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The Effect of Prior Consensual Sex between the Victim and Offender on the
Prosecutor's Decision to File Charges in Sexual Assault Cases

A thesis
presented to
the faculty of the Department Criminal Justice and Criminology
East Tennessee State University

In partial fulfillment
of the requirements for the degree
Master of Arts in Criminal Justice and Criminology

by
Kimberly B. Hollifield

May 2003

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ABSTRACT

The Effect of Prior Consensual Sex between the Victim and Offender on the
Prosecutor's Decision to File Charges in Sexual Assault Cases

by

Kimberly B. Hollifield

Research has shown that both legal and extra-legal factors are used by the prosecutor in a sexual assault case when making the decision to file charges in the case. However, no study on sexual assault prosecutorial discretion, at this time, has examined the effect of prior consensual sex between the victim and the offender and the effect that it has on the prosecutor's decision to file charges. Using data from a National Institute of Justice Study on sexual assault case processing, this study tests whether evidence of prior consensual sex between the victim and the offender plays a role in the prosecutor's decision to file charges in sexual assault cases. This study also examines the effect of the interaction between extra-legal factors and prior consensual sex between the victim and the offender.

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CHAPTER 1

INTRODUCTION

The justice system places a great deal of trust and responsibility in the hands of the prosecutor. The prosecutor has the power to file charges, plea bargain, and/or sentence a person suspected of criminal wrongdoings (Bryden & Lengnick, 1997; Kerstetter, 1990; Misner, 1996; Stanko, 1982). These responsibilities have made the prosecutor the most powerful office in the criminal justice system Misner (1996). Moreover, the prosecutor is granted a large amount of discretion by the criminal justice system. With the decision to file charges or not in a criminal case, the prosecutor has the power to judiciously select what cases are worthy of further pursuit by the criminal justice system. This essentially unbridled discretion has earned the prosecutor along with the police the title of the “gatekeeper of the criminal justice system” (Kerstetter, 1990, p. 268-282).

Social scientists and legal scholars have examined prosecutorial discretion to better understand the factors that contribute to the prosecutor’s decision to file charges. This pursuit by academicians has led to theoretical development in the area of prosecutorial discretion and has helped to better inform policymakers as to what factors influence the prosecutor’s decision to file charges. Some studies of prosecutorial discretion have revealed that the prosecutor seeks to avoid uncertainty when prosecuting cases and thus they may drop the charges in cases perceived as “unwinnable” (Albonetti 1986, 1987). In sexual assault cases, for example, extra-legal factors such as the victim’s credibility, reputation, history of

sexual involvement, and any risk-taking behaviors on the part of the victim immediately preceding the assault may be important to the prosecutor because they have the potential of making a case “unwinnable” (Frohmann, 1991). The essential issue facing the prosecutor in such cases is whether the victim can be assigned “blame” for her part in the assault by the judge or jury.

The relationship between the victim and the offender has also been used as a determining factor in the prosecutors’ decision to file charges in sexual assault cases (Bryden & Lengnick, 1997; Estrich, 1987; Frazier & Haney, 1996; Horney & Spohn, 1994; Kerstetter, 1990; Kingsnorth et al., 1999; LaFree, 1989; Spohn & Holleran, 2001; Spohn & Spears, 1996; Walsh, 1987). Studies have shown that cases where the offender and victim are strangers at the time of the sexual assault are taken more seriously by the system.¹ This pattern of findings has led one scholar to consider stranger rapes “real” rapes; conversely victims who are acquainted with the offender at the time of the offense are not viewed as legitimate by the criminal justice system (Estrich).

This study primarily focused on one extra-legal factor and its effect on the prosecutor’s decision to file charges in sexual assault cases: the prevalence of prior consensual sex between the victim and the offender. I believe that evidence of prior consensual sex between the victim and the offender will adversely affect the prosecutor’s decision to file charges; that is, prior consensual sex between the offender and the victim will result in a significantly lower likelihood of charges being filed by the prosecutor in sexual assault cases. The data for this study were taken from a study on sexual assault case processing funded by the National

Institute of Justice. The data came from two jurisdictions: Kansas City, Missouri, and Philadelphia.

Victim Characteristics in Sexual Assault Cases

Researchers have managed to link victim characteristics to the prosecutor's decision to file charges in sexual assault cases. Studies have shown; for example, that the prosecutor may call into question the victim's character and credibility (Amir, 1971; Frazier & Haney, 1996; Frohmann, 1991; Horney & Spohn, 1996; Kerstetter, 1990; Randall & Rose, 1981; Reskin & Visher, 1986; Spohn & Holleran, 2001). The victim's character plays a significant role in how the prosecutor scrutinizes the case. Victim's who have a promiscuous reputation or go beyond the given boundaries of gender-assigned roles by engaging in risk-taking behaviors may be adversely viewed by the prosecutor; for example, there may be speculation that these victims "asked for it" or precipitated the sexual assault (Amir; Kerstetter, LaFree, 1981, 1989; Stanko, 1985). Based on the belief of victim precipitation, it is thought by some that the victim should not be granted full protection under the law. In the words of one experienced sexual assault crimes prosecutor,

Good victims have jobs (like stockbroker or accountant) or impeccable status (like a policeman's wife); are well-educated and articulate, and are, above all, presentable to a jury: attractive-but not too attractive, demure-but not pushovers. They should be upset-but in good taste-not so upset that they become hysterical (Bryden & Lengnick, 1997).

The prosecutor also looks for weaknesses and discrepancies in the victim's description of the sexual assault as a way of determining the victim's credibility (Frohmann). The prosecutor looks for discrepancies that may be used as a reason for rejecting the case and discrediting the victim. This process involves finding inconsistencies between the victim's account of the assault given to the police and the account they give to the prosecutor. The prosecutor considers the interaction between the parties after the incident, possible ulterior motives of the victim, and the emotional and psychological behavior of the victim². Another factor that arguably contributes to the victim's credibility is the amount of time that elapsed between the sexual assault and the victim's reporting of the incident to the police. Questions of the victim's credibility arise with time, i.e. the longer the time period between the assault and the report made to the police the more questions that are raised about the victim's credibility (Frazier & Haney, 1996; Frohmann; LaFree, 1989; Randall & Rose, 1981; Spohn & Holleran, 2001; Spohn & Spears, 1996). The victim's lifestyle also has the potential to compromise their credibility: if a victim was known to go out to bars alone, hitchhike, use drugs (Horney & Spohn, 1996; Kerstetter, 1990; LaFree, 1981,1989; Spohn & Holleran; Spohn & Spears, 1996), or was employed by a morally questionable job³ (Spohn & Holleran) their credibility was questionable.

The prosecutor also utilizes information about the victim's age in the decision making process (Horney & Spohn, 1996; Kerstetter, 1990; Lafree, 1989; Spohn & Holleran, 2001; Spohn & Spears, 1996). Studies that have examined the effect of the victim's age on the prosecutorial decision to file charges have

produced varied results. Some studies have revealed that as the age of the victim increases so does the attention given to the case by the criminal justice system (LaFree 1980; 1989). Younger rape victims have been found to receive more protection by the criminal justice system in that their offenders were charged more harshly than offenders of older victims (Kerstetter, 1990). Still, one study found no statistically significant differences between aggravated rapes and simple rapes with respect to the age of the victim (Horney & Spohn). Other studies have found no relationship between the victim's age and the prosecutor's decision to file charges (Spohn & Spears, 1996; Spohn & Holleran).

Other extra-legal factors used by the prosecutor are the race of the victim and the race of the offender (Brownmiller, 1975; Horney & Spohn, 1996; LaFree, 1980, 1989; LaFree, Reskin,& Visher 1985; Spohn & Holleran, 2001; Spohn & Spears, 1996 Walsh, 1987). LaFree (1980, 1989) found that jurors were less likely to believe a defendant was guilty if his victim was black. He also found that prosecutors are more likely to file felony charges if the victim was a white female. Walsh (1987) found that white victims' cases involved harsher sentences for their offenders. Spohn and Spears (1996) had a surprising finding in that there was a greater likelihood for prosecutors to drop charges in cases involving black offenders and white victims.

Albonetti's Theory of Uncertainty Avoidance

Albonetti (1986, 1987) proposed a theory of uncertainty avoidance to help explain the role of prosecutorial discretion and the factors that contribute to

the prosecutor filing charges in a case. The main premise of the uncertainty avoidance theory is that prosecutor's will seek to reduce uncertainty in their caseloads. The purpose for avoiding uncertainty is to achieve desirable outcomes, i.e. to secure convictions. By securing more successful convictions over acquittals, the prosecutor is better able to gain career success, prestige and respect from his/her fellow peers in the criminal justice system (Albonetti, 1986). Albonetti explained that there was a need to examine those initial factors because they had previously been overlooked and are important in understanding the decision making process of the prosecutor. Her studies are also an extension to research on organizational theories of uncertainty that are utilized in decision making from many fields of study. These organizational theories follow rational choice models. Rational choice models suggest that in order for a decision to be fully rational then knowledge of all possible alternatives must be present. Because criminal justice officials do not know all the possible alternatives when making a decision, they rely on results from the past. When applied to the judicial system, the assumption is that the prosecutor will make decisions based upon past results that have led to successful results; i.e. securing a conviction.

Albonetti conducted two studies (1986, 1987) to test the uncertainty avoidance theory. Her studies stem from earlier research on prosecutorial discretion. Earlier research failed to address those items that influence the initial decision of the prosecutor to file charges. In the first study (1986), she examined the decision to continue felony prosecution following a grand jury indictment. She used data on 4,238 felony cases from 1974 from the

superior court of Washington, DC. This study supported the uncertainty avoidance theory by showing that prosecution decreased in cases where only one or no witness was available. This finding supports the uncertainty avoidance theory because the lack of credible witnesses leads to an increase in uncertainty on the part of the prosecutor.

In Albonetti's second study (1987), she analyzed the use of prosecutorial discretion in the decision to go forward with a case. She hypothesized that when there was information indicating increased uncertainty in securing a conviction that the prosecutor would be less likely to proceed with the case. She also proposed the idea that the prosecutor will tend to avoid or remove uncertainty in their initial decision to prosecute.

Albonetti found that the probability of conviction increased in the presence of corroborative or physical evidence; there was a lower likelihood of prosecution if there were no witnesses to the assault other than the victim, if the offender was arrested at the scene, and if the victim provoked the offense. The likelihood of prosecution increased, however, if: (1) the case involved strangers, (2) there was a weapon used during the assault, and (3) the offender had a prior record of felony convictions. These results led Albonetti to conclude that the prosecutor's decisions follow the uncertainty avoidance theory. Ultimately, the prosecutor's decision-making process is influenced by the desire to protect and enhance their career. She suggests that future research in this area should elaborate on the link between career advancement, the prosecutor's attempt to manage scarce resources, and the exercise of discretion.

The Present Study

This study tested whether evidence of prior consensual sex between the victim and the offender plays a role in the prosecutor's decision to file charges in adult sexual assault cases. Prior research has extensively examined the effect of victim/offender relationship on the decision to file charges in sexual assault cases; at this time, however, there is no study that has examined whether prior consensual sex between the victim and the offender adversely affects the prosecutor's decision to file charges in sexual assault cases. I hypothesized that cases that involve prior consensual sex between the victim and offender, in line with Albonetti's (1986, 1987) uncertainty avoidance theory, would result in a significant decrease in the likelihood of the prosecutor filing charges. I also examined the effect of the interaction between victim risk-taking behaviors at the time of the incident and prior consensual sex between the victim and the offender.

In Chapter 2, I reviewed studies that have examined prosecutorial discretion and theoretical perspectives related to sexual assault cases. In Chapter 3, I presented the proposed methodology for this study, including the hypotheses to be tested. In Chapter 4, I presented the results of the analysis. In Chapter 5, I presented the conclusions of this study and made recommendations for future research in this area. The manuscript begins with a review of relevant prior research.

CHAPTER 2

REVIEW OF PRIOR RESEARCH

This study tested whether evidence of prior consensual sex between the victim and the offender affects the prosecutor's decision to file charges in sexual assault cases. In this chapter I reviewed previous research on prosecutorial discretion with an emphasis on studies that focus on the prosecution of sexual assault cases. As I presented in Chapter 1, a number of theoretical perspectives attempt to explain prosecutorial discretion in sexual assault cases. The various theoretical perspectives attempt to frame the processing of sexual assault cases in the criminal justice system. The main objective of this chapter was to bring together a plethora of previous research on the issue of prosecutorial discretion while concentrating on sexual assault case processing⁴. I begin by examining legal factors that have been found to contribute to prosecutorial decision making in sexual assault cases.

