriend, a 20-year-old African-American, attempted to force her to engage in oral sex. The victim stated that she allowed the suspect to perform oral sex on her, but when he demanded fellatio in return, she refused. Upon her refusal, the suspect choked the victim and attempted to put his penis inside her mouth. The suspect's attempts were interrupted by his mother, who heard the victim screaming. The victim ran into the bathroom and put on her clothes. The

victim stated that as she was running out of the house, the suspect threw water on her from a drinking glass. She called police after leaving. The written justification for case rejection indicated:

In this case the victim and defendant have a long history of breaking up and returning to an intimate relationship. The victim reports that in this case, she went to the defendant's home in the early morning hours in response to his telephone call. She says that he kissed her when he met her outside of his house and took her inside with him where they went to his room. She reports that he performed oral sex on her which she told detectives was consensual. The victim said that the defendant then demanded something in return and attempted to force her to perform oral sex on him. The victim says that she was successful in keeping the defendant at bay. The victim said that the defendant then put a pillow over her face and said he would suffocate her. He got on top of her and tried to force her legs open when his mother heard her screams, came in, and asked him what he was doing to her. The victim then went into the bathroom where the defendant threw her clothes to her. She reports that she dressed and as she was leaving, the defendant threw some water on her. The defendant and his mother refused to give the detective a statement. The victim was not seen at RTC and there was no sign of injury, (nor was any reported), to the victim. Without any corroborative evidence either in the form of witnesses or medical evidence there is insufficient evidence to prove this case beyond a reasonable doubt.

The justification for the preceding case emphasizes the prior volatile relationship between the victim and the suspect. It also highlights two aspects of the victim's behavior that appear to be inconsistent with those of a typical victim in a non-consensual rape: [1] the victim goes to the suspect's house in the middle of the night; and [2] the victim consents to some sexual acts but refuses to engage in others. Coupled with the lack of evidence that the victim suffered any type of injury, these facts apparently led the prosecutor to conclude that the victim's allegations were unfounded.

Case Rejection Based on Typifications of Rape Scenarios and Inferences About the Victim

The following case further illustrates the use of prosecutorial typifications of rape scenarios, by incorporating inferences based on the victim's character and behavior at the time of the incident. In this case, the victim, a 31-year-old white female, advised that she, her boyfriend, the suspect (her half brother), and several other people went out drinking together. When the victim arrived home, she was extremely intoxicated and went directly to bed. Soon after she went to bed, the suspect entered her bedroom, removed her clothing, and began engaging in sexual intercourse with her. The

victim woke up and demanded that the suspect stop. The suspect then attempted to force the victim to engage in fellatio; when she resisted, he resumed having sexual intercourse with her. Due to her intoxication, the victim passed out during the incident. When she awoke, she reported the incident to the police. The prosecutor provided the following written justification:

This case is being no actioned for the following reasons: 1) the victim was very intoxicated on the night of the incident. She had consumed 2 beers, 2 long island iced teas, 2 glasses of wine, a large glass of vodka and coke and medication for AIDS. 2) She told me under oath that she has no recollection of the events that took place in her bedroom that evening. There is no way to prove an essential element of the crime which is the victim's lack of consent. She told me she's not sure whether she consented or not. It is the undersigned's belief that this case can not be proved beyond a reasonable doubt.

The reasons for not charging in this case clearly are related to the victim's behavior on the night of the alleged assault. The prosecutor notes not only that the victim had engaged in risky behavior by drinking to intoxication, but also that she was taking medication for a sexually transmitted disease. By referring to "medication for AIDS," which is irrelevant to the victim's intoxication, the prosecutor implies that the victim is sexually promiscuous. These inferences about the victim's character and behavior at the time of the incident, coupled with the fact that the victim cannot recall what happened and doesn't know whether she consented or not, provide sufficient justification to reject the case.

Case Rejection Based on Typifications of Rape Reporting

Included in prosecutors' "repertoire of knowledge" about rape case scenarios are beliefs about rape-reporting. Prosecutors expect victims to report the incident to the police soon after it occurs. If the victim does not report the crime promptly, "her motives for reporting and the sincerity of her allegations are questioned if they fall outside the typification of officially recognizable/explainable reasons for late reporting" (Frohmann 1991: 219). A late report, in other words, will lead the prosecutor to question the victim's credibility and the veracity of her story unless she can provide a legitimate explanation: she was emotionally traumatized by the incident; she was

embarrassed or worried about the reaction of family and friends; or she was afraid of retaliation by the suspect.

Delay in reporting was a key factor in the rejection of a spousal sexual battery case. In this case, the victim, a white 38-year-old female, stated that her husband forced her to engage in vaginal intercourse against her will. The victim stated that after the assault, she remained in their bed and fell asleep. The victim stated that she did not attempt to make any noise or summon help because she did not want her guests to know what was happening. The victim did not contact the police immediately following the incident; in fact, she left the country and did not report the incident until she returned. The victim also stated that she had sex with the suspect after the rape. The prosecutor provided the following justification for case rejection:

The victim reported the crime approximately six weeks after it occurred. The victim did not respond to the rape treatment center or call the police the night of the crime. The victim left the country and called the police upon her return. There is no physical or corroborating evidence. Given the lack of evidence and the time between the date of the incident and the date of the report the state has no choice but to no action this case.

In this case, the victim's failure to make a prompt report raised questions in the mind of the prosecutor. Because the victim offered no explanation for the late report and because there are other elements of the case that appear to conflict with prosecutors' typifications of rape case scenarios (the victim and suspect are married, the victim did not cry out or summon help at the time of the incident, and the victim and suspect engaged in consensual sexual relations following the incident), the prosecutor reports that she "has no choice" but to reject the case.

Case Rejection Based on Ulterior Motives

The final justification for case rejection discussed by Frohmann (1991) involves ulterior motives on the part of the victim. As Frohmann (1991: 221) notes, "Ulterior motives rest on the assumption that a woman consented to sexual activity and for some reason needed to deny it afterwards." The prosecutors interviewed by Frohmann described a number of motives for filing a

false complaint, including the victim's need to cover up illegal (i.e., drug abuse or prostitution) or otherwise deviant behaviors (i.e., premarital or extramarital sex). Frohmann suggested that prosecutors used their knowledge of the victim's current situation, as well as information regarding the relationship between the victim and suspect, to construct these notions of victim motive.

One of the ulterior motive cases included in our study involved a 13-year-old black female who reported that her stepfather fondled her, digitally assaulted her as often as five times per week, and attempted to rape her. Although the felony review unit initially filed charges in this case, facts that came to light as the case moved toward trial caused the state's attorney to whom it was assigned to file a motion to dismiss the charges. The ASA filed the following justification for dismissing the charges prior to trial:

The victim is the stepdaughter of the defendant. The victim disclosed to her school counselor that the defendant had sexually molested her starting in Kansas when she was eleven and continuing up until approximately one week before she disclosed to him. *The victim when initially interviewed by this ASA was very credible as there was physical evidence of penetration.* The defendant responded to the accusations by cleaning out the joint checking account, not showing up at his job, and was missing for a week. *While preparing for trial, motives for the victim to fabricate became apparent.* However, *the most important issue was that the victim repeatedly told this ASA and the defense attorney (in deposition) that she had never been involved with anyone else and had never had a boyfriend. Sunday night before the trial was to begin, this ASA was contacted by defense counsel that he was adding two witnesses to the defense list. The first was [a sixteen year old male], who would testify that while visiting the defendant during the summer of 1997, he and the victim had consensual sex. The second was the victim's cousin by marriage, who would testify that she had overheard the victim threaten the defendant "that she would do to him what she had done to her grandfather."* On Monday morning, the victim was confronted by this ASA with these allegations. The victim admitted that she and the stepbrother had made out, petted, and that she had "hunched" with him but had not had sex. The victim then became hysterical in the ASA's office and stated that she did not wish to go forward with the trial. The victim's mother was informed of what was going on and agreed that she did not want her daughter to go through with the trial. The ASA then announced a Nolle Prosequere in Court.

In this case the prosecutorial justification for dismissal of charges was twofold: first, the willingness of the victim's cousin to testify that the victim had threatened that she would do to her stepfather "what she had done to her grandfather;" and, second, the availability of a witness who could contradict the victim's statements about her sexual inexperience. Although the victim

ultimately decided not to pursue the case, in the presence of this motive for the victim to fabricate, it is unlikely that the prosecutor would have proceeded with a trial.

The second case illustrates a different type of ulterior motive. The victim in this case was a white 46-year-old female who had been living with the suspect, a white 45-year-old male, for seven years. According to the victim's statements to police, the suspect held her in her apartment for three days, during which time he forced her to submit to sexual intercourse four times. In addition to the sexual assaults over the three-day period, the victim filed a second report. In the second case, the victim advised that while she and the suspect were arguing, he became extremely angry, grabbed a knife, and threatened to kill her. At this point, she called the police and the suspect was arrested. The victim later helped the suspect make bond and let him back into the house. The prosecutor included the following facts in the close-out memo:

The victim came into [the sexual assault office] to give sworn statement to this ASA. Under oath, the victim recanted the events as she had reported them in both cases. *She says that she lied to the police about everything she said [the suspect] did because she was jealous and wanted him to leave and didn't know any other way to get him out. The victim insisted that all of the sexual contact during the second incident was consensual and that she was always free to leave but that she got jealous again and wanted the defendant out.* The victim's friend said that the victim had come back asking for help bonding the defendant out the second time. The friend said that the victim said that she was going to say nothing happened and the friend told her that if she lied she could go to jail and she would not bond her out. The victim denies this conversation and insists that nothing ever happened and that her jealousy is the reason why she told the lies. *The victim and defendant have been living together for seven years with no children in common.* The victim is illiterate and depends on the defendant for financial support. INS filed a detainer and it is likely that the defendant will be deported following a hearing. Based upon the fact that there are no witnesses and no medical corroboration of injury to the victim in the case and that the victim has fully recanted her original statements, this case cannot be proven beyond a reasonable doubt.

According to the prosecutor who reviewed this case, the victim stated that she fabricated the sexual assault because she was jealous and wanted the suspect to leave the house but "didn't know any other way to get him out." Additional information presented in the written justification suggests that the prosecutor may have believed that the victim actually had ulterior motives for *recanting* her original testimony. The prosecutor notes that the victim's statement that she fabricated the sexual assault is inconsistent with the statements made by a witness in the case and also implies that she

recanted her original statements to protect her relationship with and financial support by the suspect. In this case, in other words, the prosecutor suggests that the victim's statement that she fabricated the complaint because of ulterior motives was itself based on ulterior motives.

A Case Incorporating Multiple Justifications

A number of the closeout memos examined for this study provided multiple justifications for case rejection. One case, for example, involved the alleged sexual assault of a Hispanic woman by a Hispanic man with whom she was acquainted. The victim's report indicated that the suspect drove her to the local correctional center to visit her husband. Following the prison visit, the victim and suspect ate dinner at a restaurant, stopped and bought a bottle of rum from a liquor store, and went to the beach together. After spending several hours at the beach, the suspect drove the victim home. According to the victim, it was at this time that the defendant forced her to have sexual intercourse with him. The justification in this case read:

This case was not actioned because it is the opinion of this ASA that the case cannot be proven beyond a reasonable doubt due to insufficient corroborating evidence. The victim and defendant were with each other several hours prior to the offense. Despite saying that she did not drink much alcohol beyond a couple of sips, the victim is unable to account for several hours prior to the incident from her leaving the beach after 8:00 p.m. and returning around midnight (shortly before the alleged incident). The victim also gave the police a false name. It was several days later when the victim finally admitted that she gave a false name because she was worried about confidentiality and the victim later admitted that her bigger concern for giving a false name was that she may have had a misdemeanor arrest warrant against her in her true name. Furthermore, there is an inadequate explanation for the delayed reporting, the victim's husband is in ICDC for a misdemeanor battery against victim. According to the husband's and the landlord's statements, the husband had been calling all night and learned that the victim was out with the defendant. When the husband's telephone call woke the victim up, the victim did not immediately report the alleged incident to the husband. The victim did not report the incident to the police until several hours after the alleged offense and a couple of hours after the husband's telephone call. The landlord and her child heard the victim crying but didn't hear any cries for help or any reason to cause alarm or call 911 when they heard the victim crying.