Prosecutorial Discretion in Sexual Assault Cases

A great deal of research has amassed concerning prosecutorial discretion in sexual assault cases. Overall, legal and extra-legal factors have been identified as contributing to the prosecutor's decision to file charges. Some of the legal factors contributing to the decision to file charges include: (1) the available physical evidence (Horney & Spohn, 1996; Kerstetter, 1990; Reskin & Visher, 1986; Spears & Spohn, 1996; Spohn & Holleran, 2001; Spohn & Spears, 1996),

(2) the number of offenders (Horney & Spohn), (3) the prior criminal record of the offender (Horney & Spohn; Spohn & Holleran), (4) the number of witnesses (Frazier & Haney, 1996; Spears & Spohn; Spohn & Holleran), (5) the presence of a weapon (Frazier & Haney; Horney & Spohn; Kerstetter; LaFree, 1981; Randall & Rose, 1981; Spears & Spohn, 1996; Spohn & Holleran), (6) the injuries sustained by the victim (Horney & Spohn; Kerstetter; Randall & Rose, 1981; Spears & Spohn, 1996; Spohn & Holleran), and (7) the victim's cooperation with the authorities (Bryden & Lengnick, 1997; Kerstetter; Kingsnorth, Lopez, Wentworth, & Cummings 1998; LaFree, 1981; Randall & Rose, 1981).

Albonetti (1987) suggests that prosecutors consider three types of evidence when deciding to file charges: (1) exculpatory evidence, (2) corroborative evidence, and (3) physical evidence. She found that the presence of physical evidence makes for a strong case and therefore increases the likelihood that a prosecutor will file charges. Types of physical evidence that are essential to a sexual assault case may include presence of semen, blood, clothing, bedding, or hair (Horney & Spohn, 1996; Spohn & Holleran, 2001).

Another important case characteristic is the severity of the assault. Several studies have created a combination of features to make up this variable. The majority includes presence of a weapon (Frazier & Haney, 1996; Horney & Spohn, 1996; Kerstetter, 1990; LaFree, 1981; Randall & Rose, 1981; Spears & Spohn, 1996; Spohn & Holleran, 2001), number of offenders (Horney & Spohn; Kingsnorth et al, 1998), and injury to the victim (Horney & Spohn; Kerstetter; Randall & Rose, 1981; Spears & Spohn, 1996; Spohn & Holleran). These studies

have shown that these case characteristics tend to influence both the decision to file, as well as, the severity of the punishment sought. While legal factors such as these have a significant impact on the prosecutor's decision to file charges there are also extra-legal factors that are utilized. The studies I examine included controls for legal factors; however, this study focuses on the extra-legal factors that influence the decision to file charges by the prosecutor in a sexual assault case. More specifically, this study examines one extra-legal factor, i.e. prior consensual sex between the victim and the offender, and the possible interaction of other extra-legal factors known to affect the prosecutor's decision to file charges.

Prior Consensual Sex and its Effect on the Prosecutor's Decision to File Charges

At the present time no study has specifically examined the effect that prior consensual sex between the victim and the offender has on the prosecutor's decision to file charges. However, in a study by Meyers and Torney (1981), they found that in the jurisdiction where they collected their data the statutes did not allow a woman who has had consensual sexual intercourse with a man during the previous 12 months to charge a man with first-degree rape. They also found that victims who have had a relationship with their offender (which included any familiarity with the offender), had the least chance of having their assault accepted for a felony charge by the prosecutor. While the findings from this study cannot be generalized to other jurisdictions, it emphasizes the need to examine the effects, if any, that prior consensual sex between the victim and the

offender has on the prosecutor's decision to file charges in other jurisdictions. I now turn my focus to other extra-legal factors that may influence the decision to file charges by the prosecutor in a sexual assault case. I begin by examining victim characteristics.

Victim Characteristics in Sexual Assault Case Prosecution

Researchers have found that the prosecutor's decision to file charges in sexual assault cases is influenced by victim characteristics. Prosecutors use demographic information such as victim's race and age. They also examine risk-taking behaviors on the part of the victim during the time of the criminal incident. The prosecutor also considers victim moral characteristics, as well as blame and believability factors of the victim. Finally, the prosecutor may take into account the relationship between the victim and the accused when deciding to file charges.

Race of the Victim. An extra-legal factor that has been found to influence the prosecutor's decision to file charges in a sexual assault case is the race of the victim. Findings from the majority of studies that have examined the effect of the victim's race on the decision to file charges have revealed that white victims are deemed as more valuable than minority victims (Amir, 1971; Brownmiller, 1975; LaFree, 1980, 1989; Spears & Spohn, 1996; Spohn & Holleran, 2001; Walsh, 1987). Sexual assault cases involving white victims, therefore, tend to have a higher likelihood of securing convictions than do cases involving minority victims. Offenders who sexually assault white women

generally receive harsher penalties in the form of longer prison sentences than offenders that sexually assault minority women.

Amir's (1971) study from Philadelphia revealed that white victims were more likely than black victims to have precipitated their sexual assault. He also found that white victims were more likely to be raped by an acquaintance than were black victims. Brownmiller's (1975) early study of rape reveals that cases that involve white victims and an offender from the minority status are seen as especially heinous. She supports this finding with a historical count of cases in which minorities who were accused of rape against a white victim have faced harsher punishments than any other victim/offender dyads.

Studies by LaFree (1980, 1989) have examined the race of the victim and the race of the offender and the effect it has on judicial decision-making. LaFree (1980) found that sexual assault cases that involved a white woman and a black offender resulted in harsher punishments than the punishment given to other types of offenders. This study also found that the race/ethnicity of the victim/offender dyad was more important in influencing processing decisions than examining the race of either the victim or the offender alone. Moreover, his results suggested that cases involving white offenders and white victims are not handled as seriously as those involving black offenders and white victims, but more serious than cases involving black offenders and black victims.

Walsh (1987) found similar results in his study, i.e. he found that cases involving white victims carried with them harsher sentences for their offenders than those cases involving black victims. He also found that regardless of the

relationship between the victim and the offender, black offenders who assault white victims receive more severe punishments than do black offenders who assault black victims. His findings reveal that the mean sentence lengths for blacks who assault whites were significantly different from blacks who assault blacks (Walsh).

LaFree (1989) examined jurors' responses to rape victims. He found that like the prosecutor, they also used the extra-legal factor of victim's race when making a decision on the case. In those cases involving a black victim, jurors were less likely to believe that the defendant was guilty. The majority of the jurors for this study were middle-class white women. Therefore, LaFree explains that the jurors may have been influenced by stereotypes of black women that they had. He found the following to be a prevailing stereotype supported in previous criminology literature (Walsh): "Black women are more likely to consent to sex or are more sexually experienced and hence less harmed by the assault" (LaFree, 1989, p. 220). In this study, LaFree also examines the way race affects sexual assault case processing decisions. He found that prosecutors are more likely to file felony charges if the victim was a white female. Paralleling Walsh's (1987) findings he found that the victim/offender dyad had the most influence on processing decisions.

A more recent study by Spohn and Spears (1996) found varied results. This study found that the likelihood for prosecutors to drop charges in cases involving black offenders and white victims were greater than other victim/offender race combinations. However, sentence lengths that were imposed

upon black offenders who assaulted white victims were longer than those for other victim/offender race combinations.

In a study by Spohn and Holleran (2001), they found that if the victim was white and the offender was a stranger, then the prosecutor was more likely to file charges than if the victim was black and the offender was a stranger. In fact, prosecutors were 4.5 times more likely to file charges if the victim was white. They also found that while most sexual assault cases were committed by offenders of the same racial makeup as their victim, those cases involving strangers had interracial parties involved in a higher percentage than acquaintance or intimate sexual assault cases. The interracial victim/offender dyad present in those stranger cases was a black offender and a white victim.

The race of the victim is only one of the extra-legal factors that have been used by the prosecutor when deciding when to file charges. Another extra-legal factor that has been examined is the age of the victim. There are inconsistent findings on the affect that the victim's age has on the prosecutor's decision to file charges.

The Victim's Age. The age of the victim is an extra-legal factor that prosecutors take into consideration when deciding to file charges. While there is no one study in this area of research that examines the effect that the age of the victim plays on the decision to file charges, several studies control for this variable (Kerstetter, 1990; Kingsnorth et al.; LaFree, 1989; Spears & Spohn, 1996, 1997). LaFree's (1989) study found that as the victim's age increased so

did the likelihood of charges being filed; he stated that, "...Processing agents in Indianapolis reacted with more concern for older than for younger rape victims" (p. 103). Kerstetter, on the other hand, found that younger victims were given more protection by the law than any other age group; offenders accused of sexually assaulting young victims were charged more harshly than offenders accused of sexual assault against older victims. Spears and Spohn (1996) found results similar to LaFree's. The authors found that cases involving children were less likely to result in the filing of charges than those cases involving adults. Similar results were found in a second study by Spears and Spohn (1997) in that victims that were teenagers or adults had a greater likelihood of having charges filed for their cases if there were no questions surrounding their character. In cases involving children, the prosecutor is more likely to file charges in the cases that involve older children victims. Kingsnorth et al. (1999) found that younger victims have a greater likelihood of having their cases fully prosecuted.

These studies that have examined age and the role it has in the prosecutor's decision-making process remain inconsistent. The inconsistencies that are found by examining several studies that include the victim's age in their analyses seems to suggest that victim's age alone is not that great of an influencing factor. However, when combined with other factors it produces an effect in the prosecutor's decision to file charges.

Victim Risk-taking Behavior. Another extra-legal factor that is used by the prosecutor when deciding to file charges in sexual assault cases is evidence

that the victim was involved in “risk-taking” behavior immediately preceding the sexual assault. Research has shown that if the victim was involved in risk-taking behaviors prior to the assault that she is viewed as having provoked the incident; her account of the assault, therefore, is taken as less credible. The lack of credibility on the part of the victim introduces uncertainty into the case which, therefore, deems it as an unwinnable case. Based on these apprehensions, the prosecutor is less likely to file charges in those cases involving risk-taking behaviors on the part of the victim. Studies that have examined victim risk-taking behaviors have included the following indicators: (1) whether the victim was hitchhiking prior to the assault, (2) victim had a history of drug/alcohol use/abuse prior to the assault, (3) victim was walking alone at night prior to the assault, (4) victim was in a bar alone prior to the assault, and/or (5) victim willingly accompanied the suspect to his residence or invited the suspect to her residence prior to the assault (Amir, 1971; Estrich, 1987; LaFree, 1980; LaFree et al., 1985; Spohn & Holleran, 2001; Spears & Spohn, 1996, 1997). The presence of any of these factors on the part of the victim creates the opportunity for victim blaming to occur not only by society, but also by the legal system that handles the criminal act of sexual assault.

Some of the early scholars to study victims and the idea of victim precipitation were Hans von Hentig and Benjamin Mendelsohn. Both Hentig and Mendelsohn examined the assumption of victim precipitation. However, Hentig’s thoughts on victim precipitation suggested that the victim’s involvement is

passive; where as, Mendelsohn's ideas suggested active involvement on the part of the victim (as cited in Doerner & Lab, 1998).

Hentig (as cited in Doerner & Lab, 1998), suggested that in order to understand the dynamics of a criminal act one must examine it in terms of the criminal-victim dyad. He explained that while the victim may contribute to the criminal act there are other factors that the victim has no control over. Examples of the characteristics that a victim has no control over could include physical, social, or psychological limitations that would prevent the ability to resist an offender.

Mendelsohn (as cited in Doerner & Lab, 1998), created a six-step classification system of victims. This classification system described the amount of blame that could be contributed to the victim for the incident occurring. This classification system included: (1) completely innocent victim, (2) victims with minor guilt or victims due to ignorance, (3) victim as guilty as the offender and voluntary victims, (4) victim more guilty than the offender, (5) most guilty victim, and (6) simulation or imaginary victim. Mendelsohn is also credited for coining the term "victimology".

Amir's (1971) study was also one of the first that focused on victim risk-taking behaviors. He asserted that a victim who was engaged in risk-taking behavior prior to the sexual assault provoked the incident. He called such assaults victim-precipitated:

The term victim precipitation applies to cases in risky situations marred with sexuality, especially when she uses what could be interpreted as

indecenty in language and gestures, or constitutes what could be taken as an invitation to sexual relations (Amir, p. 266).

Amir examined 646 forcible rape cases from Philadelphia. Relying on his own definition of victim-precipitated rapes, he found that of the 646, 122 (19%) were victim-precipitated rape cases. Amir found that white victims were more likely than black victims to have precipitated their sexual assault. He found a statistically significant relationship between the use of alcohol and victim-precipitated rape cases. Alcohol was present in 53% of the victim-precipitated rape cases versus 25% in the non-victim precipitated rape cases. He also found a statistically significant relationship between the victim having a “bad reputation” and the victim-precipitated rape cases. Females with a history of promiscuity violate tradition gender roles and are therefore stigmatized by “bad reputation”. Amir defined a victim that had a past history of promiscuous relationships as having a “bad reputation”. Finally, he found that the majority of victim-precipitated rape cases (71%) involved victims who were acquainted with their offender. Amir’s study was one of the pioneering studies that began to examine the victim’s behavior as a source of blame for the sexual assault. Other studies followed Amir’s lead by examining the effect of victim risk-taking behavior on the way in which criminal justice officials handle these cases.

LaFree (1980) examined victim risk-taking and the consequences it has for a victim as their case is processed through the criminal justice system. He examined the way a victim’s behavior affects jury verdicts. For this study he defined risk-taking behaviors as non-traditional behavior⁵. Nontraditional

behaviors are generally actions by the victim that go beyond the scope of traditional gender roles. Examples of non-traditional behavior for female could include, but is not limited to the following: (1) alcohol use, (2) drug use, (3) a promiscuous lifestyle, and (4) having illegitimate children (LaFree, 1980).

LaFree (1980) found that the majority of victims who had engaged in the above risk-taking behaviors were young (i.e., under 21 years old) and unmarried. Rape cases that involved victim risk-taking most often occurred between 8:30 pm and 6:30 am. These cases, however, failed to generate other important evidence to support the victim's account of the assault. Because many of these cases involving victim risk-taking lacked other forms of evidence, jurors often turned to the extra-legal factor of victim lifestyle and reputation to reach a verdict. Furthermore, those victims who were engaged in risk-taking prior to the sexual assault were viewed in a negative light by the jurors; the jurors were less likely to believe the victim's account of the assault in those cases that involved questions surrounding the victim's lifestyle and reputation. Finally, LaFree's analysis confirmed that victim's who engage in risk-taking or non-traditional behaviors are more likely to have their cases result in acquittals and in shorter sentence lengths for their offenders than those cases that involved victims without these behaviors present. Other studies have also included victim risk-taking in their analyses (Estrich, 1987; Spears & Spohn, 1996, 1997; Spohn & Holleran, 2001). The majority have found that evidence of victim risk-taking prior to the sexual assault negatively impacts the prosecutor's decision to file charges.

LaFree et al. (1985) also examined juror's perceptions of victim's behavior prior to the assault. Using post-trial interviews from 1978-1980 with 331 jurors from Marion County, Indiana, they compared the ways that jurors' believe that women should behave and the effect that this has on the verdict that they will submit based upon evidence of the victim's risk-taking behavior. The interviews consisted of questions about the juror's background, attitudes on sex-roles, attitudes on crime and rape, as well as, their specific reaction to both the victim and the defendant from the case they heard. LaFree and his colleagues found that jurors were influenced by the victim's previous behavior; they were less likely to believe that a defendant was guilty if there was evidence that the victim had had sex outside of marriage. Additionally, other factors that created doubt about the victim's credibility included evidence that: (1) the victim drank or used drugs prior to the assault or (2) the victim had been acquainted with the defendant prior to the assault. The jurors in this jurisdiction were also less likely to convict men who had raped black women.

Estrich (1987) discusses the negative impact that evidence of victim risk-taking behaviors can have on not only the prosecutor, but the jurors who hear the few cases that make it beyond the initial stages. She reviews Amir's (1971) work on victim precipitated rape, as well as, court cases *Young v. Commonwealth* and *Barker v. Commonwealth*, in order to show a historical timeline of how victim risk-taking behavior negatively impacts the victim's account of the sexual assault to criminal justice officials. Estrich contends that the criminal justice system

must quit blaming the victim and begin holding the offender responsible for his actions (even in cases where so-called victim risk-taking behavior is present).

Spears and Spohn (1996) included victim risk-taking behaviors in the analyses of their study on prosecutorial sexual assault charging decisions. They found that sexual assault cases involving evidence that the victim was involved in risk-taking behaviors prior to the assault resulted in a reduced likelihood of charges being filed by the prosecutor. Their study supports the earlier work of Estrich (1987), in that those victims that have evidence of risk-taking behaviors in their case file will not be considered “genuine victims” and therefore will not be granted the full protection of the law.

Spears and Spohn (1997) found that extra-legal victim characteristics, such as victim risk-taking, create uncertainty and a decreased likelihood of securing a conviction for the prosecutor. Because factors such as victim risk-taking create a decreased likelihood in securing a conviction, the prosecutor will use these factors when deciding whether to file charges. Prior research (Albonetti, 1986, 1987) suggests that these types of factors will decrease the likelihood of the prosecutor filing charges. They found that victim characteristics were the only factors that influenced the charging decision in the cases involving adolescent and adult victims.

Finally, Spohn and Holleran (2001) found that victim characteristics such as risk-taking behavior were confined to those cases involving acquaintances and intimates. The prosecutor was significantly less likely to file charges in acquaintances/relatives cases that had evidence that the victim was engaged in

risk-taking behavior prior to the incident. They also found that the cases that involved intimates and evidence of risk-taking behavior on the part of the victim had a significantly greater effect on the prosecutor's decision to file charges. They found that in sexual assaults involving acquaintances/relatives, those cases that involved risky behavior and no questions about the victim's moral character were 36% more likely to have charges filed than those cases involving risky behavior and questions about the victim's moral character. Cases that involved no risky behavior and no questions about the victim's moral character had the highest likelihood of having charges filed. In cases that involved intimate partners those that involved risky behavior and no injury to the victim had the least likelihood of charges being filed. Those cases involving no risky behavior and injury to the victim had the greatest likelihood of charges being filed (Spohn & Holleran, 2001, p. 674-675)

The evidence of victim risk-taking insinuates that a certain amount of blame can be placed upon the victim. There are other extra-legal factors that prosecutors have used when making the decision to file charge that also suggest that the victim is to blame or that the victim "precipitated" her assault. Information about the victim's character and moral characteristics has also been used in prosecutorial decision making.

Victim's Character and Moral Characteristics. Several studies have found that there is a link between the prosecutor's decision to file charges and evidence that raises questions about the victim's character and moral

characteristics. Studies support the claim that only certain victims are considered “genuine” and, therefore, worthy of the full protection of the law (Estrich, 1987; LaFree, 1989). Reskin and Visser (1986) have examined factors that play a role in the process of jury decision-making. They included an examination of factors such as victim’s character and moral characteristics and the effect they have on jury decision-making. This was a qualitative study that utilized data from sexual assault trials in Indiana between 1978 and 1980, through interviews and observations of jurors they found that the following information in regards to victim’s character and moral characteristics on their influence in jury decision-making: (1) Jurors were less likely to believe that a defendant was guilty in cases that involved victim-provocation or if there was evidence that the victim was of low moral character, (2) The influence of extralegal factors was confined to weak cases in which the defendant’s guilt was ambiguous because the prosecution did not present sufficient evidence. If there was sufficient hard evidence presented, jurors’ were less likely to use the extralegal factors to influence their decisions about the case.

Estrich’s (1987) work describes the distinctions that the criminal justice system makes when faced with cases of sexual assault. The importance of these distinctions are that only certain victims are considered to be a “genuine victim” and, therefore, handled in an appropriate manner by the system. Estrich explains that to the criminal justice system a “genuine victim” is a victim of a stranger rape, i.e. the victim of an acquaintance or intimate sexual assault case will not be considered a genuine victim. For the victim that does not fit this stereotype of a

“genuine victim”, she will suffer a second assault by the criminal justice system in the form of victim-blaming and the minimal likelihood of her offender receiving punishment.

LaFree (1989) defines the “genuine victim” as one that adheres to traditional gender-roles. Violation of traditional gender roles can be found in the victim’s behavior prior to the incident and/or in the victim’s lifestyle. LaFree explains that the violation of traditional gender roles in a victim’s behavior prior to the incident include victim risk-taking behaviors such as hitchhiking, walking alone at night, or going into a man’s apartment. Violation of traditional gender roles in the victim’s lifestyle may include evidence that the victim is sexually active outside of marriage, works in a disreputable occupation, or fails to dress modestly (LaFree, 1989, p. 51). Research has also linked the decrease in the likelihood of the prosecutor to file charges with evidence of negative victim character and poor moral standing on the part of the victim (Reskin & Visher 1986; Spears & Spohn, 1997; Spohn & Holleran, 2001).

Spears and Spohn (1997) conducted a study that examined the effect of evidence factors and victim characteristics on the decision to file charges in sexual assault cases. They hypothesized that the decision to file charges is related to the strength of the evidence in the case. They also hypothesized that victim characteristics will influence the prosecutor’s decision to file charges especially in those cases that are less serious. Finally, they examined the differences between the factors that affected case outcomes for those cases involving children versus those involving adult victims.

The data for this study came from a sample of all sexual offenses reported to the Detroit Police Department in 1989. The victim characteristics that they examined for this study were morals⁶, victim's risk-taking behavior prior to the incident, victim's age, the relationship between the victim and offender, victim's verbal response to the incident, victim's physical resistance to the assault, and the amount of time between the assault and the victim's report to the police. Their analyses found that there were no individual evidence factors that influenced the prosecutor's decision to file charges. In support of their hypothesis, they found that the prosecutor would be more likely to file charges in those cases that involved no questions about the victim's character, no risk-taking behavior prior to the incident, or if the victim was a teenager or adult. In those cases that involved adolescent/adult victims, as hypothesized, the prosecutor was more likely to file charges if there were no questions about the victim's moral character and if the victim was not engaged in risk-taking behavior prior to the assault.

I have presented two extra-legal factors, i.e. victim risk-taking behaviors and the victim's character and moral characteristics that have the potential to lead to victim-blaming on the part of the criminal justice system. There are many factors that could potentially lead to victim-blaming. Some studies look specifically at the concept of victim blaming and the components that operationalize this broad area.

Victim Blame and Believability Factors

Another area that has been considered by prosecutorial discretion researchers are questions surrounding victim blame and believability. If a victim's reputation or actions prior to the sexual assault are considered questionable, then, it is argued, there will be a lower probability of charges being filed. Studies have examined the role that questions surrounding victim blame and believability have on criminal justice officials' processing decisions. These studies have revealed that victims of sexual assault are often blamed for contributing to their assault and their account of the assault is often regarded with suspicion. The effect that victim blame and believability factors have on the decisions made about the case by the criminal justice system is also presented in these studies (Estrich, 1987; Kerstetter, 1990; Meyers & Torney, 1981; Reskin & Visher, 1986; Spears & Spohn, 1996; Spohn & Holleran, 2001).

Meyers and Torney (1981) in a study on the processing of rape victims found that factors outside of the law influence the decision-making process. Through the examination of police and prosecutor files they found a variety of statements questioning the victim's believability and placing the blame upon the victim. Some examples of the narratives they examined include the following: "Check out her emotional problems", "Cover the abortion the victim had two weeks ago", "Woman is a known prostitute", "Woman was braless and let the guy put suntan oil on her back" (Meyers & Torney, p. 166). These narratives are a clear example of how victim blame and believability surface in sexual assault case processing.

Estrich (1987) discusses ways that a victim may be blamed for her sexual assault, as well as, ways in which a victim's account of the assault may be discredited. She uses a personal example of an individual who came to her for advice on how to get through to a prosecutor that she was raped. The young woman that came to Estrich had been raped by an ex-boyfriend. She had reported it to the police, but got no response, in fact, they told her that they would not arrest him or file charges. The reasons (although this is not the account that the criminal justice officials relayed to her) that no action would be taken is because she did not meet their definition of a "genuine victim" and her actions that proceeded the incident did not match up to those that are required in order to have a "winnable" case. She had not gone for medical care immediately following the sexual assault, there was a time delay between the incident and her report to the police, she had had a prior intimate relationship with the man, and he had no criminal record. These events taken together are used to discredit the victim because cases that involve these factors have a very low likelihood of securing a conviction for the prosecutor; furthermore, they create questions of victim's blame and believability.