The written justification provided by the prosecutor in this case highlights several reasons for case rejection: (1) the inconsistent statements made by the victim (she gave the police a false name and then lied about her reasons for doing so); (2) delay in reporting (she did not report the

crime until two hours after she talked with her husband on the telephone); (3) ulterior motives (the husband was told that the victim was out with the suspect until midnight and the victim did not report the rape until after she talked with her husband); and (4) inferences about the victim (she spent most of the day with the suspect (a man to whom she is not married), cannot explain where she was or what she was doing from 8 p.m. to midnight, and is married to a man who is in jail for physically assaulting her). Reading between the lines, it appears that the prosecutor believed that the victim and the suspect engaged in consensual sexual intercourse and that the victim fabricated the sexual assault to cover this up and to account for her failure to answer her husband's phone calls until after midnight. In conjunction with the inconsistencies in the victim's statements and the lack of corroborating evidence, these assumptions lead the prosecutor to reject the case.

Case Rejection Based on Lack of Victim Cooperation

The prosecutorial justifications for case rejection discussed thus far are consistent with Frohmann's (1991: 224) assertion regarding the "centrality of victim discredibility." They confirm that prosecutors use a variety of techniques to discredit the victim's allegations and justify rejecting the case. However, as shown in Table 4.2, a substantial number of the written justifications in these cases focused on the *victim's lack of cooperation* and not on the *prosecutor's concerns* about the victim's character, reputation, or behavior at the time of the incident. There were 15 cases in which the victim failed to appear for the prefile interview or could not be located to arrange an interview, 10 cases in which the victim would not cooperate or asked that the case be dropped, and 5 cases in which the victim formally recanted her testimony.

The written justifications in the 15 cases in which the victim failed to appear or could not be located describe repeated unsuccessful attempts to contact the victim. One case, for example, involved the alleged kidnaping and sexual assault of a 16-year-old black female by an 18-year-old black male. The victim claimed that the suspect, who was the boyfriend of one of her friends, offered to drive her to the grocery store. Instead, he drove her from Ft. Lauderdale to Miami; when

she insisted that he take her home, he stopped the car, fondled and digitally penetrated her, and attempted to rape her. The prosecutor assigned to this case attempted to contact the victim and her girlfriend, both of whom resided in Broward County, a number of times; she also subpoenaed the victim and other witnesses to appear for a prefile interview. The prosecutor's justification for rejecting the case stated:

All witnesses subpoenaed repeatedly. All failed to appear. Victim in Broward [County]. Did locate, had investigations personally serve victim. Victim still failed to appear.

Another "failure to appear" case involved a 30-year-old Hispanic female who was an admitted crack addict. She reported that she smoked crack on the night of the alleged assault and stated that about 5:00 a.m. she approached the suspect, whom she knew from the neighborhood, and asked if she could borrow enough money for transportation home. She stated that she accompanied the suspect to the 1979 Chevrolet van where he was living and that he sexually assaulted her there. The suspect denied that the victim had been in his van that evening and stated that he did not sexually assault her. The prosecutor's closeout memo stated,

Victim failed to appear for pre-file conference twice. Detectives did not think she intended to pursue this case. Personal service attempted. Subpoena served on her brother who said he does not know of victim's whereabouts but if he sees her he would deliver the subpoena.

The justifications provided in the "could not locate" cases were somewhat different. In several of these cases, the prosecutor attributed his/her difficulty in locating the victim either to the fact that the victim did not have a phone (or the phone had been disconnected) or was "a street person," "homeless," a "prostitute," or a "runaway." Typical of these justifications for case rejection are the following:

Victim is a runaway with substance abuse and psychological problems . . . With no way to find victim, state could not proceed with case.

Victim and witness are homeless prostitutes. Unable to locate.

Victim can't be located. Victim is a street person. She failed to appear for deposition twice. Detective cannot locate her. The witness who had permitted her to be on his property also tried to locate her without any success.

As these written justifications document, prosecutors often made aggressive attempts to locate the victims and witnesses in these cases. It is certainly possible that, had these victims been found, their allegations eventually would have been discredited by the prosecutor's use of one of the techniques that Frohmann (1991) describes. However, the fact that they could not be located limited the prosecutor's options. Without a victim/witness, the prosecutor had no choice but to reject the case.

Prosecutors options also were limited in those cases in which the victim would not cooperate, asked that the case be dropped, or recanted. Although prosecutors are not legally precluded from pursuing a case with a reluctant victim, their goal of "avoiding uncertainty" (Albonetti 1987) makes this unlikely. The closeout memos filed in several of these cases suggested that the prosecutor assigned to the case believed that the victim *had been* sexually assaulted. One case, for example, involved a woman who claimed that she had been sexually assaulted by her ex-boyfriend, who broke into her house in the middle of the night. The prosecutor, apparently convinced that the victim was telling the truth, made numerous attempts to secure her cooperation and even had the victim arrested and held in jail for four days for failure to cooperate. Eventually, however, the victim recanted her testimony. The prosecutor explained that the case was rejected

because the victim refused to assist in the prosecution of this case. She failed to appear in my office after personal service on August 5, 1997 and August 12, 1997. . . . Thereafter, I had the court issue a writ of bodily attachment against her. She was arrested on 9/19/97 and held for 4 days. On 9/23/97 I took a sworn statement from her where she recanted entirely. Therefore, it is impossible to prosecute this case without her cooperation. There is no physical evidence to prove this case without her cooperation.

In several of the cases rejected because of the victim's lack of cooperation, the prosecutor's written justification implied that the assault may have been fabricated or that the sexual contact was consensual. In one case, for example, a 27-year-old woman claimed that she was sexually assaulted by her 21-year-old boyfriend at his parent's house (where they were living). She reported that they were "having problems in their relationship," and that on the night in question she found him in his room with another woman. She stated that they got into an argument when he returned from driving

the other woman home and that he grabbed her when she attempted to leave the bedroom. She also stated that during the course of the assault he tore her underwear, pulled her hair, punched her, and bit her on the breast. The suspect admitted that he and the victim engaged in sexual intercourse, but insisted that it was consensual; he also stated that they had engaged in "rough sex" in the past. The incident report indicated that the police officer investigating the crime repeatedly asked the victim to obtain the ripped underwear, so that they could be examined for physical evidence, and attempted to contact the victim and the witnesses in the case, without success. Three weeks later, the case was rejected by the prosecutor, who gave the following explanation:

In this case the victim recanted, without explanation, her statements made orally and in writing to the detective at the time the defendant was arrested. She has affirmed the fact that the defendant could have believed that all of the acts he did during this incident were done with her consent.

Other cases in the "victim would not cooperate/asked that charges be dropped" category involved teenage girls who admitted under questioning that the sexual contact was consensual. In some of these cases, the complaint was filed, not by the alleged victim, but by the victim's parents. The written justifications filed in these cases included the following:

Victim is fourteen years old; defendant is nineteen years old. Both parties engage in consensual sex. Victim does not want to prosecute. Initially, victim's mother wants to prosecute but acknowledges later on that she just wanted to teach her daughter a lesson.

No actioned. 1) The victim was 15 years old having consensual sexual intercourse with the defendant who was 27 years old. 2) She does not want the State to prosecute this case. 3) She indicated that she loves the defendant.

As the closeout memos in these cases indicate, the victim's decision not to cooperate may be based on a number of different considerations. Regardless of the motivation, her lack of cooperation obviously makes it difficult, if not impossible, for the prosecutor to proceed with the case.

Case Outcomes and Case Characteristics

The findings discussed thus far indicate that prosecutors use a variety of techniques to justify charge rejection. They also provide clues to the characteristics of the cases found in each category.

However, the cases used to illustrate the various types of justifications were not randomly selected from all rejected cases; as a result, the characteristics of *these cases* may not accurately represent the types of cases in each category. To explore this issue, we used the quantitative data collected for this study to compare the victim, suspect, and case characteristics of four types of sexual battery cases: those that were rejected or dismissed (all types of justifications); those that were rejected because of discrepant accounts or ulterior motives on the part of the victim; those that were rejected because the victim could not be located, refused to cooperate, or recanted; and those that were fully prosecuted. Our purpose is to determine, first, whether cases that were rejected or dismissed differ from those that were fully prosecuted and, second, whether cases rejected because of concerns about the victim's credibility or motives differ from those rejected because of the victim's lack of cooperation.

The victim, suspect, and incident characteristics are presented in Table 4.3. They are described in detail in Chapter One of this report.

Comparison of Rejected and Prosecuted Cases. As shown in Table 4.3, which presents the victim, suspect, and incident characteristics of cases in each of the four categories, there are important differences between the cases that were rejected/dismissed and those that were fully prosecuted. With respect to the victim characteristics, for example, cases that were not prosecuted were more likely than those that were prosecuted to involve victims who were black (58.1% versus 47.0%), while prosecuted cases were more likely than those not prosecuted to involve victims who were 13 to 16 years old (43.9% versus 37.0%). Rejected cases also were more likely than prosecuted cases to involve victims who engaged in risk-taking behavior at the time of the incident, as well as victims whose moral character was called into question by evidence in the file. Somewhat surprisingly, a larger proportion of the cases that were rejected were cases involving strangers (20.5% versus 4.5%), while a larger proportion of the cases that were prosecuted involved relatives

(27.3% versus 13.7%). Rejected cases also were more likely than prosecuted cases to involve suspects who were black.

(Table 4.3 About Here)

The data presented in Table 4.3 also indicate that cases that were fully prosecuted were more serious cases than those that were rejected: they were more likely to involve a suspect who used a gun or knife during the assault, collateral injury to the victim, and at least one aggravating circumstance (assault by a stranger, use of a weapon, injury to the victim, or attack by multiple offenders). There were, on the other hand, inconsistent differences in the evidence available in the two types of cases. Although witnesses were more common in cases that were prosecuted, physical evidence was more common in cases that were rejected and there were no differences in the proportions of cases that were reported within one hour or in which the victim physically resisted the suspect. The proportions of suspects who claimed that the victim consented or that the incident was fabricated also were nearly identical.

We used logistic regression to further explore the effect of victim, suspect, and case characteristics on the decision to file charges or not. The results of this analysis, shown in Table 4.4, generally are consistent with the results of the bivariate analysis.²⁹ Prosecutors were more likely to prosecute if the suspect used a gun or knife, if the victim suffered some type of collateral injury, if the victim was younger, and if the victim and suspect were acquaintances/relatives or intimate partners rather than strangers. Prosecutors were less likely to file charges if there were questions about the victim's moral character or behavior at the time of the incident. To test the possibility that charging was more likely if the victim was a young teenager, we re-ran the analysis with a dichotomous variable measuring the victim's age (age 13 to 16 =1; age 17 and over =0). We found that prosecutors were nearly four times more likely to file charges if the victim was between 13 and 16 years old than if the victim was older than 16 ($B = 1.31$; $SE = .57$; odds ratio = 3.71). To test for differences in the likelihood of charging between the two categories of non-strangers, we re-ran the analysis with intimate partners as the reference group; we found that there were no differences in the

odds of charging in cases involving intimate partners and acquaintances/relatives ($B = .30$; $SE = .61$). Consistent with prior research, then, charging decisions in this jurisdictions were based on a combination of legally relevant case characteristics and legally irrelevant victim characteristics.

(Table 4.4 About Here)

Comparison of Cases Rejected for Different Reasons. Our comparison of cases rejected because of concerns about victim credibility or ulterior motives and those rejected because the victim could not be found or would not cooperate also revealed some differences (see Table 4.3). These results, however, must be interpreted with caution because of the relatively small number of cases in each category. We found that cases rejected because the victim could not be located or refused to cooperate were more likely than those rejected because of victim credibility or motive problems to involve questions about the victim's moral character. There was evidence of an out of wedlock pregnancy or birth in six of these cases, evidence that the victim had a prior sexual relationship with someone other than the suspect in four, evidence of a history of drug abuse in two, evidence suggesting that the victim was a prostitute in two, and evidence that the victim had repeatedly run away from home in two. Cases rejected because of discrepant accounts or ulterior motives on the part of the victim involved evidence of prior sexual relations with someone other than the suspect (3 cases), evidence of a history of drug or alcohol abuse (3 cases), evidence suggesting that the victim was a prostitute (3 cases) and evidence of an out of wedlock pregnancy or birth (2 cases). Evidence that the victim had engaged in risk-taking behavior was somewhat more common in cases rejected because of discrepant accounts or ulterior motives, but the types of risky behavior found in the two categories were very similar: either the victim invited the suspect to her home or apartment, accompanied him to his home or apartment, or used drugs and/or alcohol at the time of the incident.

There also were differences in the types of victim/suspect relationships found in the two categories of case rejection. Eight of the cases rejected because the victim failed to appear or refused to cooperate, but none of the cases rejected because of discrepant accounts or ulterior motives.

involved a victim and suspect who were complete strangers.³⁰ With only two exceptions, on the other hand, the case and incident characteristics of cases rejected for the two types of reasons did not vary. The suspect was more likely to claim that the victim consented in cases rejected for lack of cooperation (41.9%) than in cases rejected because of discrepant accounts or ulterior motives (26.1%). The other exception is that a larger percentage of the cases rejected for a lack of cooperation involved an assault that took place in the victim's home or apartment (69.6% versus 51.6%).

DISCUSSION

The purpose of this study was to replicate and extend Frohmann's (1991) research on prosecutorial accounts of case rejection. Using data on all sexual assaults cleared by arrest in Miami in 1997, we examined the decision to charge or not, focusing on the prosecutor's written justification for charge rejection. Consistent with previous research, we found that more than half of the sexual battery cases were rejected at screening or filed and then later dismissed.

This finding confirms the importance of the decision to charge or not and suggests that the prosecutor does "control the doors to the courthouse" (Neubauer 1988: 200). However, our findings regarding prosecutors' reasons for rejecting charges suggest that the explanation for the high rate of charge rejection is complex. Frohmann (1991, 1997) argues that the decision to reject charges in sexual assault cases is inextricably linked to prosecutors' "downstream concern with convictability," which is itself linked to stereotypes concerning real rapes, genuine victims, and rape-relevant behavior. Although the findings of our study are consistent with her assertion that charging decisions primarily reflect the prosecutor's assessment of the likelihood of conviction, they also suggest that this assessment is based on factors other than typifications of rape and rape victims. In a substantial number of the cases examined for this study, the decision to reject charges could be traced to the victim's failure to appear for a prefile interview, the victim's refusal to cooperate in the prosecution of the case, or the victim's admission that the charges were fabricated. In these types

of cases, in other words, the odds of conviction were low (or nonexistent), not because the prosecutor believed that the facts in the case contradicted potential jurors' assumptions about rape and rape victims, but because the unavailability of a victim who was willing to testify made it impossible to proceed with the case.

When we compared the characteristics of cases that were rejected/dismissed to those of cases that were fully prosecuted, we found that the decision to prosecute reflected both legally relevant case characteristics (use of a weapon and injury to the victim) and legally irrelevant victim characteristics. Prosecution was more likely if the victim and the suspect were non-strangers or if the victim was a young teenager; it was less likely if there were questions about the victim's moral character or behavior at the time of the incident. (This pattern of results was confirmed by a logistic regression analysis of the decision to charge or not.) Further analysis comparing the characteristics of cases rejected for different reasons revealed that evidence of risk-taking was somewhat more common in cases rejected because they didn't fit with prosecutors' typifications of rape cases and rape-relevant behavior or because it appeared that the victim had ulterior motives, while questions about the victim's moral character surfaced more often in cases rejected because the victim could not be located or refused to cooperate. We also found that cases rejected for lack of cooperation were more likely than those rejected for discrepant accounts or ulterior motives to involve a victim and suspect who were complete strangers, a suspect who claimed that the victim consented, and an assault that took place in the victim's residence.

A number of these findings merit comment. The results of our multivariate analysis of the decision to charge or not are consistent with previous research demonstrating that prosecutors attempt to avoid uncertainty by filing charges in cases where the likelihood of conviction is good and by rejecting charges when conviction seems unlikely. This is confirmed by the fact that all but two of the cases that were prosecuted resulted in a conviction. It also is confirmed by our findings regarding the predictors of charging decisions. As noted above, the odds of charging were greater in the more serious cases in which the victim was young, the suspect used a gun or knife, or the

victim was injured. Our results also reveal, however, that there are “extralegal sources of uncertainty” (Albonetti 1987:311) and that one of the primary focal concerns of prosecutors in sexual battery cases is the credibility of the victim. In these cases, most of which involved victims and offenders who were non-strangers, prosecutors’ anticipation of a consent defense and downstream orientation toward judges and juries apparently led them to scrutinize more carefully the character and behavior of the victim. Evidence that challenged the victim’s credibility or fostered a belief that she was not entirely blameless increased uncertainty about the outcome of the case and thus reduced the odds of prosecution.

The comments of the state’s attorneys interviewed for this study are consistent with these conclusions. When we asked prosecutors to identify the factors that influenced their decision to file charges in a sexual battery case, all of them mentioned the strength of evidence in the case and the credibility of the victim. A prosecutor who had been prosecuting rape cases in Dade County for more than eight years, in fact, stated that “the *key factor* is the credibility of the victim.” As he noted,

As long as I have sufficient belief in the victim’s credibility, I can overcome almost everything else. The bottom line is whether the jury will believe the victim. Rape cases rarely involve witnesses and don’t always involve physical evidence, so it all comes down to the victim and her credibility.

When asked to explain how they evaluated victim credibility, all of the respondents noted that inconsistencies between the victim’s and suspect’s account of the incident and inconsistent or contradictory statements by the victim would lead them to question her credibility. One prosecutor noted, for example, that she asked herself, “Is what the victim telling me plausible and consistent with everything else I know about this case? Is her story consistent with the evidence we have and with the statements of other witnesses?” Another stated that he asked himself a similar question—that is “Does her story make sense? Can she explain to me why she behaved the way she did?” Other respondents emphasized the victim’s demeanor during the interview, as well as inconsistencies in the victim’s and the suspect’s version of the incident. One respondent explained that,

You have to look at the victim, her demeanor and her behavior. You have to look closely at the allegations that have been made. If there is other evidence or testimony that conflicts with what she's saying—if, for example, the suspect has an entirely different account of the encounter and there are witnesses who corroborate his story—then you have to determine what set of circumstances you accept and what you don't find credible.

These comments suggest that Dade County state's attorneys, like the prosecutors in Frohmann's study (1991: 214), "are actively looking for 'holes' or problems that will make the victim's version of 'what happened' unbelievable or not convincing beyond a reasonable doubt."

When asked what the typical juror is looking for in a sexual battery case, each of the respondents acknowledged that jurors come into the courtroom with preconceived ideas about rape. According to one prosecutor, "jurors tend to be suspicious of cases involving people who know each other or victims who don't fit the stereotype of a rape victim." Another respondent explained that,

People come into the jury box with the perceptions they get from TV. They expect the victim to be dragged off the street by a stranger and brutally assaulted. Then they get these convoluted stories that involve people who generally know each other and that don't jibe at all with their perceptions of rape. The process has to start with jury selection. You have to emphasize that crimes committed by family members, friends, and lovers are serious. If you can't get them to admit that, you have to try to get them off the jury.

A third prosecutor, who asserted that "the cases the jurors wrestle with . . . are the date-rape type of cases," noted that in these types of cases "jurors typically have questions about her behavior at the time of the incident—why did she agree to go back to his room after the date, why did she agree to watch pornographic movies with him, and so on." These statements confirm Frohmann's (1991) assertion that it is the prosecutors' orientation toward potential jurors that motivates them to scrutinize the victim's background and behavior and look for holes in her story.

Our findings concerning the effect of the victim/suspect relationship are somewhat surprising. Not only were there very few cases involving strangers in the data file, which included all cases of sexual battery that resulted in an arrest in 1997, but cases involving strangers were *less likely* than those involving acquaintances, relatives, or intimate partners to be prosecuted. This clearly contradicts general assertions that crimes involving strangers are regarded as more serious than crimes involving non-strangers (Black 1976; Gottfredson and Gottfredson 1980), as well as more

specific assertions that sexual assaults involving acquaintances are not regarded as "real rapes" (Estrich 1987) and that women victimized by these crimes are not regarded as "genuine victims" (LaFree 1989). At least in this jurisdiction, prosecutors are not reluctant to proceed with cases involving friends, relatives, and intimate partners.

This conclusion is somewhat at odds with the comments made by the prosecutors we interviewed. When asked whether the relationship between the victim and suspect influenced the decision to charge or not, most respondents indicated that it did play a role. One prosecutor noted that "family relationships and interpersonal dynamics complicate a sexual battery case." He added that "it doesn't necessarily change the way you look at the evidence, but it probably will change the way the jury looks at the evidence." Other respondents explained that acquaintance cases are complicated by the possibility that the victim might have a motive to lie or to fabricate. As one attorney noted,

We have to recognize that there are situations in which people make false allegations—a woman may be angry at her husband, who is having an affair, and may see this as a way to get back at him. Or, a woman may falsely claim that she was raped in order to cover up a premarital or extramarital sexual relationship or to explain away a sexually transmitted disease or pregnancy. In these situations, you have to determine whether the victim is being truthful. You have to see if there are circumstances that allow you to conclude that the allegation is real.

The fact that a fairly substantial number of the stranger cases were rejected because the victim could not be located or refused to cooperate also is puzzling. Because it seemed unlikely that a woman attacked by a complete stranger would disappear or fail to show up for a prefile interview or would refuse to cooperate or ask that the charges be dropped, we examined the characteristics of each of these eight cases in more detail. Four of these cases did not involve a suspect who used a weapon or collateral injury to the victim; in two of these cases the victim did not make a prompt report, willingly went to the suspect's residence, and had a history of prior consensual sex with someone other than the suspect. In the other two cases the victim reported the crime within one hour but there was either evidence of risk-taking behavior or questions about her moral character. In the remaining four cases, the suspect did use a weapon or injure the victim. In one of these more

aggravated cases the victim made a prompt report and there was no moral character evidence or evidence that she had engaged in risky behavior; in this case the victim indicated that she did not want to pursue the case and asked that the charges be dropped. In the other three cases, the victim either was walking alone late at night or was a prostitute. Although this suggests that all of these stranger cases, with one exception, had some type of evidentiary problem, the problems found in most of the cases do not appear to be so damaging that they would motivate the victim to disappear, request that the charges be dropped, or recant.

The comments of the prosecutors interviewed for this study provide some clues to victim motivation in these types of cases. According to one state's attorney, "When a woman has just been raped, she wants everyone's help. But once she knows what it is going to mean to proceed with the case through the criminal justice system, she may decide it's not worth it." Another attorney voiced a similar opinion, stating,

Although we do our best to process cases in a timely fashion, I think that sometimes victims just get worn down by all of the delays. The victim is asked to tell her story over and over—to the police, to the prosecutor, at the deposition—and if the case drags on too long she loses interest or decides that it simply isn't worth it. I also think that we have to acknowledge that sometimes women get subtle or not-so-subtle messages from police and prosecutors that their veracity is being questioned or that the case is unlikely to lead to a conviction.

A third prosecutor focused more on the victim's fear of public exposure. He stated that

A sexual battery charge deals with probably the most intimate relationship between a man and a woman. I do believe that quite a number of people are petrified about having to describe the gory details of the violation to strangers. We're asking someone who has been violated and probably feels very humiliated to describe the attack in great detail to jurors who are complete strangers. I don't find it all that surprising that some women don't want to put themselves through that. In addition, there are situations involving prostitutes or drug addicts or homeless women who are reluctant to proceed with the case because they know that their lifestyle is a strike against them and they suspect that the jury won't believe them.