Kerstetter (1990) analyzed victim blame and believability factors related to alcohol consumption and the presence of nonsexual discrediting information about the victim⁷. Victim's use of alcohol leads to victim blaming and questions about the victim's believability. Cases involving a victim who used alcohol are less likely to result in charges being filed by prosecutor. He also found that if there was evidence of victim nonsexual discrediting information then the police

were less likely to found the case. Those cases involving nonsexual discrediting information that did make it to the prosecutor had a lower likelihood of having charges filed.

Case Rejection determined by Victim Blame and Believability Factors.

Frohmann (1991) conducted a study that focused on the reasons given by the prosecutor for rejecting a case. She began the study with the belief that the prosecutor would look for discrepancies in the victim's account of the assault or factors that would lead one to place the blame upon the victim in order to reject the case. A case that involves questions surrounding the victim's blame and believability that can be contributed to the victim will have a greater likelihood of being rejected because such a case will be seen as "unwinnable" by the prosecutor. In line with Albonetti's uncertainty avoidance theory, Frohmann found that there was great pressure placed upon the prosecutor in these jurisdictions to maintain a high conviction rate. The prosecutor is encouraged to do so in order to "promote an image of the community's legal protector" (p. 215).

This study used data from two district attorney's offices on the West Coast, i.e., Bay City and Center Heights. The research spanned over 17 months; involving observations of more than three hundred case screenings, as well as, open-ended interviews with prosecutors and sexual assault case investigators. Frohmann found that a common technique used by the prosecutors from these jurisdictions was to discredit the believability of the victim's allegation of the assault. One technique used by the prosecutor as a way of diminishing the

victim's believability is through finding inconsistencies in the victim's account of the assault as it was provided to criminal justice officials.

Official Typifications of Rape Relevant Behavior. Another technique the prosecutor may use is official typifications of rape-relevant behavior. Frohmann (1991) explains that the prosecutors who handle sexual assault cases become familiar with the typical features of an incident of sexual assault. "This knowledge includes how particular kinds of rape are committed, post-incident interaction between the parties in an acquaintance situation, and victims' emotional and psychological reactions to rape and their effect on victims' behavior"(p. 217). The prosecutors who Frohmann observed and interviewed explained that when a victim's account of sexual assault does not follow these typifications they question the believability of the victim. Victim-blaming also surfaces in cases where the victim's account of the sexual assault does not match that of the prosecutor's typification. The following is an example of victim blaming by a prosecutor in Center Heights:

...The girl is 20 going on 65. She is real skinny and gangly. Looks like a cluckhead [crack addict]-they cut off her hair. She went to her uncle's house, left her clothes there, drinks some beers and she said she was going to visit a friend in Center Heights who she said she met at a drug rehab program. She is not sure where this friend Cathy lives. Why she went to Center Heights after midnight, God knows? It isn't clear what she was doing there between 12 and 4 a.m. Some gang bangers came by and

offered her a ride. They picked her up on Main and Lincoln. I think she was turning a trick, or looking for a rock, but she wouldn't budge from her story....There are a lot of conflicts between what she told the police and what she told me....It looks like this to me-maybe she is a strawberry, she's hooking or looking for a rock, but somewhere along the line it is not consensual....She's not leveling with me-visiting a woman with an unknown address on a bus in Center Heights-I don't buy it" (p. 218).

It is apparent through this prosecutor's account that blame is being placed upon the victim, as well as, her believability being scrutinized.

Post-incident Interaction between the Victim and Offender. Another factor that the prosecutor uses when deciding whether or not to reject the case is the post-incident interaction between the victim and the offender. Post-incident interaction between the victim and the offender is an extremely important factor in cases of acquaintance rape. The typical pattern is that the victim and the offender do not see each other after the incident. Cases of acquaintance rape that involve contact, especially incidents that involve consensual sex after the assault invoke a "downstream concern with convictability" (p. 219). A "downstream concern with convictability" arises when a prosecutor realizes that the likelihood of a successful conviction is small. One prosecutor explained that no judge or jury would believe a victim who involved herself with an individual who previously sexually assaulted them. One prosecutor stated, "There is a difference between

believing a woman was assaulted and being able to get a conviction in court” (p. 224).

Other Characteristics of Victim Blame and Believability. Spears and Spohn (1996) included a victim blame and believability characteristics section in their study of prosecutorial charging decisions. They define victim blame and believability characteristics as, “factors that might lead decision makers to ‘blame’ the victim or to question her credibility” (p. 192). They examined the following as potential victim blame and believability characteristics: (1) the relationship between the victim and the offender, (2) whether the victim screamed during the attack, (3) whether the victim physically resisted the suspect, and (4) whether the victim reported the crime to the police within one hour. They found that the relationship between the victim and the offender, whether the victim screamed, and whether the victim physically resisted did not influence the prosecutor’s decision to file charges. However, if the victim reported the crime to the police within an hour, the prosecutors were more likely to file charges.

Spohn and Holleran (2001) included victim blame and believability factors in their analyses of prosecutorial charging decision. They included gender, race, and age as components of victim blame and believability characteristics. They explain that these are factors that might lead to victim blaming or the questioning of the victim’s believability (Spohn & Holleran, p. 668). They found that these victim blame and believability factors only affected the prosecutor’s decision to file charges in the cases of nonstranger rape. One

exception to this finding was that of the victim's race which also affected the prosecutor's decision to file charges stranger rape cases.

Timeliness of The Report to Police. The prosecutor also examines the amount of time that it took between the sexual assault and the report to the police as a way of questioning a victim's believability. Studies have revealed that there is a greater likelihood of the prosecutor filing charges if the incident is reported in a timely manner (Frohmann, 1991; Kerstetter, 1990; Randall & Rose, 1981; Spears & Spohn, 1997). Randall and Rose (1981), for example, explain that one way for the victim to establish her credibility is by a prompt report of the incident to the police. They found that delays in reporting create suspicion about the victim's motives. Similar to other studies, Kerstetter found that the longer amount of time that elapsed between the assault and the report to the police also increased questions about victim's believability. Frohmann found that if a victim waits to report the assault she is faced with skepticism by criminal justice officials. Criminal justice officials, in this study, stated that victims who wait more than 24 hours to report the incident may have ulterior motives or may be a false report. Another reason that it is important for victims to report the incident in a timely manner is so that prosecutor may be able to secure physical evidence. Spears and Spohn (1997) found that a prompt report of the assault to the police was important to all victims except those cases involving children. There was a greater likelihood that the prosecutor would file charges in those cases in which the victim reported the assault to the police within one hour.

These studies provide clear examples of how factors of victim blame and believability are used by the prosecutor when deciding whether or not to file charges in a case. The majority of the studies seem to suggest that victim blame and believability factors are used more in nonstranger rape cases. For that reason, although not directly tied to victim blame and believability characteristics, I will examine the relationship between the victim and the offender and the role it has on the prosecutor's decision to file charges.

Victim and Offender Relationship

Studies have examined the role that the relationship between the victim and the offender has on the prosecutor's decision to file charges (Bryden & Lengnick, 1997; Estrich, 1987; Kingsnorth et al, 1998, Kingsnorth, MacIntosh, & Wentworth, 1999; Spohn & Spears, 1996; Spohn & Holleran, 2001). The majority of these studies found that cases that involve a victim and an offender who had a previous relationship will have a lower likelihood of having charges filed in the case. A case involving a victim and an offender who had a relationship prior to the sexual assault generates doubt concerning the credibility of the victim. Those sexual assault cases involving a relationship between the victim and the offender prior to the incident place that case into an "unwinnable" case scenario for the prosecutor (Frohmann, 1991). Based on Albonetti's (1986, 1987) findings, because these cases are seen as "unwinnable", to the prosecutor, they will have a lower likelihood of resulting in charges being filed.

Estrich's (1987) main focus is on the relationship between the victim and the offender and the effect that the relationship has on criminal justice processing of sexual assault cases. Estrich asserts that the criminal system only considers those cases that involve victims and offenders that are strangers to be "real rape". Cases of simple rape, i.e. rape by an acquaintance or intimate are not handled by criminal justice officials in an appropriate manner. One prosecutor, who was discussing a victim's rape case that involved an ex-boyfriend explains, "That was rape...technically. She was forced to have sex without consent. It just wasn't a case you prosecute" (Estrich, p.9). Estrich presents an extensive historical account of examples in which sexual assault cases involving a victim and offender who have had a previous relationship are dealt with in a more lenient manner than those cases involving strangers.

Spohn and Spears (1996) examined what effect offender and victim characteristics would have, if any, on sexual assault case processing decisions. The data for this study were obtained from a previous study done by Spohn and Horney (1993) on rape law reform. This study used court records from Detroit from 1970 through 1984. The purpose of this study was to examine the victim/offender dyad in terms of the racial makeup of each and report the effect that race would have on case outcomes. It also examined the relationship between the victim and offender, as well as, victim risk-taking characteristics that have had an effect on case processing as demonstrated through previous studies. Spohn and Spears hypothesized that the cases that involved a black offender and a white victim would result in harsher treatment than those involving a black

offender/black victim would or white offender/white victim would. They also hypothesized those black offenders who sexually assault white victims would be treated more harshly than any other victim/offender dyad in all stages of the case processing. Finally, they hypothesized that black offenders who sexually assault white strangers would be treated more harshly than offenders (black or white) who sexually assault nonstrangers (black or white). However, they hypothesized that there would be no difference in the treatment of these offenders from black offenders who assault black strangers or white offenders who assault white strangers.

Spohn and Spears analyses found that the likelihood of charges being dismissed was greater in cases that involved black offenders and white victims than for the other victim/offender dyads. When examining conviction rates, they found that there was no difference between the conviction rates of black offender and white victims and black offenders/black victims. They found that white offenders who assaulted white victims were more likely to be convicted than black offenders charged with assaulting a white victim. Another contradiction to their hypotheses was the finding that the race of the offender/victim dyad did not affect the likelihood of incarceration. Supporting their hypotheses they found that black offenders who assaulted white victims tended to receive longer sentences than white offender/white victim or black offender/black victim dyads. They found that the relationship between the victim and offender had an effect on the likelihood of conviction and incarceration but not on the sentence length. Those offenders who assaulted a stranger had a higher likelihood of being convicted and

of those who were convicted, the offenders who assaulted strangers were twice as likely to be incarcerated. Finally, they found that black offenders who sexually assaulted white victims received significantly longer sentences than other victim/offender race dyads.

Kingsnorth et al. (1998) examined the effect of racial/ethnic composition of the offender/victim dyad on prosecution and sentencing of sexual assault cases. This study was done in Sacramento County, California. It tracked 365 sexual assault cases through the court system from prosecutorial intake through sentencing. The study took place over a three-year period. Kingsnorth et al. found that whites who assault whites are likely to be arrested on a greater number of counts than any other racial/ethnic group dyads. One reason to explain this is that the proportion of cases involving white on white assaults that are reported within 12 hours of the incident are smaller than those cases involving other racial/ethnic dyads. Blacks and Hispanics who assault whites are charged with the fewest number of counts. Kingsnorth et al. also found that cases involving a white on white victim-offender dyad are less likely to result in victim injury.

Kingsnorth et al. (1998) examined several factors that have been argued to influence the prosecutor's decision to charge. Legally relevant factors that influenced the prosecutor's decision to charge were: (1) victim's cooperation, (2) defendant's incriminating statements, (3) number of witnesses, (4) defendant's prior felony convictions, and (5) offense severity. Extra-legal factors that influenced the prosecutor's decision to file charges included: (1) the amount of time between the incident and the report and (2) if domestic violence was

involved in the police report. They found that there was no relationship between the racial/ethnic composition of sexual assault cases and the prosecutor's decision to reject or dismiss a case.

The factors that influenced the decision of a plea bargain or trial are the number of felony charges and convictions in a defendant's prior criminal record. They found that the racial/ethnic component of the offender/victim dyad was not related to the likelihood of going to trial. The type of incarceration received was also examined. They found no significant relationship between racial/ethnic makeups of the offender/victim dyad to the type of incarceration that the defendant would receive. Cases that are the result of a plea bargain are more likely to receive a jail term than those convicted on a more serious charge. The greater the number of conviction counts and the more aggravating circumstances that are present in a case increase the likelihood of a prison sentence or a jail sentence. Stranger cases were more likely to result in prison sentences and a greater duration of time than nonstrangers regardless of the racial/ethnic makeup of the offender/victim dyad were.