These comments suggest that the victim's reluctance to proceed with a case against a stranger who sexually assaulted her may be motivated both by her disillusionment with the criminal justice system and by her reluctance to have her private life made public.

Although the explanations presented above also could apply to cases in which the victim and

suspect were non-strangers, the closeout memos and the comments of prosecutors suggested additional reasons why the victim in non-stranger cases might refuse to cooperate or recant. In a number of these cases, it was clear that the prosecutor believed the victim had been sexually assaulted and was reluctant to drop the charges; there were a number of cases where the victim was subpoenaed to testify at the prefile interview and one where the victim was arrested and held in jail for four days in an attempt to induce her to cooperate. The fact that the victims in these cases either failed or appear or refused to cooperate suggests that the victim believed prosecution was not in her best interest. This was confirmed by the prosecutors we interviewed. One noted, for example, that "there are cases where the victim actually forgives the offender or is reconciled with the offender." She added that in cases in which the offender is a close relative or an intimate partner, "as time goes by she may come to believe that it wasn't that big a deal. There are a lot of the dynamics of domestic violence cases working in sexual assault cases involving intimates." Another stated that some of these cases involve

women who are attacked by men they know, perhaps even by men with whom they have an intimate relationship, and who reconcile with the offender and decide that they no longer want to prosecute. In those situations, there is not much to be gained by filing charges since she won't show up and won't agree to testify if the case goes forward.

Several respondents emphasized that in these types of cases they "take what the victim wants into account." One noted, however, that "society has an interest in the outcome of this case as well" and that "you can't always let the victim dictate what will happen." As he explained,

When I have a victim who comes in and tells me that she wants to leave his punishment up to God, which happens more than you would think, I'll say to her, "Fine, God can deal with him when he gets there, but we have to decide what to do about this now." I ask the victim what would satisfy her—what would make her think that justice had been done.

Considered together, the results of our analysis and the comments of the state's attorneys we interviewed suggest that the reluctance of victims to proceed with the case can be attributed to a combination of factors: a belief that prosecution of the suspect is not in her own interest; a belief that prosecution of the suspect is not worth either the time and effort required or the humiliation of

testifying about her victimization; and a belief, either arrived at independently or communicated by police and prosecutors, that her character and her behavior at the time of the incident make conviction unlikely. The victims in these cases, in other words, may have made a rational decision that pursuing the case would be too traumatic and/or would be a waste of time given the low odds of conviction.

Although we can only speculate, the acquaintance and intimate partner cases in which the victim disappeared, asked that the charges be dropped, or recanted also may reflect the fact that these victims were using "prosecution as a power resource" (Ford 1991:320). Like battered women, in other words, these victims of sexual violence may have brought charges in order to send a message that further violence will not be tolerated and to achieve, at least in the short-run, a satisfactory solution to their interpersonal problems. As Ford (1991: 326) notes, "victims who are otherwise powerless in the face of violence seek to use prosecution for leverage in managing conjugal conflict or arranging favorable settlements." Because victims' names were redacted from the case materials we received, we were not able to question them about their reasons for recanting or asking that charges be dropped. Given what we know about the motivations of battered women, this would be an interesting avenue for future research.

CHAPTER FIVE

SUMMARY AND DISCUSSION

Studies of the important and highly discretionary charging decision conclude that prosecutors attempt to avoid uncertainty by filing charges in cases where the likelihood of conviction is good and rejecting charges when conviction seems unlikely. These studies also suggest that prosecutors' assessments of convictability are based on a combination of legally relevant case characteristics and legally irrelevant suspect and victim characteristics. Charging is more likely if the crime is serious, the evidence is strong, the suspect is culpable, and the victim is credible and blameless.

Feminists contend that victim characteristics are particularly likely to influence case outcomes—including the decision to charge or not—in sexual assault cases. They argue that criminal justice officials, using stereotypes or typifications of real rapes and genuine victims, base their decisions on the victim's background and reputation, the victim's relationship to the accused, and the victim's behavior at the time of the incident. Although some researchers suggest that victim characteristics will come into play in all types of sexual assaults, others assert that the influence of these extralegal factors will be confined primarily to less serious—and thus more discretionary—simple sexual assaults or, alternatively, to sexual assaults involving victims and suspects who are non-strangers.

The purpose of this multi-site study of prosecutors' charging decisions in sexual assault cases was to test the validity of these assertions. We used data on sexual assaults that resulted in an arrest in three large urban jurisdictions to: (1) identify the factors affecting charging decisions in sexual assault cases; (2) test the hypothesis that the effect of victim characteristics would be confined to cases of simple rape; (3) test the hypothesis that charging decisions in sexual assault cases involving strangers would be determined by legally relevant factors and that the effect of legally irrelevant victim characteristics would be confined to cases involving acquaintances, relatives, and intimate partners; (4) test Frohmann's (1991) contentions regarding prosecutorial justifications for case rejection; and (5) examine the impact of a special unit for prosecuting sexual assault cases.

The results of our study are summarized below. We begin by discussing the results of our analysis of the pooled data set (objectives #1 and #2). We then present the results of our analysis of the data for each jurisdiction (objective #5), followed by the results of our comparison of case outcomes for cases involving different types of victim/suspect relationships (objective #3). We conclude with our results testing Frohmann's contentions regarding prosecutorial justifications for case rejection (objective #4).

- Our analysis of the pooled data set revealed that:
 - prosecutors filed charges in just over half of the cases that resulted in an arrest; most of the cases that were fully prosecuted resulted in a conviction.;
 - prosecutors' charging decisions were determined by a combination of case and victim characteristics; charging was substantially more likely if the victim was injured, if the suspect used a gun or knife, and if there was physical evidence; charging also was more likely if the victim reported the crime promptly, if there were no questions about the victim's moral character or behavior at the time of the incident, if the suspect was black and the victim was white, or if the victim was a young teenager;
 - the relationship between the victim and the offender did not affect the decision to charge or not;
 - the effect of victim characteristics was not confined to simple rapes; although the age of the victim came into play only in cases of simple rape, risk-taking behavior by the victim had a nearly identical effect on simple and aggravated rapes and the racial makeup of the victim/suspect pair affected charging decisions in aggravated rapes only.
- Our analysis of the data partitioned by jurisdiction revealed that:
 - the likelihood of charging did not vary among the three jurisdictions;
 - the effect of victim characteristics did not vary in the predicted way; the set

of victim characteristics affected the likelihood of charging in the jurisdiction (Kansas City) with a specialized unit for prosecuting sexual assaults and in one jurisdiction (Miami) without a specialized unit, but had no effect on charging decisions in the other jurisdiction (Philadelphia) without a specialized unit. The effects of the individual victim characteristics also did not vary in the predicted manner.

- Our analysis of charging decisions in cases involving strangers, acquaintances/relatives and intimate partners (Philadelphia and Kansas City only) revealed that:
 - the relationship between the victim and the suspect did not affect the likelihood of charging in these two jurisdictions;
 - although the presence of physical evidence to connect the suspect to the crime had a strong and statistically significant effect on charging in all three types of cases, it had a more pronounced effect in cases involving strangers than in cases involving acquaintances or relatives;
 - in cases involving strangers, the decision to charge or not was determined primarily by legally relevant factors;
 - with the exception of the victim's race, which influenced the decision to charge or not if the victim and suspect were strangers, victim characteristics affected charging decisions only in cases involving non-strangers; in cases involving acquaintances or relatives, prosecutors were significantly less likely to file charges if the victim engaged in risky behavior or if there were questions about her moral character or reputation; in cases involving intimate partners, prosecutors were less likely to file charges if the victim engaged in risky behavior, physically resisted the suspect, or was not injured;
 - although women assaulted by strangers were more likely than those assaulted

by non-strangers to engage in the types of risky behaviors (i.e., walking alone late at night, hitchhiking or in a bar alone) that might lead jurors to conclude that they precipitated or were to blame for the sexual assault, these types of behaviors did not affect the decision to charge or not if the victim and suspect were strangers;

- prosecutors were more likely to file charges against men (black or white) who assaulted white women who were strangers to them than against black men who assaulted black women who were strangers to them.
- Our test of Frohmann's (1991) assertions regarding prosecutorial justifications for charge rejection in Dade County (Miami), Florida, revealed that:
 - although the reasons given by prosecutors to account for charge rejection were consistent with Frohmann's assertion that prosecutors use "discrepant accounts" and "ulterior motives" as justifications, these were not the only types of reasons given; in a substantial number of the cases the decision to reject charges could be traced to the victim's failure to appear for a prefile interview, the victim's refusal to cooperate in the prosecution of the case, or the victim's admission that the cases were fabricated;
 - in this jurisdiction, cases involving strangers were less likely than those involving non-strangers to be prosecuted; many of these cases were rejected because the victim could not be located or refused to cooperate;
 - the results of our analysis and the comments of the state's attorneys we interviewed suggest that the reluctance of victims to proceed with the case could be attributed to a combination of factors: a belief that prosecution of the suspect is not in her own interest; a belief that prosecution of the suspect is not worth either the time and effort required or the humiliation of testifying about her victimization; and a belief, either arrived at independently or

communicated by police and prosecutors, that her character and her behavior at the time of the incident make conviction unlikely.

Considered together, the results of our study suggest that prosecutors' charging decisions, like judges' sentencing decisions, are guided by a set of "focal concerns" (Steffensmeier et al. 1998).

Because prosecutors are concerned about reducing uncertainty and securing convictions, they are more likely to file charges when the crime is serious, when it is clear that the victim has suffered real harm, and when the evidence against the suspect is strong. Our findings also suggest, however, that the focal concerns that structure prosecutors' charging decisions in sexual assault cases are somewhat different than those found in other types of cases. Because victim credibility plays a particularly important role in sexual assault cases, the perceptual shorthand that prosecutors develop to reduce uncertainty and assess convictability rests explicitly on stereotypes about rape, rape victims, and rape-relevant behavior. As Estrich (1987) and LaFree (1989) have noted, criminal justice officials, including prosecutors, use a set of victim characteristics to create an image, not of a *typical* rape victim, but of a *genuine* rape victim. Complainants whose backgrounds and behavior conform to this image will be taken more seriously, and their allegations treated more seriously, than complainants whose backgrounds and behavior are at odds with this image. The results of our study, which highlight the pivotal role of victim credibility and demonstrate that cases involving questions about the victim's moral character and behavior at the time of the incident are more likely to be rejected, indicate that prosecutors' focal concerns in sexual assault cases incorporate these stereotypes.

Our results also suggest that the focal concerns that structure prosecutors' charging decisions in various types of sexual assault cases, while not identical, are similar. Although our finding that the legally relevant case characteristics had fairly consistent effects across crime types, relationship types, and jurisdictions was expected, we predicted that the effect of the victim characteristics would be more variable. Based on previous research, we expected that the effect of the legally irrelevant

victim characteristics would be confined primarily to cases of simple rape, to sexual assaults involving victims and suspects who were non-strangers, and to sexual assaults prosecuted in jurisdictions without specialized sex offense units. As noted above, the pattern of results for this study did not conform to these expectations. Although the constellation of victim characteristics that affected charging decisions across case types and jurisdictions varied, at least one legally irrelevant victim characteristic came into play in every type of case and in each of the three jurisdictions. This suggests that prosecutors' downstream orientation toward judges and juries leads them to scrutinize more carefully the character and behavior of the victim in all types of sexual assaults. Evidence that challenges the victim's credibility or fosters a belief that she was not entirely blameless increases uncertainty about the outcome of the case and thus reduces the odds of prosecution.

Our analysis of the reasons given by prosecutors to justify charge rejection are somewhat at odds with this conclusion. Consistent with Frohmann's (1991) work, we found that Dade County State's Attorneys used a variety of techniques to discredit the victim's allegations and thereby justify charge rejection. We also found, however, that not all charge rejections reflected prosecutorial concerns about the victim's character, reputation, and behavior at the time of the incident. A substantial number of cases were rejected because the victim failed to appear for a prefile interview, asked that the charges be dropped, or recanted her testimony. In these cases, in other words, prosecution was terminated, not because of the prosecutor's concerns about convictability, but because of the victim's unwillingness to go forward. Although it is possible that the victim's decision was motivated by signals from police and prosecutors that the odds of conviction were low, her decision also might have been based on either a rational calculation of the costs and benefits of pursuing the case or a belief that the problems that led her to seek charges had been solved.

A final comment concerns the prosecution of sexual assault cases in the post-rape reform era. Beginning in the mid-1970s, most states adopted reforms designed to shift the focus in a rape case from the character and behavior of the victim to the behavior of the offender; the overall goal of these reforms was to encourage reporting and reduce case attrition (see Estrich 1987; Spohn and

Horney 1992). The most common reforms included changes in the definition of rape, elimination of resistance and corroboration requirements, and enactment of rape shield laws designed to preclude the use of testimony concerning the victim's sexual history. As Spohn and Horney (1992) note, these reforms were designed primarily to increase the odds of successful prosecution in cases in which the victim and the suspect were acquainted and the suspect claimed that the victim consented. Although research evaluating the impact of the rape law reforms generally concludes that the statutory changes did not produce the widespread instrumental changes that reformers anticipated, there is evidence that the reforms did encourage arrest and prosecution in "borderline cases" in which the victim and the offender were non-strangers and the suspect did not use a weapon or seriously injure the victim. Our findings are consistent with this. Over three-quarters of the cases included in this study were cases in which the victim and the offender were non-strangers. In fact, nearly 25 percent were cases in which the victim and suspect were intimate partners. Moreover, the relationship between the victim and offender had no effect on the likelihood of charging in Kansas City or Philadelphia; in Miami cases involving intimate partners were *more likely* than those involving strangers to be prosecuted and there were no differences in the likelihood of charging between the two types of non-stranger cases.

Although these results are encouraging, the fact that over half of the sexual battery cases were not prosecuted, coupled with the fact that prosecutors questioned the victim's credibility in a substantial number of the cases that were rejected, suggests that the prosecution of sexual assault cases remains problematic. The rape law reforms notwithstanding, prosecutors continue to use a decision making calculus that incorporates stereotypes of real rape and genuine victims.

NOTES

1. Kerstetter (1990: 309-310) also concluded that "the complainant's willingness to prosecute represents more than a simple statement of volition." Instead, it may reflect "the circumstances under which *detectives* tend to be inclined or disinclined to pursue the case." He based this conclusion on the results of analysis using willingness to prosecute as a dependent variable. He found that the complainant's decision was influenced by three variables: presence of a witness to the incident; use of a weapon by the suspect; and evidence that the complainant had violated sex-role norms (i.e., by hitchhiking, being in a bar alone, engaging in premarital or extramarital sexual intercourse, or willingly entering the suspect's car or residence).
2. Spohn and Spears (1996), on the other hand, found that the effect of the victim/offender relationship was conditioned by the racial makeup of the victim/offender dyad. The victim/offender relationship had no effect on any of the four outcomes examined when the offender was black and the victim was white or when both the offender and victim were white. The relationship came into play only when both the offender and victim were black; blacks charged with sexually assaulting black acquaintances were treated more leniently than blacks charged with sexually assaulting black strangers.
3. The results of some studies are inconsistent with these conclusions. Spohn and Horney (1993), for example, found that extralegal victim characteristics had little effect on case outcomes in Detroit (either before or after the implementation of rape law reforms). Kingsnorth et al. (1998) found that the racial composition of the offender/victim dyad did not influence any of the decisions points they examined and that the primary predictors of case outcomes were legally relevant factors.
4. The Missouri statutes define forcible rape as sexual intercourse with another person by

the use of forcible compulsion (RSMo §566.030). Forcible sodomy is defined as deviate sexual intercourse ("any act involving the genitals of one person and the mouth, tongue, or anus of another person or a sexual act involving the penetration, however slight, of the male or female sex organ or the anus by a finger, instrument, or object . . .) with another person by the use of forcible compulsion (RSMo §566.060). First degree statutory rape is defined as sexual intercourse with another person who is less than 14 years old (RSMo §566.032) and first degree statutory sodomy is defined as deviate sexual intercourse with a person who is less than 14 years old (RSMo §566.062). All four of these offenses are ungraded felonies for which the authorized term of imprisonment is life or a term of years not less than five years; if, however, the actor inflicts serious physical injury or displays a deadly or dangerous instrument in a threatening manner or subjects the victim to intercourse with more than one person the authorized term of imprisonment is life or a term of years not less than ten years. Sexual assault, which is a class C felony, is defined as sexual intercourse with another person without that person's consent (RSMo §566.040). Deviate sexual assault, which is a class C felony, is defined as deviate sexual intercourse with another person with that person's consent (RSMo §566.070).

5. The Crimes Code of Pennsylvania defines rape, which is a felony of the first degree, as sexual intercourse under any of the following circumstances: forcible compulsion; threat of forcible compulsion; where complainant is unconscious and unaware; where complainant is substantially impaired by actor through use of intoxicants, drugs, or other means designed or intended to reduce resistance; where complainant is, by mental disability, incapable of consent; or where complainant is less than 13 years of age (18 Pa.C.S.A. §3121). Involuntary deviate sexual intercourse, which also is a felony of the first degree, is defined as deviate sexual intercourse (oral or anal sexual penetration or penetration with an object) under any of the conditions outlined above or where the complainant is less than 16 years of age and the actor is four or more years older and the

complainant and actor are not married to each other (18 Pa. C.S.A. §3123). Sexual assault, a felony of the second degree, is defined as sexual intercourse or deviate sexual intercourse without the consent of the complainant (18 Pa. C.S.A. §3124.1).

6. Sexual battery is defined as "oral, anal, or vaginal penetration by, or union with, the sexual organ another or the anal or vaginal penetration of another by any other object . . ." Florida Statutes § 794.011 (1)(h). Depending upon the presence of aggravating circumstances, sexual battery is either a capital felony, a life felony, a first degree felony, or a second degree felony (§794.011(2 thru 5). If the offender is 18 or older and the victim is less than 12 and the offender injures the victim's sexual organs, the crime is a capital felony; if the offender in this situation is less than 18, the crime if a life felony. Nonconsensual sexual battery involving a victim 12 years of age or older and an offender who either uses or threatens to use a deadly weapon or uses physical force likely to cause serious personal injury is a life felony. Nonconsensual sexual battery on a person 12 years of age or older is a first degree felony under the following circumstances: the victim is physically helpless to resist; the offender threatens to use force or violence likely to cause serious personal injury or threatens to retaliate against the victim or any other person and the victim believes that the offender has the ability to carry out the threat; the offender administers any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim; the victim is mentally defective and the offender has reasons to believe this or has actual knowledge of this fact; the victim is physically incapacitated; or the offender is in a position of control or authority as an agent or employee of government. A person who commits nonconsensual sexual battery upon a person 12 years of age or older and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree.
7. In 1997, 1,237 sexual batteries were reported to the Sexual Crimes Bureau of the Miami-

Dade Police Department. Of these, 243 were cleared by arrest. (Personal communication, Karin Montejo, Major, Sexual Crimes Bureau, Miami-Dade Police Department.)

8. The Miami-Dade Police Department serves unincorporated Miami-Dade County. It does not provide law enforcement services to the city of Miami, the city of Miami Beach, or 28 other municipalities in Dade County, each of which has its own law enforcement agency.
9. There were 17 male victims and 4 female suspects in Kansas City, 14 male victims and 1 female suspect in Philadelphia.
10. We first attempted to obtain permission to examine the files maintained by the Kansas City Police Department. However, we were informed that the police department's sexual assault case files were not stored in a separate location, but rather were intermixed with the case files for all other felonies. Because obtaining the files would be very time-consuming and would require the services of a department employee, our request was denied.
11. The offender's prior criminal record is included in the analysis comparing charging decisions in cases involving strangers, acquaintances, and intimate partners in Kansas City and Philadelphia. Because we were unable to obtain this information for the offenders included in the Miami data file (often the offender's name was redacted from the documents provided to us), we do not include the offender's prior criminal record in the 3-city analysis that we present in Chapters 2 and 5.
12. We did not include a control for the most serious charge at arrest because over 80 percent of the defendants were arrested for forcible rape or sodomy. Including this variable in the model did not change any of the results reported here.
13. The information on screening and prosecution of sexual assault cases in Kansas City was obtained during a personal interview with the Sex Crimes Unit Trial Team Leader in 1999.

14. The information on screening and prosecution of sexual assault cases in Philadelphia was obtained during personal interviews with the head of the Family Violence and Sexual Assault Unit and with a lieutenant in the Sex Crimes Unit of the Philadelphia Police Department.
15. The data obtained for this project reveal that 43 (16.1%) of the 267 cases that resulted in an arrest in 1997 were rejected at screening. An additional 92 (34.5%) cases were dismissed by the FVSAU after charges were filed.
16. Questions regarding the handling of rape complaints by the Sex Crimes Unit were raised in two-part series, headlined "Women Victimized Twice in Police Game of Numbers." that appeared in the *Philadelphia Inquirer* in October of 1999. In January of 2000, the Philadelphia Police Department reopened more than 2,000 rapes, indecent assaults, and other sex offenses reported from 1995 to 1999 and inappropriately closed and classified as "investigation of person." According to the *Philadelphia Inquirer* (January 16, 2000), the cases were flagged for re-investigation by department auditors who began reviewing sex-crimes files in October of 1999. The article noted that "The auditors identified as least 1,800 cases from 1995, 1996, and 1997 that were closed without adequate investigation and improperly given administrative designations, such as "investigation of person," that do not appear in the city's crime statistics."
17. Information obtaining during personal interview.
18. The formula for the z test is:

$$Z = \frac{b_1 - b_2}{\sqrt{SEb_1^2 + SEb_2^2}}$$

19. The results of t tests for each pair of cities were as follows: Kansas City v. Miami (t = 0.20); Kansas City v. Philadelphia (t = 1.86); Miami v. Philadelphia (t = 1.76).

20. The results of the t test were: Kansas City v. Miami ($t = 3.18$); Kansas City v. Philadelphia ($t = 4.50$); Miami v. Philadelphia ($t = 6.89$).
21. The results of the t test were: Kansas City v. Miami ($t = 2.44$); Kansas City v. Philadelphia ($t = 2.84$); Miami v. Philadelphia ($t = 5.00$).
22. The results of the t test were: Kansas City v. Miami ($t = 4.52$); Kansas City v. Philadelphia ($t = 9.04$); Miami v. Philadelphia ($t = 2.09$).
23. The arithmetic mean is not presented as the measure of central tendency for binary items; instead we present the proportion of cases in the category that is coded "1".
24. It is important to remember that these are the characteristics of sexual assault cases that resulted in an arrest, not the characteristics of cases that occurred or that were reported to the police.
25. Although this may indicate that victims are reluctant to report assaults involving suspects with whom they are acquainted or intimately involved, it also may reflect the fact that it is more difficult for the police to identify the suspect and make an arrest if the victim does not report the crime promptly.
26. This suggests that victims of sexual assault at the hands of an intimate partner did not report the crime to police unless they were injured and/or that police did not arrest the suspect unless there was some type of collateral injury.
27. The z test revealed that risk-taking behavior had a significantly greater effect on cases involving intimates than on cases involving acquaintances ($z = 1.96$).
28. The regression coefficients and standard errors for the three risk-taking measures were as follows: accompanying suspect to his residence or inviting him to hers ($b = .012$; $SE = .76$); using drugs or alcohol ($b = .44$; $SE = .77$); walking alone, hitchhiking, or in a bar alone ($b = -.51$; $SE = .58$).
29. Because there were only 140 cases in the analysis and because we were concerned about testing a model with a small number of cases and a relatively large number of

independent variables, we did not control for all of the independent variables included in Table 4.3. We excluded evidence of a prior sexual relationship between the victim and the suspect, the most serious charge at arrest (which was sexual battery for over three-fourths of the cases in each category), the type of defense mounted by the suspect (which was missing for over 25 percent of the cases, generally because the suspect did not make a statement to the police), and the location of the assault.