Kingsnorth et al. (1999) studied the role of prior relationship and its effect on criminal justice processing. This study looks at the charging decision made by prosecutors, trial vs. resolution by guilty plea, jurors' decision making, and sentence severity as it relates to the crime of sexual assault. The study uses data from sexual assault cases in Sacramento County from 1992-1994.

Kingsnorth et al. (1999) found that stranger sexual assault cases were almost twice as likely to go to trial as nonstranger cases. They also found that

stranger case defendants when found guilty were more likely to receive a prison sentence and the duration of the sentence was more than twice as long that of a nonstranger defendant. Other differences found between stranger and nonstranger sexual assault cases include: (1) stranger cases were more serious in that they had more offenders, (2) more aggravating circumstances, (3) more arrest charges, (4) felony counts filed, (5) counts convicted, and (6) the use of a weapon. Victims' of stranger rapes were more likely to report the assault in a prompt manner, whereas nonstranger victims' waited more than twenty-four hours. They also found that strangers' victims were more likely to be treated with negative characteristics in the crime reports than nonstrangers' were.⁸

In the analysis of the prosecutor's decision to charge, they found that: (1) incriminating remarks by the defendant, (2) cooperation by the victim, (3) injury to the victim, and (4) availability of witnesses affected the prosecutor's decision. Other contributing factors that influenced the prosecutor are the amount of time elapsed between the incident and the report and the age of the victim. They found that in nonstranger rape cases injury to the victim, incriminating remarks by the defendant, the number of arrest charges, and the victim's age play a role in the prosecutor's decision to charge, but do not play a part in stranger cases. In the decision to prosecute fully they found that evidence of prior relationship and negative victim characteristics do not have a statistically significant influence. They also found that younger victims have a greater likelihood of having their case fully prosecuted. Sentence length will increase if the defendant has a prior criminal record and is charged with felony counts; conversely, the sentence length

will decrease if there is evidence of a prior relationship between the victim and offender. Negative victim characteristics were also found to decrease the sentence length of the defendant.

Spohn and Holleran (2001) examined the prosecutor's decision to file charges based upon victim characteristics that are determined by the relationship between the victim and offender. They examined the relationship of the victim and offender by looking at those in cases that involved strangers, acquaintances/relatives, or intimate partners⁹. This study predicts that those cases involving strangers will be determined by legally relevant factors, whereas, those involving intimates and acquaintances will use extra legal factors such as victim characteristics, as well as, legally-relevant factors.

This study is an improvement over prior research in that it takes into account data from three urban areas. This study used data from Kansas City, Miami, and Philadelphia. This study also provides beneficial distinctions concerning the victim/offender relationship. The study analyzed victim characteristics, offender characteristics, and case characteristics.

The study found that more of the victims in the stranger rape cases were involved in some type of risk-taking behavior prior to the assault than those victims of acquaintance or intimate rapes. Those cases involving strangers and intimates were more likely to question the victim's moral character than in cases involving acquaintances. Victims of stranger rapes tended to report their assault in a timelier manner than in those cases involving intimates or acquaintances. There was a greater probability of securing evidence and corroboration to the

victim's claim in stranger cases. The use of a weapon (gun or knife) and the presence of a prior felony conviction were more common to stranger rapes. However, those victims of an intimate rape showed more injuries than those who were victims of an acquaintance or stranger.

This study did not find a difference in the likelihood to file charges based upon the relationship between the victim and offender. Instead, the study found that physical evidence, corroboration of the victim's claim, evidence of a defendant's prior felony charge, no risk-taking behavior by the victim, and no doubts about the victim's moral character would influence the prosecutor's decision to file. Any of these factors could lead to a greater likelihood in filing charges. These findings suggest that prosecutors use both legally relevant and irrelevant factors when making the decision to file charges.

They found that in cases involving acquaintances/relatives prosecutors were more likely to use the legally irrelevant factor of victim characteristics. If there was evidence of victim risk-taking behavior or suspicion regarding a victim's moral character, then the prosecutor was less likely to file charges. In cases involving intimates the prosecutor was less likely to file charges if the victim engaged in risk-taking behavior or if she resisted her attacker. However, if the victim of a case involving an intimate was injured the prosecutor was more likely to file charges.

Those cases that were least likely to result in a charge being filed occurred when the victim was black and there was no use of a weapon. Prosecutors were most likely to file a charge in cases involving a victim that was

white and the use of weapon. These findings support the sexual stratification hypothesis that was previously referenced.

This study supported the original hypothesis that prosecutors will utilize legally relevant factors in those cases involving strangers. It found that the probability of filing charges in these cases significantly increased with the physical evidence and the use of a weapon (knife or gun). The hypothesis was also supported in that legally irrelevant factors were used in those cases involving friends, acquaintances, and relatives. More specifically these cases were less likely to secure a charge if there was evidence that the victim engaged in risk-taking behavior prior to the assault or if questions surrounded the victim's moral character.

Findings from this study support both the sexual stratification hypothesis and Albonetti's (1986; 1987) uncertainty avoidance theory. In line with the sexual stratification hypothesis, the findings reveal that white women victims are guaranteed more protection by the law than black women victims. It supports the uncertainty avoidance theory in that prosecutors are more likely to file charges in those cases that they feel will result in a successful conviction, while avoiding those cases that are filled with "uncertainty".

Theoretical Perspectives.

There are several theoretical perspectives that seek to describe the crime of sexual assault and the way that the criminal justice system processes sexual

assault cases. I will examine, in detail, the following theories: LaFree's (1980) study of the race component as examined through the sexual stratification hypothesis, Walsh's (1987) analysis of the sexual stratification hypothesis, Estrich's (1987) theory of "real rape", and Albonetti's (1986, 1987) rational choice model and the uncertainty avoidance theory.

Sexual Stratification Hypothesis. LaFree (1980) has examined the role that the race of the victim has in the sexual stratification hypothesis. LaFree's work on the sexual stratification hypothesis is an expansion of the original hypothesis by Collins' (1975). The combined work of LaFree and Collins has produced a sexual stratification hypothesis that includes the following assumptions: (1) women are considered the property of the men from their own race, (2) white women are valued more than black women, (3) the sexual assault of a white woman by a black man is taken more seriously than that of any other victim/offender dyads, and (4) sexual assaults upon women of a minority group are perceived as less serious regardless of the race of the offender.

To test the assumptions underlying the sexual stratification hypothesis, LaFree (1980) has examined the effect that the race of the victim has on official reactions to sexual assault. He also incorporates Collins' (1975) definition of the sexual stratification hypothesis as a type of property relationship. Historically males were granted sexual property rights over women, i.e. the exclusive sexual rights over a particular person. He uses a longitudinal study that examines an individual from the initial police report to the final disposition. LaFree examined

if there is an effect on decisions made due to the sexual stratification component race, i.e. the victim-offender dyad. This study did not examine the role of the relationship between the victim and offender nor if there was evidence of prior consensual sex between the victim and offender to see what, if any, effect it would have on the decision making process. This study used both quantitative and qualitative data. His findings were consistent with the sexual stratification hypothesis in that eight of nine outcomes indicate that black-white assaults are more likely to result in more harsh sentences for the offenders; five of these relationships were statistically significant. He also found that seven out of nine outcomes indicate that intraracial assaults involving blacks resulted in less serious sanctions; one of these outcomes was statistically significant. Those outcomes that didn't support the sexual stratification hypothesis were not statistically significant. Black offenders assaulting white victims were: (1) more likely to receive more serious charges, (2) have their cases filed as a felony, (3) more likely to be incarcerated in the state prison, and (4) receive longer sentences. However, the same offenders were not more likely to be arrested or found guilty in court than other offenders. These results support LaFree's (1980) statement that, "American society is characterized by a sexual stratification system which imposes more serious sanctions on men from less powerful groups who are accused of assaulting women from more powerful social groups (p .852)".

Walsh (1987) has examined the sexual stratification hypothesis as it applies to the crime of sexual assault. The sexual stratification hypothesis studied by Walsh consists of two essential components. The hypothesis suggests that

victims in the racial minority status are seen as less worthy and therefore are not granted the full measure of justice. This hypothesis also suggests that the criminal justice system will impose harsher sentences on defendants of less powerful groups that are accused of assaulting women from more powerful social groups. He explains that white women make up a powerful social group based on their membership in the racial majority. Another way of defining the amount of power that a group has comes from their economic status. Minorities are over-represented in the lower socioeconomic stratum; hence, they are viewed as members of a less powerful group. Walsh also states that the rape of a white woman by a black man is taken as a threat to the white man's dominant social position and therefore punished more harshly. He explains that a sexual assault of a minority woman is not punished as severely because it does not threaten the status quo of the white man's property rights or his dominant social position.

Walsh (1987) tested whether sentence severity was correlated with the sexual stratification hypothesis. He hypothesized that blacks that assaulted whites would receive the most severe sentences and that those offenders who assaulted blacks would receive the most lenient sentences. He used data from felony sexual assault cases from a metropolitan Ohio county for the years 1978-1983. Walsh's findings support the sexual stratification hypothesis. He found that black offenders who assaulted white victims had the greatest likelihood of receiving a prison sentence; black offenders who assaulted black victims had the greatest chance of receiving a probation sentence. These findings support both contentions of the sexual stratification hypothesis. Another finding that supported

this hypothesis was that regardless of the offender/victim relationship, blacks who assaulted whites received significantly harsher sentences than did blacks who assaulted blacks. Yet another finding, related to offender/victim relationship revealed no difference in sentencing based on the race of the victim. Finally, he found that white defendants were more likely than black defendants to be imprisoned than given a probation sentence. This study is not meant to be generalized to larger populations and it does not fully test the sexual stratification hypothesis.

Kerstetter (1990) has also examined the sexual stratification hypothesis. He explains the sexual stratification hypothesis as a branch of conflict theory. He defines it as the claim to sexual rights over an individual by a more powerful individual, i.e. an individual is seen as sexual property (Collins, 1975). The role of sexual stratification comes into play in the way that the criminal justice system deals with women. Women receive less protection from the criminal justice system if they were acting outside the boundaries of sex-roles that are in place and a woman's sexual property value is determined by her status in relation to a man. Kerstetter, in line with previous studies, also suggests that a white victim alleging sexual assault by a black man will be taken more seriously by the criminal justice system than other victims.

Estrich's Theory of Real Rape. Estrich (1987) introduced a theory of "real rape". She explains that rape is seen in the criminal justice system as either a real rape, i.e. stranger rape, a rape involving an offender and a victim who are

strangers, or as simple rape, i.e. acquaintance, date rape. Real rapes, as they are defined by the criminal justice system, are based upon stereotypes of what constitutes a real rape and a genuine victim. Estrich (1987, p.8) explains that real rapes are seen as those attacks that involve “an armed stranger who jumps from the bushes” to attack his victim. Simple rape are those rapes in which there is a prior relationship between the victim and offender, lack of force or resistance, and the absence of evidence corroborating the victim’s account (Bryden & Lengnick, 1997; Estrich, 1987; Kerstetter, 1990; Kingsnorth, et al. 1999; Spohn & Holleran, 2001). Estrich (1987) examines the ways in which victims of simple rape are handled by the criminal justice system. Victims of simple rapes are also susceptible to judgmental attitudes from criminal justice actors. Often their sexual history/reputation is called into question and they are seen as untrustworthy. Their cases often never make it past the initial report. One reason that “simple rape” cases do not get prosecuted is because prosecutors see them as unwinnable. However, Estrich argues that we must expand the definition of real rape to include simple rapes.

Estrich also explains that simple rapes occur more frequently than stranger rapes. There are, however, fewer reports of simple rapes than real rapes made to police. Studies have shown that victims of acquaintance (simple) rapes often do not consider themselves as legitimate crime victims. Other reasons for not reporting a simple rape include: (1) the dilemma between deciding if the rape was really rape, (2) little physical resistance on the part of the victim, and (3) fear of a “second assault” from the criminal justice system.

Estrich found that simple rapes are taken less seriously than stranger rapes at all points in the processing of the cases. This indifference begins with the police's decision to "found" a case. Kerstetter (1990) explains that the police decision to "found" a case involves deciding if an incident is a crime and how to classify the crime. This decision must be made after the primary investigation and within seven days of the incident. In order for a case to proceed to the prosecutor it requires that the police "found" the case. There are high rates of "unfounding" for cases of rape. This suggests that police may be skeptical of the victim's report. The police are not required to give their reasons for "unfounding" a case. If the case is "founded" it will proceed to the prosecutor.