30. We could not determine the reason for case rejection in seven of the 15 cases involving strangers. In these cases the closeout memorandum either was missing or simply indicated that the cases was rejected because there was insufficient evidence to prosecute.

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Table 1.1. Dependent and Independent Variables Used in the Analysis

VARIABLE	DEFINITION	CODING
<u>Dependent Variable</u>		
Charged	Charges filed by the prosecutor	1 = yes 0 = no
<u>Victim Characteristics</u>		
Race	Victim's race	1 = white 0 = non-white
Age	Victim's age	age in years
Relationship to Suspect	Relationship between victim and suspect (three dummy variables: stranger is reference category)	1 = stranger 0 = all others 1 = acquaintance 0 = all others 1 = intimate partner 0 = all others
Risk-taking ^a	Victim engaged in risk-taking behavior at the time of the incident	1 = yes 0 = no
Morals ^b	Questions about the victim's moral character	1 = yes 0 = no
Resist	Victim physically resisted the suspect	1 = yes 0 = no
Prompt Report	Victim reported the crime within one hour	1 = yes 0 = no
<u>Suspect Characteristics</u>		
Race	Suspect's race	1 = white 0 = non-white
Age	Suspect's age	age in years
Prior Felony Conviction	Suspect has at least one prior felony conviction	1 = yes 0 = no
<u>Case Characteristics</u>		
Victim Injury	Victim suffered collateral injury	1 = yes 0 = no
Weapon	Suspect used a gun or knife	1 = yes 0 = no

Table 1.1, continued

VARIABLE	DEFINITION	CODING
Physical Evidence	Physical evidence to corroborate victim's testimony or connect suspect to crime	1 = yes 0 = no
Witness	Witness to assault	1 = yes 0 = no
Jurisdiction	Jurisdiction where case prosecuted (3 dummy variables: Miami is reference category)	1 = Kansas City 0 = all others 1 = Philadelphia 0 = all others 1 = Miami 0 = all others

^aThis variable was coded "1" if the police file indicated that at the time of the assault the victim was walking alone late at night, was hitchhiking, was in a bar alone, was using alcohol or drugs, willingly accompanied the suspect to his residence, or invited the suspect to her residence.

^bThis variable is coded 1 if the police file contained information about the victim's prior sexual activity with someone other than the suspect, out of wedlock pregnancy or birth, pattern of alcohol and/or drug abuse, prior criminal record, work as a prostitute, or work as an exotic dancer or in a massage parlor.

Table 2.1. Frequency Distribution for Dependent and Independent Variables

VARIABLE	N	%
<u>Dependent Variable</u>		
Charged (% yes)	363	54.5
<u>Victim Characteristics</u>		
Race (% white)	225	34.4
Age (mean)	23.77	
Relationship to Suspect		
Stranger	131	19.7
Acquaintance/Relative	369	55.5
Intimate Partner	165	24.8
Risk-taking Behavior(% yes)	248	37.2
Questions about Moral Character(% yes)	250	37.6
Physical Resistance (% yes)	466	70.0
Reported Within One Hour (% yes)	216	32.7
<u>Suspect Characteristics</u>		
Race (% white)	152	23.2
Age (mean)	31.31	
<u>Case Characteristics</u>		
Victim Injury (% yes)	175	26.3
Suspect Used Gun or Knife (% yes)	107	16.1
Physical Evidence (% yes)	384	57.7
Witness	276	41.8
Jurisdiction		
Kansas City	259	38.9
Philadelphia	267	40.1
Miami	140	21.0

Table 2.2 Aggravated and Simple Rapes

	All Cases		Kansas City		Philadelphia		Miami	
	N	%	N	%	N	%	N	%
Aggravated Rapes	322	48.3	126	48.6	132	49.4	64	45.7
Simple Rapes	344	51.7	133	51.4	135	50.6	76	54.3

Table 2.3. Case Outcomes and Sentences: Simple and Aggravated Sexual Assaults

	Simple Rape (N=344)		Aggravated Rape (N=322)	
	N	%	N	%
<u>Case Outcomes</u>				
Charges Rejected	162	47.0	141	43.8
Charges Dismissed	14	4.0	30	9.3
Guilty Plea	129	37.5	91	28.3
Guilty-Jury	13	3.8	30	9.3
Guilty-Judge	16	4.7	19	5.9
Not Guilty	10	3.0	11	3.4
<u>Type of Sentence</u>				
Probation	70	44.9	52	37.7
Jail	9	5.8	4	2.9
Prison	77	49.4	82	59.4
<u>Length of Sentence</u>				
Probation (Median, in months)	36.0		36.0	
Probation (Mean, in months)	48.5		42.2	
Jail/Prison (Median, in months)	48.0		96.0	
Jail/Prison (Mean, in months)	117.4		212.6	

Table 2.4. The Effect of Victim Characteristics, Suspect Characteristics, and Case Characteristics on the Decision To Charge: Results of the Logistic Regression Analysis

VARIABLE	B	SE	Odds Ratio
<u>Victim Characteristics</u>			
Race (1 = white)	.38	.26	NS
Age	-.01	.01	NS
Relationship to Suspect (stranger is reference category)			
Acquaintance/Relative	.45	.26	NS
Intimate Partner	.15	.28	NS
Risk-taking Behavior (1 = yes)	-.93*	.19	0.40
Questions about Moral Character (1 = yes)	-.46*	.19	-0.70
Physical Resistance (1 = yes)	-.36	.20	NS
Reported Within One Hour (1 = yes)	.51*	.21	1.67
<u>Suspect Characteristics</u>			
Race (1 = white)	-.13	.30	NS
Age	.01	.009	NS
<u>Case Characteristics</u>			
Victim Injury (1 = yes)	.59*	.23	1.80
Suspect Used Gun or Knife (1 = yes)	.68*	.27	1.97
Physical Evidence (1 = yes)	.72*	.19	2.05
Witness (1 = yes)	.28	.18	NS
Jurisdiction (Kansas City is reference category)			
Philadelphia	-.28	.21	NS
Miami	.12	.25	NS
N of Cases		629	
-2 Log likelihood		774.022	
Chi-Square		93.486	
df		16	
P		.00	

* $P \leq .05$

Table 2.5. The Effect of Victim Characteristics, Suspect Characteristics, and Case Characteristics on the Decision To Charge in Aggravated and Simple Sexual Assaults

VARIABLE	Aggravated Sexual Assaults			Simple Sexual Assaults			z value
	B	SE	Odds Ratio	B	SE	Odds Ratio	
<u>Victim Characteristics</u>							
Race (1 = white)	1.18*	.44	3.26	-.29	.37	NS	2.56*
Age	.02	.02	NS	-.03*	.01	0.97	2.50*
Relationship to Suspect ^a							
Acquaintance/Relative	.08	.35	NS		NA		NA
Intimate Partner	.32	.39	NS	-.65*	.32	0.52	NA
Risk-taking Behavior	-.92*	.29	.40	-.89*	.27	0.41	0.08
Questions about Moral Character	-.26	.29	NS	-.57*	.27	0.56	0.83
Physical Resistance	.02	.33	NS	-.40	.27	NS	0.99
Reported Within One Hour	.71*	.30	2.03	.26	.32	NS	1.02
<u>Suspect Characteristics</u>							
Race (1 = white)	-.41	.48	NS	.14	.41	NS	0.87
Age	.005	.02	NS	.01	.01	NS	0.25
<u>Case Characteristics</u>							
Victim Injury ^b	.58	.33	NS		NA		NA
Suspect Used Gun or Knife ^b	1.05*	.33	2.85		NA		NA
Physical Evidence	1.01*	.31	2.74	.68*	.26	1.98	0.82
Witness	.25	.28	NS	.26	.26	NS	0.03
Jurisdiction							
Philadelphia	-.56	.33	NS	.05	.29	NS	0.66
Miami	.06	.41	NS	.32	.34	NS	0.49
N of Cases		306			323		
-2 Log likelihood		334.173			402.407		
Chi-Square		84.25			44.99		
df		16			13		
Probability		0.00			0.00		

^aThere were no cases of simple rape in which the victim and suspect were strangers. For these cases the comparison is between cases involving acquaintances/relatives and those involving partners.

^bThere were no cases of simple rape in which the victim was injured or the suspect used a gun or knife; these variables are eliminated from the model.

* P ≤ .05

Table 2.6. Frequency Distribution for Dependent and Independent Variables: Data Partitioned by Jurisdiction

	Kansas City (N=259)		Philadelphia (N=267)		Miami (N=140)	
	N	%	N	%	N	%
<u>Dependent Variable</u>						
Charged (% yes)	149	57.5	1332	49.4	82	58.6
<u>Victim Characteristics</u>						
Race (% white)	125	49.2	47	17.9	53	38.4
Age (mean)	23.52		25.05		21.78	
Relationship to Suspect						
Stranger	53	20.5	60	22.5	18	12.9
Acquaintance/Relative	143	55.2	154	57.7	72	51.8
Intimate Partner	63	24.3	53	19.9	49	35.3
Risk-taking Behavior(% yes)	112	43.2	97	36.3	39	27.9
Questions about Moral Character (% yes)	89	34.5	104	39.0	57	40.7
Physical Resistance (% yes)	182	70.3	203	76.0	81	57.9
Reported Within One Hour (% yes)	82	31.9	98	36.8	36	26.3
<u>Suspect Characteristics</u>						
Race (% white)	92	35.5	29	11.1	31	22.3
Age (mean)	31.86		31.89		29.20	
<u>Case Characteristics</u>						
Victim Injury (% yes)	79	30.5	55	20.6	41	29.3
Suspect Used Gun or Knife (% yes)	42	16.2	45	16.9	20	14.3
Physical Evidence (% yes)	142	54.8	163	61.0	79	56.4
Witness	110	42.5	122	45.9	44	32.4

Table 2.7. Case Outcomes and Sentences: Data Partitioned By Jurisdiction

	Kansas City (N=259)		Philadelphia (N=267)		Miami (N=140)	
	N	%	N	%	N	%
<u>Case Outcomes</u>						
Charges Rejected	110	42.5	135	50.6	58	41.4
Charges Dismissed	21	8.1	7	2.6	16	11.4
Guilty Plea	97	37.5	61	22.8	62	44.3
Guilty-Jury	27	10.4	14	5.2	2	1.4
Guilty-Judge	2	0.8	33	12.4	0	0.0
Not Guilty	2	0.8	17	6.4	2	1.4
<u>Type of Sentence</u>						
Probation	55	43.7	28	25.9	40	62.5
Jail	2	1.6	2	1.9	15	23.4
Prison	69	54.8	78	72.2	9	14.1
<u>Length of Sentence</u>						
Probation (median, in months)	36.0		24.0		54.0	
Probation (mean, in months)	44.8		30.5		55.2	
Jail/Prison (median, in months)	195.0		24.0		24.0	
Jail/Prison (mean, in months)	342.3		41.1		63.88	

Table 2.8. The Effect of Victim Characteristics, Suspect Characteristics, and Case Characteristics on the Decision To Charge: Data Partitioned by Jurisdiction

VARIABLE	KANSAS CITY			PHILADELPHIA			MIAMI		
	B	SE	Odds Ratio	B	SE	Odds Ratio	B	SE	Odds Ratio
<u>Victim Characteristics</u>									
Race (1 = white)	-.51	.47	NS	1.31*	.53	3.70	-.002	.57	NS
Age	-.003	.02	NS	.008	.01	NS	-.09*	.04	0.92
Relationship to Suspect									
Acquaintance/Relative	-.08	.49	NS	.52	.38	NS	2.25*	.89	9.51*
Intimate Partner	-.28	.51	NS	.07	.44	NS	1.61	.85	NS
Risk-taking Behavior	-1.70*	.35	0.18	-.40	.30	NS	-.91	.54	NS
Questions about Moral Character	-.13	.36	NS	-.29	.30	NS	-1.14*	.47	0.32
Physical Resistance	-1.16*	.37	0.32	-.11	.33	NS	.23	.47	NS
Reported Within One Hour	.53	.40	NS	.03	.31	NS	1.24*	.62	3.46
<u>Suspect Characteristics</u>									
Race (1 = white)	-.16	.49	NS	-.08	.63	NS	.77	.70	NS
Age	.02	.02	NS	.01	.01	NS	.06*	.03	1.06
<u>Case Characteristics</u>									
Victim Injury	.32	.43	NS	.20	.36	NS	2.02*	.71	7.52
Suspect Used Gun or Knife	.29	.53	NS	.85*	.39	2.35	1.72*	.84	5.59
Physical Evidence	1.49*	.36	4.44	.51*	.30	NS	.29	.49	NS
Witness	.34	.32	NS	.08	.28	NS	.50	.51	NS

Table 2.8, continued

	KANSAS CITY	PHILADELPHIA	MIAMI
N of Cases	248	254	127
-2 Log likelihood	251.731	328.336	130.204
Chi-Square	88.43	23.77	40.90
df	14	14	14
Probability	0.00	0.05	0.00

* $p \leq .05$

Table 3.1. Descriptive Statistics for Variables Included in Models of Offender/Victim Relationship

	<u>Stranger</u> (n=113)	<u>Acquaintance</u> (n=297)	<u>Partner</u> (n=116)
<u>Dependent Variable</u>	Mean	Mean	Mean
Prosecutor charged (charges filed=1)	.55	.53	.52
<u>Independent Variables</u>			
<u>Victim Characteristics</u>			
White victim (white=1)	.41	.31	.32
Victim's age	28.50/14.37 ^a	21.28/10.30 ^a	27.99/9.61 ^a
Risk-taking by victim (yes=1)	.48	.39	.33
Questions re moral character (yes=1)	.41	.29	.52
Victim physically resisted (yes=1)	.77	.69	.81
Incident reported in one hour (yes=1)	.68	.21	.36
<u>Suspect-Based Characteristics</u>			
White suspect (white=1)	.21	.24	.23
Suspect's age	30.41/8.87 ^a	32.49/12.92 ^a	31.75/8.41 ^a
Any prior felony convictions (yes=1)	.53	.33	.44
<u>Case-Based Characteristics</u>			
Gun/knife used (yes=1)	.30	.10	.20
Injury to victim (yes=1)	.39	.12	.47
Physical evidence available (yes=1)	.73	.51	.62
Witnesses to incident (yes=1)	.52	.47	.29
Philadelphia (Philadelphia=1)	.53	.52	.46

^a Standard deviation

Table 3.2. Logistic Regression Results for All Cases (Kansas City and Philadelphia Only)

	B	SE _B	exp(B)
<u>Victim Characteristics</u>			
White victim (white=1)	.36	.32	1.44
Victim's age	.00	.01	.99
Risk-taking by victim (yes=1)	-.95*	.21	.39
Questions about moral character (yes=1)	-.56*	.23	.74
Victim physically resisted (yes=1)	-.30	.22	.57
Incident reported in one hour (yes=1)	.40	.23	1.49
<u>Suspect Characteristics</u>			
White suspect (white=1)	-.18	.36	.84
Suspect's age	.01	.01	1.01
Any prior felony convictions (yes=1)	.42*	.21	1.52
<u>Case Characteristics</u>			
Gun/knife used (yes=1)	.54	.30	1.72
Injury to victim (yes=1)	.36	.25	1.43
Physical evidence available (yes=1)	.86*	.22	2.36
Witnesses to incident (yes=1)	.17	.20	1.18
Philadelphia (Philadelphia=1)	-.28	.21	.75
<u>Victim/Suspect Relationship</u>			
Strangers (ref.)	----	----	----
Acquaintances	.25	.29	1.29
Intimate Partners	-.01	.32	.99
Constant	-.30	.49	
Cox and Snell R ²		.15	
Nagelkerke R ²		.20	
Chi-Square/df		79.93/16*	
Number of Cases		500	

* p<.05

Table 3.3. Logistic Regression Results for Prosecutors' Decision to File Charges for cases involving Strangers, Acquaintances, and Intimates

	B	Stranger SE _B	exp(B)	B	Acquaintance SE _B	exp(B)	B	Partner SE _B	exp(B)
<u>Victim Characteristics</u>									
White victim (white=1)	1.49*	.75	4.47	-.11	.46	.89	.79	1.08	2.20
Victim's age	.02	.02	1.02	.00	.01	.99	.02	.04	1.02
Risk-taking by victim (yes=1)	-.27	.58	.76	-.66*	.29	.52	-1.93*	.58	.14
Questions about moral character (yes=1)	-.47	.62	.62	-.71*	.30	.49	.72	.52	1.91
Victim physically resisted (yes=1)	-.08	.62	1.07	-.40	.30	.67	-1.44*	.66	.24
Incident reported in one hour (yes=1)	.88	.57	2.41	.11	.33	1.11	.97	.52	2.65
<u>Suspect Characteristics</u>									
White suspect (white=1)	.24	.82	1.27	.08	.50	1.08	-1.41	1.12	.24
Suspect's age	.02	.03	1.02	.01	.01	1.01	.00	.04	1.00
Any prior felony convictions (yes=1)	-.17	.56	.84	.59*	.29	1.80	.30	.49	1.34
<u>Case Characteristics</u>									
Gun/knife used (yes=1)	1.72*	.65	5.62	.24	.47	1.27	-.29	.64	.75
Injury to victim (yes=1)	.51	.59	1.67	-.10	.41	.90	1.01*	.53	2.76
Physical evidence available (yes=1)	2.07*	.66	7.90	.62*	.29	1.85	1.33*	.51	3.77
Witnesses to incident (yes=1)	.22	.54	1.24	.13	.26	1.14	.30	.51	1.35
Philadelphia (Philadelphia=1)	-.74	.58	.48	-.06	.29	.94	-.80	.53	.45
Constant	-3.57	1.53	----	.02	.51	----	-.64	1.34	.53
Cox and Snell R ²		.34			.11			.32	
Nagelkerke R ²		.47			.14			.42	
Chi-Square/df		46.73/14*			31.77/14*			43.38/14*	
Number of Cases		109			277			114	

*p<.05

Table 4.1. Disposition of Sexual Battery Cases in Miami, 1997

	%	N
Case Disposition		
Charges Rejected By Prosecutor	41.4	58
Charges Filed But Later Dismissed	11.4	16
Defendant Convicted by Plea or Trial	45.7	64
Defendant Not Convicted	1.4	2
Most Serious Charge at Arrest		
Armed Sexual Battery	12.1	17
Sexual Battery	52.1	73
Sexual Battery on a Minor	10.7	15
Other Sex Offense	24.3	34
Non-sex Offense	0.7	1
Most Serious Charge Filed by Prosecutor		
Armed Sexual Battery	6.4	9
Sexual Battery	18.6	26
Sexual Battery on a Minor	6.5	9
Other Sex Offense	19.3	27
Non-sex Offense	7.9	11
Not Charged	41.4	58

Table 4.2. Prosecutorial Justifications of Case Rejection

Type of Justification	Number of Cases ^a
Discrepant Accounts	
<ul style="list-style-type: none"> • Inconsistencies in victim's accounts or between victim's and suspects' accounts 	13
<ul style="list-style-type: none"> • Using typifications of rape relevant behavior 	
<ul style="list-style-type: none"> • Typifications of rape scenarios 	4
<ul style="list-style-type: none"> • Typifications of rape scenarios and inferences about the victim based on this 	5
<ul style="list-style-type: none"> • Typifications of rape reporting 	2
Ulterior Motives	7
Other Reasons	
<ul style="list-style-type: none"> • Victim failed to appear or could not be located 	15
<ul style="list-style-type: none"> • Victim would not cooperate or asked that case be dropped 	10
<ul style="list-style-type: none"> • Victim recanted 	5
Unable to Classify	4

^aAlthough 58 of the 140 cases were rejected at screening, the number of cases does not add up to 58 because some of the cases were placed in more than one category.

Table 4.3. Case Outcomes and Case Characteristics for Sexual Battery Cases: Cases Rejected/Dismissed and Cases Prosecuted

	Charges Rejected or Dismissed						Case Fully Prosecuted	
	All Rejections & Dismissals		Rejected-Victim Credibility or Motives ^a		Rejected-Lack of Cooperation or Recanted ^b			
	%	N	%	N	%	N		
Victim Characteristics								
Race								
Black	58.1	43	43.5	10	61.3	19	47.0	31
White	31.1	23	43.5	10	25.8	8	45.5	30
Hispanic/Other	10.9	8	12.9	3	12.9	4	7.6	5
Age (mean)	22.4		25.6		23.3		21.1	
13 to 16 years old	37.0	27	27.3	6	25.8	8	43.9	29
Evidence of risk-taking behavior^c (% yes)	33.8	25	39.1	9	32.3	10	21.2	14
Questions about moral character^d (% yes)	50.0	37	43.5	10	51.6	16	30.3	20
Relationship to the suspect								
Stranger	20.5	15	0.0	0	25.8	8	4.5	3
Acquaintance	32.9	24	43.5	10	32.3	10	30.3	20
Relative	13.7	10	21.7	5	12.9	4	27.3	18
Intimate Partner	32.9	24	34.8	8	29.0	9	37.9	25
Prior sexual relationship w/ suspect (%yes)	31.1	23	34.8	8	29.0	9	33.3	22

	Charges Rejected or Dismissed						Case Fully Prosecuted	
	All Rejections & Dismissals		Rejected-Victim Credibility or Motives ^a		Rejected-Lack of Cooperation or Recanted ^b			
	%	N	%	N	%	N	%	N
Suspect Characteristics								
Race								
Black	64.9	48	56.5	13	64.5	20	48.5	32
White	18.9	14	30.4	7	19.4	6	25.8	17
Hispanic/Other	16.2	12	13.0	3	16.1	5	25.8	17
Age (mean)	27.7		30.2		27.9		30.8	
Case & Incident Characteristics								
Most serious chg. at arrest = sexual battery	77.0	57	78.3	18	87.1	27	72.7	48
Offender used a gun or knife (%yes)	12.2	9	4.3	1	16.1	5	16.7	11
Victim injured (% yes)	24.3	18	26.1	6	25.8	8	34.8	23
Physical evidence available (% yes)	60.8	45	52.2	12	67.7	21	51.5	34
Witness to incident (% yes)	27.4	20	26.1	6	19.4	6	38.1	24
Incident reported within one hour (% yes)	25.0	18	26.1	6	22.6	7	27.7	18
Victim physically resisted suspect (% yes)	58.1	43	56.5	13	51.6	16	57.6	38
Suspect claims victim consented (% yes)	32.4	24	26.1	6	41.9	13	31.8	21
Suspect claims incident fabricated (% yes)	24.3	18	21.7	5	16.1	5	24.2	16

	Charges Rejected or Dismissed						Case Fully Prosecuted	
	All Rejections & Dismissals		Rejected—Victim Credibility or Motives ^a		Rejected—Lack of Cooperation or Recanted ^b			
Location where assault occurred								
Victim's residence	51.4	38	69.6	16	51.6	16	45.5	30
Suspect's residence	17.6	13	13.0	3	19.4	6	18.2	12
Somewhere else	31.0	19	17.4	4	29.0	9	36.4	24
At least one aggravating circumstance ^c	35.1	26	34.8	8	38.7	12	43.9	29

^aIn these cases the justification for rejecting or dismissing the charges was based on discrepant accounts or ulterior motives (see Table 2).

^bIn these cases the justification for rejecting or dismissing the charges was either that the victim failed to appear or could not be located, the victim asked that the case be dropped, or the victim recanted (see Table 2).