A problem that occurs at this stage of the process is the lack of accountability of the prosecutor. The prosecutor is very rarely held accountable for his/her decision to dismiss or charge a case. Estrich found that acquaintance rapes are less likely to result in convictions than stranger rapes. Conviction rates decrease when: (1) there is evidence of a prior relationship between the victim and offender, (2) lack of physical force, and (3) no proof of penetration and (4) few/no witnesses. Studies have shown that these factors, which affect prosecutors, also affect jurors' decision-making (Bryden & Lengnick, 1997; Estrich, 1987; Horney & Spohn, 1994; Kerstetter, 1990; LaFree, 1989). In addition, those cases that involve a stranger have much greater conviction rates.

Estrich establishes four reasons underlying a prosecutor's choice to either dismiss or downgrade a rape charge. Acquaintance rape cases are viewed as private disputes. This view has the potential to perpetuate the privilege of the

more powerful (man) to overpower (i.e. rape) the less powerful (woman). Another factor is that cases that involve a prior relationship are seen as being less serious. The offender bases this notion on the idea that the prior relationship somehow permits sexual access to the victim. Unlike many other crimes, sexual assault cases that involve a prior relationship between the victim and offender tend to place blame on the victim; hence the accountability of the offender may be more questionable than a stranger case.

Finally, acquaintance rapes are seen as less terrifying and are, therefore, deserving of a lesser punishment. Estrich considers this ideology absurd and is greatly troubled that such beliefs are prevalent in our criminal justice system. This belief is contrary to the accounts given by acquaintance rape victims. For the victims of acquaintance rapes the incident is very terrifying and the negative effects are long lasting.

Estrich has also examined the law and the attempts that have been made to reform rape laws. She explains that much of the reform of rape laws has proved to have an insignificant effect on the way that victims of simple rapes are handled by the criminal justice system. Other studies (Polk, 1985; Spohn & Horney, 1996) have also shown that the rape law reforms have not produced the expected results. Although reforms have been put into place to decrease the amount of victim blaming, studies show that prosecutors still use information such as a victim's past sexual history in order to discredit the victim's case. Estrich concludes her study by stating that we must recognize that simple rape is real rape.

A Supplementary Analysis of Estrich's Theory of "Real Rape". Spears and Spohn (1996) examined whether the system does use stereotypes of real rape and genuine victims when deciding which cases to prosecute. Their study tests the hypothesis that charging decisions are affected by the prosecutor's stereotype of "real rape" and "genuine" victims. This study is an expansion to Estrich's work. This study used data from Detroit. The original data included a sample of all complaints of sexual offenses received by the Detroit Police Department in 1989. This study selected every second case to be included. There were 321 cases included in this study.

The first hypothesis this study tested was the effect of victim characteristics on charging decisions. They hypothesized that those cases involving victims who conform to the "genuine" victim are more likely to result in the filing of charges. They also tested the effect of evidentiary factors on the prosecutor's decision to file charges. They hypothesized that more evidence would result in a greater likelihood of charges being filed by the prosecutor. They also compared adult sexual assault cases and child sexual assault cases. They hypothesized that evidence factors would affect both, but that only the adult cases would be affected by the victim characteristics.

To test for evidentiary factors, this study formed an evidence measure, which included semen, fingerprints, bloodstains, hair, or skin samples that were present at the time of screening. In order to test for victim characteristics they included the following: (1) victim's demographics and (2) blame and believability

factors. The victim's background included victim's race and victim's age. The blame and believability factors describe items that might contribute to "victim-blaming" by the system; this measure consisted of: (1) the victim/offender relationship, (2) whether or not the victim screamed during the assault, (3) whether or not the victim physically resisted the offender, (4) the timeframe in which the victim reported the assault to the police, (5) the victim's moral character¹⁰, and (6) victim's risk-taking behavior at the time of the incident.

The study used a genuine victim scale consisting of the six blame and believability factors. This scale was used to determine how much a victim conformed to the stereotype of a "genuine" victim. They hypothesized that the prosecutor would stereotype a "genuine" victim as one who had no questions surrounding her moral character, did not engage in risk-taking behavior, was sexually assaulted by a stranger, verbally and physically resisted her attacker, and reported the assault immediately to the police. If a victim fits this protocol then they have a better likelihood of the prosecutor filing charges against their attacker.

This study found that charges were less likely to be filed in cases involving children than those involving adults. The child sexual assault cases were less likely to involve a stranger. The cases involving children were also less likely to involve the use of threats or physical restraints, weapons, or injury by the offender. In line with their hypothesis, none of the cases involving children used questions about the victim's moral character and only a few involved questions about risk-taking behavior. Also consistent with their hypothesis, this study revealed that victims who fit the mold of a "genuine" victim are more likely to

have charged filed against their attacker. As the number of characteristics of a “genuine” victim increased so did the likelihood of charging. The study found that the relationship between the victim and the offender and whether or not the victim verbally or physically resisted her attacker did not have an effect on the prosecutor’s decision to file charges. However, the prosecutor’s decision to file charges increased in those cases in which the victim promptly reported the assault to the police (i.e., within an hour). The likelihood of filing charges decreased if there were questions surrounding the victim’s moral character or if there was information that suggested the victim was involved in risk-taking behavior at the time of the assault.

Albonetti’s Uncertainty Avoidance Theory. I have chosen Albonetti’s uncertainty avoidance theory (1986, 1987) as the theoretical model to frame this study. Albonetti’s studies (1986, 1987) on prosecutorial discretion use the uncertainty avoidance theory to explain reasons that prosecutors reject cases. The main assertion of this theory is that the prosecutor will seek to reduce uncertainty in their caseload. The reason for reducing uncertainty in their caseload is in order to secure more convictions. The prosecutor’s success is determined by his/her court records, thus there is pressure to maintain a high record of convictions.

In sexual assault cases, uncertainty in cases can stem from many factors such as: (1) evidence that the victim was engaged in risk-taking activities prior to the assault, (2) negative victim moral characteristics, and (3) questions surrounding the victim’s credibility. While Albonetti’s studies did not look

specifically at sexual assault cases, many of the same factors such as victim precipitation and evidence of a previous relationship between the victim and offender were found to make a case “unwinnable”. Therefore, there is a lower likelihood of the prosecutor’s filing charges in such a case. For this study, I hypothesize that evidence of prior consensual sex between the victim and the offender will follow the contentions of Albonetti’s uncertainty avoidance theory. Furthermore, I expect there to be a lower likelihood of charges being filed by the prosecutor in these cases as a way of avoiding uncertainty that occurs due to their perceived “unwinnable” status. I believe that the prosecutor will use extra-legal factors surrounding the victim in order to drop the charges in a case involving prior consensual sex between the victim and the offender.

To iterate, the purpose of this study was to test the overall research question that the evidence of prior consensual sex between the victim and the offender will result in a lower likelihood of charges being filed by the prosecutor. Using data from sexual assault cases in Philadelphia this study tested for the effects, if any, that prior consensual sex between the victim and offender has on the prosecutor’s decision to file charges. It also examined the interaction between prior consensual sex and various other sexual assault case variables. The following chapter discusses the methodology used in greater detail.

CHAPTER 3
METHODOLOGY

Objectives of the Study

This study tested whether prior consensual sex between the victim and the offender will affect the prosecutor's decision to file charges in sexual assault cases. At the time of the study, no study had examined the role of prior consensual sex between the victim and the offender on the prosecutor's decision to file charges in sexual assault cases; hence, this study addresses a void in the research on prosecutorial discretion in sexual assault cases. I not only examined the direct association between prior consensual sex and the prosecutor's decision to file charges, but I also explored the possible interaction of prior consensual sex with other factors known to affect the prosecutor's decision to file charges; these two main objectives are more clearly articulated in the following hypotheses:

Hypotheses to Be Tested

Hypothesis One: Evidence of prior consensual sex between the victim and the offender are more likely to result in a lower likelihood of the prosecutor filing charges.

Hypothesis Two: Black female victims who have engaged in prior consensual sex are more likely to have their cases dismissed than black female victims who have not engaged in prior consensual sex.

Hypothesis Three: White female victims who have engaged in prior consensual sex are more likely to have their cases dismissed than white female victims who have not engaged in prior consensual sex.

Hypothesis Four: Sexual assault cases involving women who have engaged in prior consensual sex with the offender and have evidence suggesting a questionable moral character are more likely to have the prosecutor dismiss charges than no moral character.

Hypothesis Five: Sexual assault cases involving women who have engaged in prior consensual sex with the offender and have evidence in their file indicating that they were involved in risk-taking prior to the sexual assault are more likely to have the prosecutor dismiss charges than no risk.

Hypothesis Six: Sexual assault cases involving women who have engaged in prior consensual sex with the offender and waited more than 24 hours after the sexual assault to report the assault to the police are more likely to have charges dismissed than cases reported in less than 24 hours.

Hypothesis Seven: Evidence of prior consensual sex between the offender and the victim are more likely to result in a lower likelihood of the prosecutor filing charges than evidence of no prior consensual sex between the offender and the victim while controlling for the available physical evidence in the case and victim's characteristics such as race/ethnicity and age.

Hypothesis Eight: The interaction of the victim's race/ethnicity and evidence of prior consensual sex between the offender and victim results in the highest likelihood of charges being filed by the prosecutor for cases involving white women who have not had

prior consensual sex with the offender (while controlling for the available physical evidence in the case and the victim's age); the lowest likelihood of charges being filed by the prosecutor for cases involving black women who have had prior consensual sex with the offender (while controlling for the available physical evidence in the case and the victim's age).

Hypothesis Nine: The interaction of the victim's moral character and evidence of prior consensual sex between the offender and victim results in the highest likelihood of charges being filed by the prosecutor for cases involving women without a questionable moral character who have not had prior consensual sex with the offender (while controlling for the available physical evidence in the case and the victim's race/ethnicity and age); the lowest likelihood of charges being filed by the prosecutor for cases involving women with a questionable character who have had prior consensual sex with the offender (while controlling for the available physical evidence in the case and the victim's race/ ethnicity and age).

Hypothesis Ten: The interaction of the victim's risk-taking behavior and evidence of prior consensual sex between the offender and the victim results in the highest likelihood of charges being filed by the prosecutor for cases involving women who were not engaged in risk-taking behavior prior to the assault and who have not had prior consensual sex with the offender (while controlling for the available physical evidence in the case and the victim's race/ethnicity and age); the lowest likelihood of charges being filed by the prosecutor will exist for cases involving women who were engaged in risk-taking behavior and who have had prior consensual sex with the offender

(while controlling for the available physical evidence in the case and the victim's race/ethnicity and age).

Hypothesis Eleven: The interaction of the timeliness of the report of the assault to the police and evidence of prior consensual sex between the offender and the victim results in the highest likelihood of charges being filed by the prosecutor for cases that are reported to the police within 24 hours and for women who have not had prior consensual sex with the offender (while controlling for the available physical evidence in the case and the victim's race/ethnicity and age) and the lowest likelihood of charges being filed by the prosecutor for cases that are not reported within 24 hours and for women who have had prior consensual sex with the offender (while controlling for the available physical evidence in the case and the victim's race/ethnicity and age).

Data for This Study

This study used data from a study funded by the National Institute of Justice and led by the principal investigator, Cassia Spohn, and her research team. Data were collected from official records by a research team that visited three sites: Miami, Philadelphia, and Kansas City, Missouri. For purposes of this study, data from Philadelphia and Kansas City, Missouri were used. The research team read the case files and reports and then recorded the specified information. The information was recorded on optical-scan forms that were created for the project that pertained to the incident, the victim, the suspect and the outcome of the case.

Jurisdiction

Data for this study came from Kansas City, Missouri and Philadelphia, Pennsylvania. These two cities are demographically different from one another. According to The United States Census for the year 2000 the population for Jackson County, the location of Kansas City, Missouri was 654,880. The racial/ethnicity demographics for Jackson County were 70.1% white, 23.3% Black, 0.5% American Indian and Alaska Native persons, 1.3% Asian, 5.4% Hispanic or Latino origin, 2.3% reported two or more races, and 2.4% reported some other race. In 1999, the median household income was \$39,277. There were 11.9% persons below poverty (US Census Bureau, 2000). This census information suggests that Kansas City has a large percentage of white persons and in comparison with Philadelphia has a higher median household income and less poverty.