^cThis variable was coded 1 if the police report contained any reference to the following types of risk-taking behavior by the complainant: walking alone late at night; hitch-hiking; accompanying the offender to his residence; inviting the offender to complainant's residence; being in a bar alone; being in an area where drugs are known to be sold; alcohol use at the time of the incident; or drug use at the time of the incident.

^dThis variable was coded 1 if the police report included any information about the complaint's prior sexual activities with someone other than the offender; pattern of alcohol use; pattern of drug use; work history in a disreputable situation (e.g., go-go dancer, massage parlor); criminal record; out of wedlock pregnancy or birth; or work as a prostitute.

^eOne of the following aggravating circumstances was present: the victim and suspect were strangers, there were multiple offenders, the suspect used a gun or knife, or the victim suffered some type of collateral injury.

Table 4.4. The Effect of Victim, Suspect, and Case Characteristics on the Decision To Prosecute: Miami, 1997

	B	SE	exp(B)
Victim Characteristics			
Race = White	.30	.55	1.34
Age	-.11*	.04	0.90
Risk-taking behavior	-1.22*	.57	0.30
Questions about moral character	-1.17*	.48	0.31
Relationship to Suspect^a			
Stranger (reference)			
Acquaintance/Relative	2.28*	1.02	9.80
Intimate Partner	1.98*	.96	7.28
Suspect Characteristics			
Race = White	.76	.68	2.14
Age	.05	.03	1.05
Case & Incident Characteristics			
Suspect used a gun or knife	1.69*	.82	5.40
Victim injured	1.89*	.70	6.62
Physical evidence available	.00	.48	1.00
Witness to incident	.78	.50	2.19
Incident reported within one hour	.61	.56	1.83
Victim physically resisted suspect	-.22	.47	0.80
Constant	-1.61	1.33	
Nagelkerke R²	.40		
N of Cases	127		

* P ≤ .05

Figure 2.1: Sexual Assault Case Outcomes

Pooled Data: Kansas City, Philadelphia and Miami

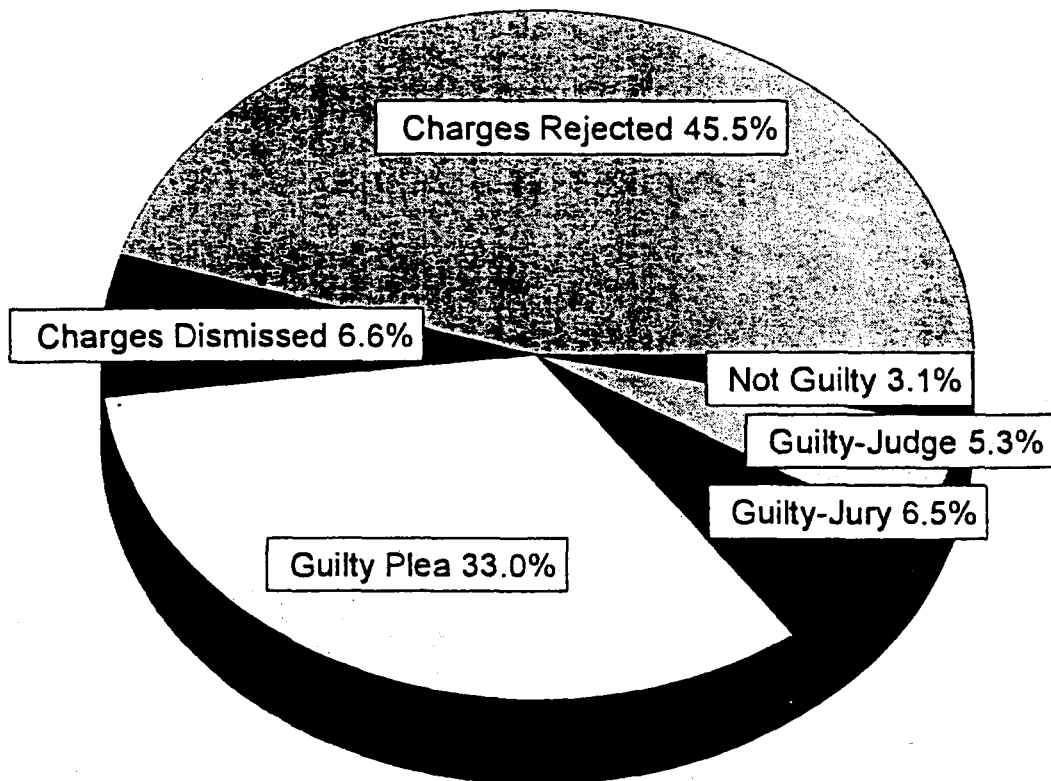


Figure 3.1

Predicted Probabilities: Sexual Assaults Involving Strangers

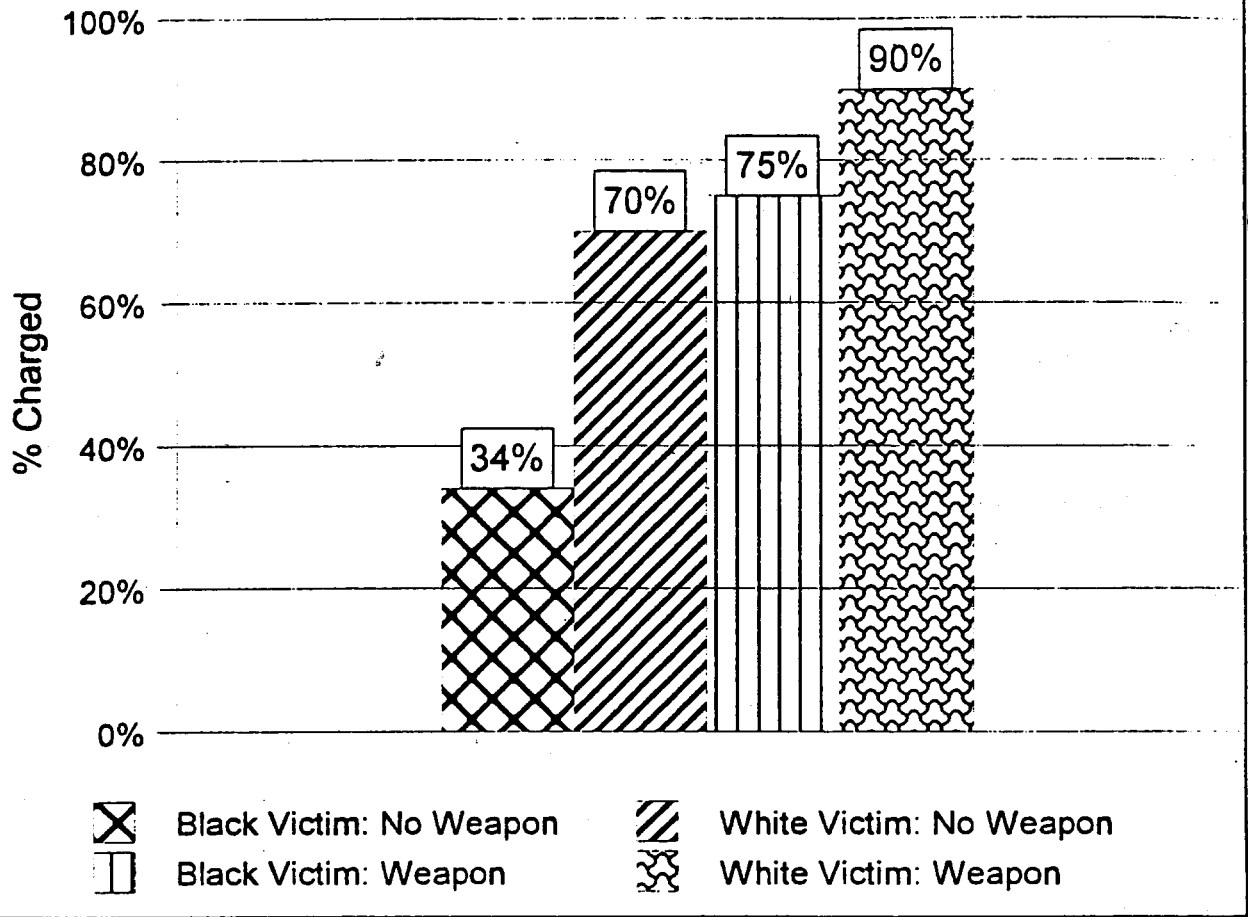
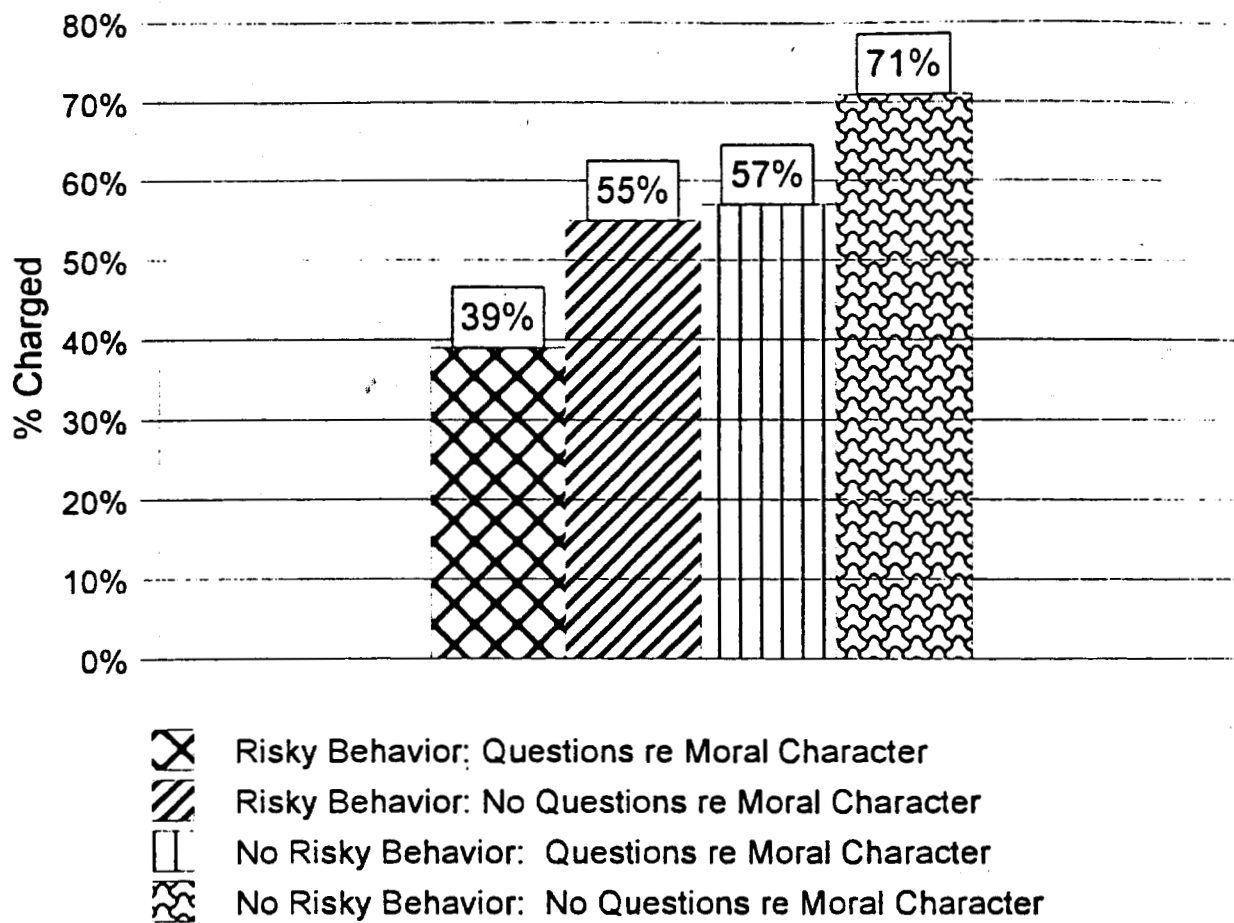


Figure 3.2

Predicted Probabilities: Sexual Assaults Involving Acquaintances/Relatives



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