According to The United States Census for the year 2000 the population for Philadelphia County in the year 2000 was 1,517,550. The racial/ethnicity demographics for Philadelphia County were 45% white, 43.2% Black, 0.3% American Indian and Alaska Native persons, 4.5% Asian, 8.5% Hispanic or Latino origin, 2.2% reported two or more races, and 4.8% reported some other race. In 1999, the median household income was \$30,746. Approximately 22.9% persons were below poverty in 1999 (US Census Bureau, 2000). Thus , Philadelphia is a diverse urban setting.

Kansas City Police Department

The Kansas City Police department is one of the largest departments in the country. Its patrol officers cover an area of 317 square miles and serve over a half a million residents (Kansas City Missouri Police Department, 2002). Unlike Philadelphia, Kansas City, Missouri does not have a specialized division of patrol officers who handle only sexual assault cases. However, the specialization in handling sexual assault cases in Kansas City, Missouri can be seen in the Kansas City Sex Crimes Unit of the Office of the Prosecuting Attorney.

Kansas City Sex Crimes Unit of the Office of the Prosecuting Attorney

Upon arrest, sexual assault cases in Kansas City are turned over to the Sex Crimes Unit (SCU) of the Office of the Prosecuting Attorney. The prosecutors in the SCU generally remain there for a long time, i.e. at least two years (Spohn & Holleran, 2001). The prosecutor's in the SCU make a decision on whether or not to file charges in the sexual assault case. If charges are filed in the case it will be given to the attorney to whom the case was originally assigned and they will handle the case through disposition, i.e. Kansas City SCU uses vertical prosecution. The team leader of the SCU stated that prosecutors in this jurisdiction, "file only if we believe that we could take the case to trial and get a conviction" (Spohn & Holleran)

Philadelphia Police Department and The Special Victim's Unit

The Philadelphia Police Department is the fourth largest in the United States. The department is made up of 6,900 uniformed police. The structure of the department is much like that of the military in that each officer has a sworn ranking. The department is subdivided into specialized divisions including: (1) mounted and canine units, (2) airport and park protection, (3) highway and traffic patrol, (4) the SWAT unit, (5) the detective bureau, (6) special investigations, (7) community relations and civil affairs, and (8) emergency response. Of importance for this study is the Special Victim's Unit.

The Philadelphia Police Department created a Special Victim's Unit (SVU) in 1980. The SVU was created to "provide a dedicated and specialized response to and investigative of, sexual assault and child abuse allegations" (Philadelphia Police Department, 2000). Employees of the SVU are responsible for the investigation of all sexual assault cases and child abuse cases by caretakers that are reported to the police. The SVU was created to establish a more specialized police department. Individuals who work in the SVU are specially trained to handle sexual assault cases. The main objective of an investigation of the SVU is to establish all facts, evidence, and supporting statements that are relevant to the case. The SVU gathers physical evidence, photographs, DNA materials, clothing, fingerprints, and records and journals in order to support the allegations of the incident. The SVU turn the case over to the District Attorney's Family Violence and Sexual Assault Unit for review and approval after they have

compiled the facts of the case and probable cause is established (Philadelphia Police Department, 2000).

Sexual Assault Case Prosecution in Philadelphia

Sexual assault cases are handled by vertical prosecution in Philadelphia. Cases are given to an assistant prosecutor who follows the case through the final disposition phase (Spohn & Holleran, 2001). However, the prosecutor who handles the case in the preliminary hearing is not necessarily the attorney who takes the case to trial (Spohn & Holleran). Research has shown that vertical prosecution is usually used in specialized cases such as sexual assault cases (Spohn & Holleran). The prosecutor will have a broad range of knowledge concerning the cases that are assigned to them; i.e. vertical prosecution allows for the prosecutor to become “specialized” in a specific area. Vertical prosecution may also be comforting to the victim because they only have to go over the details of the sexual assault with one prosecutor versus several different prosecutors (Spohn & Holleran).

Dependent Variable

The Decision to File Charges.

The dependent variable for this study measures whether the prosecutor filed charges (coded=1) or not (coded=0).

Independent Variables

Victim Characteristics.

The victim characteristic variables in this study have been based on previous studies as having an effect on the prosecutor's decision to file charges in sexual assault cases. For this study, the victim characteristic variables were examined individually and in conjunction with prior consensual sex between the victim and the offender on the prosecutor's decision to file charges.

Prior Consensual Sex between the Victim and the Offender. Evidence of prior consensual sex between the victim and the offender and its effect on the prosecutor's decision to file charges is the main focus of this study. This study focused on prior consensual sex because no study has specifically examined the effect that prior consensual sex between the victim and the offender has on the prosecutor's decision to file charges. In line with Albonetti's uncertainty avoidance theory (1986, 1987), I predicted that cases that involve prior consensual sex between the victim and the offender will be seen as "unwinnable". Because uncertainty will be introduced into a case involving prior consensual sex between the victim and the offender, I hypothesized that the prosecutor will be less likely to file charges in these cases. For this study, I dichotomized prior consensual sex between the victim and the offender: prior consensual sex (coded=1) and no prior consensual sex (coded=0).

Victim Race. Prior research (Brownmiller, 1975; LaFree, 1980, 1989; Spohn & Holleran, 2001; Spohn & Spears 1996; Walsh 1987) has shown that the race of the victim has an effect on the prosecutor's decision to file charges. In line with LaFree's (1980, 1989) and Walsh's studies on the sexual stratification hypothesis, these studies have found that white female victims are granted more protection from the law than minority female victims. Therefore, the race of the victim is included in this study to see the effect, if any that an interaction between race of the victim and prior consensual sex between the victim and the offender has on the prosecutor's decision to file charges in a sexual assault case. The data collection team recorded sexual assault data for victims from a variety of racial/ethnic backgrounds: black victim, white victim, Hispanic victim, Asian victim, and Native American victim. Due to the number of cases available this study included only the following categories of race/ethnicity of the victim: Black (coded=1) and White (coded=0).

Victim Year of Birth. There have been mixed results from previous research concerning the age of the victim and the effect that it has on the prosecutor's decision to file charge (Kerstetter, 1990; Kingsnorth et al, 1999; LaFree, 1989; Spears & Spohn, 1996, 1997). The Kansas City sample included only those cases with victims that are ages 14 and older and the Philadelphia sample included only those cases with victims who are age 16 and older.

Victim Married. Victim's marital status was reported as single, married, separated, divorced, widowed, or unknown. For purposes of this study, I only included those victims who reported their status as "single". The reason for this selection criteria was in order to focus only on those cases involving victims who were single at the time of the assault. Single victims accounted for 91% of the subjects.

Victim Moral Characteristics Prior research has shown that victim moral characteristics can negatively affect the prosecutor in the decision to file charges (Reskin & Visher, 1986; Spears & Spohn, 1997; Spohn & Holleran, 2001). I hypothesized that in line with the theoretical perspective framing this study, i.e. (Albonetti's uncertainty avoidance theory, 1986, 1987) that both questions surrounding the victim's moral character alone, as well as, the interaction of questions surrounding the victim's moral character with evidence of prior consensual sex between the victim and offender will have a negative affect on the prosecutor's decision to file charges. As Albonetti's previous research has suggested, these types of cases are avoided because they have a low likelihood of securing a conviction for the prosecutor.

For this study a victim moral characteristics index was created to reflect whether the case files revealed any questions surrounding the moral character of the victim. The index was composed of several variables. The following variables were included in this index: history of victim's prior sexual activity (with other than offender), victim's pattern of alcohol use, victim's pattern of drug

use, victim work history in disreputable situation (as a go-go dancer, massage parlor, etc), information stating or implying that the victim was involved in prostitution, victim had an out of wedlock pregnancy, victim's criminal record, evidence that victim had run away, history of victim's prior rape allegations, and a history of victim lying (Spohn & Holleran, 2001). For each of these variables the victim moral characteristics index was used, if there were questions about the victim's moral character (coded =1), if there were no questions surrounding the victim's moral character (coded=0).

Victim Risk-taking. Previous studies have shown that if the police file contains information indicating that the victim was involved in risk-taking activities immediately prior to the sexual assault that there will be a lower likelihood in the prosecutor's filing charges in the case (Amir, 1971; Estrich, 1987; LaFree, 1980; LaFree et. al, 1985; Spears & Spohn, 1996, 1997; Spohn & Holleran, 2001). Evidence of victim risk-taking decreases the chances of the case resulting in a conviction if taken to trial; it makes a case appear "unwinnable" (Frohmann, 1991). In line with Albonetti's uncertainty avoidance theory (1986, 1987), the prosecutor generally will not file charges in those cases involving victim risk-taking.

For this study, I examined the interaction of prior consensual sex between the victim and the offender with evidence of victim risk-taking to see if there is a negative effect on the prosecutor's decision to file charges in these cases. A victim risk-taking index was created composed of many variables that have been

examined in previous studies as having an effect on the outcome of the prosecutor's decision to file charges. For this study, the following variables were included in the index: victim was walking alone late at night, victim was hitchhiking, victim accompanied offender to residence, victim invited the offender into own residence, victim was in a bar alone, victim was in an area where drugs were known to be sold, victim had used alcohol at the time of the incident, or victim had used drugs at the time of the incident. If there was no evidence of victim risk-taking (coded=0), if there was evidence of victim risk-taking (coded =1).

Case Characteristics

Prior research has shown that case characteristics play a huge role in the prosecutor's decision to file charges. Both legal and extra-legal factors have been identified as contributing to the decision to file charges. For this study, both legal and extra-legal case characteristics were considered based on their ability to affect the prosecutor's decision to file charges.

Physical Evidence. According to previous research physical evidence remains the most important contributing factor to the decision to file charges. Sexual assault cases that have physical evidence available have a higher likelihood of securing a conviction than do cases with no physical evidence, therefore the prosecutor is more likely to file charges in these cases. For this study

if there was no physical evidence (coded =0) and if there was physical evidence available (coded =1).

Timeliness of the Report to the Police. Several studies have examined the amount of time that elapses between the sexual assault and the victim's report to the police. The majority of these studies have found that the more time that passes between the sexual assault and the report the more likely criminal justice officials are to have questions concerning the believability and credibility of the complainant. Some reasons for this are that as time passes the amount of available physical evidence to criminal justice officials diminishes. It also becomes harder to find the offender as time elapses. Finally, delayed reporting creates suspicions surrounding the credibility of the victim (Frohmann, 1991; Kerstetter, 1990; Randall & Rose, 1981; Spears & Spohn, 1997). The amount of time between the assault and the report to the police for this study was coded as follows: within 24 hours (coded=1), greater than 24 hours (coded=0). In line with Albonetti's uncertainty theory (1986, 1987), the more time that passes between the incident and the report to the police the greater the amount of uncertainty that becomes present in the case. Based on finding from previous studies and the uncertainty avoidance theory, I hypothesized that as the amount of time between the incident and the report to the police increases, the likelihood of the prosecutor filing charges will decrease.

Analytical Strategy. This study used univariate statistics to describe the sample that was used in the analyses. It also used bivariate statistics to examine the effect that prior consensual sex between the victim and the offender has on the prosecutor's decision to file charges. Finally, this study used multivariate analysis to examine the interaction of prior consensual sex between the victim and the offender with theoretically relevant independent variables that have been previously stated and the decision to file charges by the prosecutor.

Each of the hypotheses was tested using separate samples for Kansas City and Philadelphia respectively. I computed a series of contingency tables in this study to establish the bivariate association and magnitude of the association between the dependent variable and the independent variables. Pearson's chi-square was used to test for statistical independence between the dependent variable and each independent variable; a variety of symmetric and asymmetric measures of association were used depending on the level of measurement of the variables in each contingency table.

To adequately test the hypotheses specified in this study, it was necessary to estimate an additive regression equation and a series of non-additive regression equations; more to the point, I estimated a main effects regression equation to test hypothesis one and I estimated moderating effects regression equations for the remaining hypotheses. Because the dependent variable is dichotomous (i.e. charges filed=1; charges not filed=0), binary logistic regression was utilized. The following chapter presents the results of the univariate, bivariate, and multivariate analyses.

CHAPTER 4

FINDINGS

This study investigated the effect that prior consensual sex between the victim and the offender in a sexual assault case has on the prosecutor's decision to file charges. It also examined the effect of the interaction of prior consensual sex between the victim and the offender with a host of other factors that have been found to effect the decision of the prosecutor to file charges. Data were acquired from a study on sexual assault case processing funded by the National Institute of Justice. This chapter presents results from analyses at the univariate, bivariate, and multivariate levels for sexual assault cases from Kansas City, Missouri, and Philadelphia. The chapter begins with a discussion of the univariate results, followed with a discussion on the results from the bivariate analyses. Finally, the results from multivariate analyses are discussed.

Univariate Analysis

The frequencies and percentages for all variables used in the bivariate and multivariate analyses are presented in Table 1. Data are presented for univariate results for: (1) Kansas City, Missouri, and (2) Philadelphia. I begin with the frequencies and percentages for Kansas City, Missouri.

Kansas City, Missouri: Variable Percentages

In Kansas City, Missouri a little more than half (53.3%) of the sexual assault cases were dismissed by the prosecutor. This study focused on the reasons that the prosecutor may not dismiss charges in a sexual assault case. Percentages for factors that are argued to affect the likelihood of the prosecutor filing charges in a sexual assault case are presented. The majority (61.7%) of the sexual assault cases in this jurisdiction did not involve prior consensual sex between the victim and the offender. There was almost an equal percentage of cases that involved risk-taking behavior on the part of the victim (49.4%) versus those cases in which there was no risk-taking (50.6%). Slightly more than half (56.5%) of the cases involved questions about the victim's moral character. One factor that has been found to have a great impact on the prosecutor's decision to file charges is the available physical evidence.

In the Kansas City, Missouri sample physical evidence was available in exactly half of the cases. A little over half (58.6%) of the victim's waited more than 24 hours to report the incident to the police. Finally, in this jurisdiction, I found a fairly equal distribution of cases involving black victims (53.4%) and white victims (46.6%). The average age for the victims in Kansas City, Missouri sample was 22.71 years. The average age for the victim was lower than the average age of the victims from the Pennsylvania sample. The average age for the offenders in Kansas City, Missouri was 31.76 years. Next, I examine the percentages of variables from the Philadelphia jurisdiction.

Philadelphia: Variable Percentages

Many of the univariate results for the Philadelphia sample differed from those in Kansas City, Missouri sample; for example, fewer cases (42.1%) were dismissed by the prosecutor in Philadelphia than in Kansas City, Missouri. Similar to Kansas City, Missouri, many of the cases (67.4%) did not involve prior consensual sex between the victim and the offender. Victim risk-taking behaviors were present in nearly two thirds (63.6%) of the cases. A little more than half (59.7%) of the cases involved questions about the victim's moral character. Physical evidence was available in nearly two thirds of the cases (62.8%). In the Philadelphia jurisdiction a large percentage (72.1%) of victim's waited more than 24 hours to report the incident to the police. A major difference between Philadelphia and Kansas City, Missouri is the racial makeup of the victim. Philadelphia had a greater percentage of black victims than Kansas City, Missouri. The cases from Philadelphia were composed of (79.2%) black victims, and (20.8%) white victims. The average age of the victim in the Philadelphia sample was slightly older (26.71) than the victims from Kansas City, Missouri. The average age for the offenders from the Philadelphia sample was 33.58 years.

Bivariate Analyses

I used bivariate analyses to examine the relationship between prior consensual sex (between the victim and the offender) and the prosecutor's decision to file charges in a case. I examined the relationship between prior consensual sex and various control variables. For the bivariate analyses, I computed crosstabulations using Pearson's chi-square as a test of statistical independence between the dependent variable and each independent variable.

The Decision to File Charges By Prior Consensual Sex

Hypothesis One tested to see if evidence of prior consensual sex between the victim and the offender would result in a lower likelihood of the prosecutor filing charges. The crosstabulation results are presented in Table two. Hypothesis one was not supported in either of the samples. In Kansas City, Missouri and in Philadelphia there was no statistically significant effect between the prosecutor's decision to file charges and evidence of prior consensual sex between the victim and the offender.

The Decision to File Charges by Prior Consensual Sex by Black Victims

Hypothesis two examined the decision to file charges in cases involving prior consensual sex and black victims compared with black female victims who have not engaged in prior consensual sex. Crosstabulations using chi-square were computed to test this hypothesis. The results from the crosstabulations are presented in Table 3. There was no statistically significant relationship found in

Kansas City, Missouri or in Philadelphia; hypothesis two, therefore, was not supported.

The Decision to File Charges by Prior Consensual Sex by White Victims

Hypothesis three examined the decision to file charges in cases involving prior consensual sex and white victims compared with white female victims who have not engaged in prior consensual sex. This hypothesis was not supported in either sample. The crosstabulation results for hypothesis three are presented in Table 3. In the Kansas City, Missouri sample the hypothesis was not supported, however Pearson's chi-square was significant ($\chi^2 = 4.562$; $p < .05$). These crosstabulation results with Pearson's chi-square test for independence suggest that evidence of prior consensual sex between the victim and the offender (when the victim is white) is a factor that affects the prosecutor's decision to file charges in the Kansas City, Missouri sample, but not in the Philadelphia sample. However, these results went against the prediction that cases involving white women with no prior consensual sex would have the highest likelihood of the prosecutor filing charges in the case; instead I found that white victims had a lower likelihood of having charges filed by the prosecutor. Hence, hypothesis three was not supported in Kansas City, Missouri, or in the Philadelphia sample.

The Decision to File Charges by Prior Consensual Sex by Questionable Moral Character

Hypothesis four predicted that sexual assault cases that involved women who have engaged in prior consensual sex with the offender and have evidence suggesting a questionable moral character will be more likely to have the prosecutor dismiss charges than those involving no questions about moral character. The crosstabulation results for both jurisdictions are presented in Table 4. Chi-square results indicated that hypothesis four was not supported in either jurisdiction. The crosstabulation results indicate that a questionable moral character alone does not affect the prosecutor's decision to file charges in a sexual assault case. Therefore, hypothesis four was not supported in the Kansas City, Missouri sample or in the Philadelphia sample.

The Decision to File Charges by Prior Consensual Sex by Victim Risk-taking

Hypothesis five predicted that sexual assault cases involving women who have engaged in prior consensual sex with the offender and have evidence in their file indicating that they were involved in risk-taking prior to the sexual assault will be more likely to have the prosecutor dismiss charges than those involving no victim risk-taking. The results from the chi-square crosstabulations are presented in Table 5. The crosstabulation results for Kansas City, Missouri support this hypothesis in that those victims who had information in their files indicating that they were involved in risk-taking prior to the assault had a greater chance of having the prosecutor dismiss charges in their case ($\chi^2 = 9.267$). However, the

hypothesis was not supported in the Philadelphia sample ($\chi^2 = 1.504$). Hence, hypothesis five was supported in the Kansas City, Missouri sample, but not in the Philadelphia sample.

The Decision to File Charges by Prior Consensual Sex by Timeliness of Report

Hypothesis six predicted that sexual assault cases involving women who have engaged in prior consensual sex with the offender and waited more than 24 hours after the sexual assault to report the assault to the police will be more likely to dismiss charges than cases reported in less than one hour. The results from the crosstabulations are presented in Table 6. The results from the chi-square crosstabulations did not support this hypothesis. There were not any statistically significant relationships present in either of the jurisdictions. Hence, hypothesis six was not supported.

Logistic Regression Results

This study required multivariate modeling in order to examine the relationship between the dependent variable, i.e. the decision to file charges and multiple independent variables. Logistic regression was used to test for the effect, if any, that prior consensual sex between the victim and the offender had on the prosecutor's decision to file charges while controlling for rival factors. It also enabled me to test for the possible interactions between prior consensual sex and other variables on the prosecutor's decision to file charges in a sexual assault case.

Decision to File Charges by Prior Consensual Sex with Controls

Hypothesis seven predicted that evidence of prior consensual sex between the victim and the offender will result in a lower likelihood of the prosecutor filing charges than evidence of no prior consensual sex between the offender and the victim while controlling for the available physical evidence in the case and the victim's characteristics such as race/ethnicity and age. Hypothesis seven was tested by binary logistic regression; the results are presented in table 7. Hypothesis seven was not supported in either of the samples.

In the Kansas City, Missouri the decision to file charges did not result in a lower likelihood of the prosecutor filing charges in a sexual assault case if there was evidence of prior consensual sex between the victim and the offender. Contrary to the sexual stratification hypothesis, there was a statistically significant inverse relationship between charges being filed and the victim being white, in that there was less likelihood of charges being filed for white victims ($b = .162$; $p < .05$). Other statistically significant factors in Kansas City, Missouri were available physical evidence and the age of the offender. If physical evidence was available there was a greater likelihood of charges being filed ($b = 1.456$; $p < .05$). As the age of the offender increased, the likelihood that charges would be filed in the case also increased ($b = .041$; $p < .05$). In Philadelphia the results were somewhat contradictory. None of the variables included in the analysis produced statistically significant results. Hence, hypothesis seven was not supported in either the Kansas City, Missouri sample or in the Philadelphia sample.

Interaction of Victim's Race/ethnicity with Prior Consensual Sex on the Decision to File Charges.

Hypothesis eight predicted that the interaction of the victim's race/ethnicity and evidence of prior consensual sex between the victim and the offender will result in the highest likelihood of charges being filed by the prosecutor for cases involving white women who have not had prior consensual sex with the offender (while controlling for the available physical evidence in the case and the victim's age); the lowest likelihood of charges being filed by the prosecutor for cases involving black women who have had prior consensual sex with the offender (while controlling for the available physical evidence in the case and the victim's age). This hypothesis was tested using logistic regression; results from the logistic regressions are presented in table 8. Hypothesis eight was not supported in either the Kansas City, Missouri sample or the Philadelphia sample.

In Kansas City, Missouri factors that produced a statistically significant effect in the logistic regression equation were if the victim was white, available physical evidence, and the age of the offender. Contrary to the sexual stratification hypothesis, the results from the Kansas City, Missouri sample indicate that there is a decreased likelihood of charges being filed in cases that involve a white victim ($b = -1.868$; $p < .05$). If there was available physical evidence in a case there was an increased likelihood that the prosecutor would file charges ($b = 1.400$; $p < .05$). The age of the offender also produced a statistically

significant result; i.e. as the age of the offender increased so did the likelihood of the prosecutor filing charges in the case ($b=.040$; $p<.05$).

In Philadelphia, hypothesis eight was not supported. There were no variables in this jurisdiction that produced a statistically significant effect. Hence, hypothesis eight was not supported by either the Kansas City, Missouri sample or the Philadelphia sample.

Interaction of the Victim's Moral Character and Prior Consensual Sex on the Decision to File Charges

Hypothesis Nine predicted that the interaction of the victim's moral character and evidence of prior consensual sex between the offender and the victim will result in the highest likelihood of the charges being filed by the prosecutor for cases involving women without a questionable moral character who have not had prior consensual sex with the offender (while controlling for the available physical evidence in the case and the victim's race/ethnicity and age); the lowest likelihood of charges being filed by the prosecutor for cases involving women with a questionable moral character who have had prior consensual sex with the offender (while controlling for the available physical evidence in the case and the victim's race/ethnicity and age). Hypothesis nine was tested using a logistic regression equation; the results from the logistic regression are presented in Table 9. Hypothesis nine was not supported by either of the samples. In the Kansas City, Missouri sample the only variables that resulted in a statistically significant result were the race of the victim, available physical evidence, and the

age of the offender. The race of the victim went against prior research and the sexual stratification theory in that white victims had less likelihood of having charges filed ($b = -1.384$; $p < .05$). If there was available physical evidence in the case this increased the likelihood of the prosecutor to file charges in case ($b = 1.497$; $p < .05$). The age of the offender also produced a statistically significant effect in the Kansas City, Missouri sample; i.e. as the age of the offender increased so did the likelihood of the prosecutor filing charges ($b = .041$; $p < .05$).

In Philadelphia hypothesis nine was not supported. The only variable that produced a statistically significant effect in the Philadelphia sample was the age of the victim; as the age of the victim increased so did the likelihood that the prosecutor would file charges in the case ($b = .057$; $p < .05$). Hence, hypothesis nine was not supported by either of the samples.

Interaction of Victim Risk-taking Behavior and Evidence of Prior Consensual Sex and the Decision to File Charges

Hypothesis ten predicted that the interaction of the victim's risk-taking behavior and evidence of prior consensual sex between the offender and the victim will result in the highest likelihood of charges being filed by the prosecutor for cases involving women who were not engaged in risk-taking behavior prior to the assault and who have not had prior consensual sex with the offender (while controlling for the available physical evidence in the case and the victim's race/ethnicity and age); the lowest likelihood of charges being filed by the prosecutor will exist for cases involving women who were engaged in risk-taking

behavior and who have had prior consensual sex with the offender (while controlling for the available physical evidence in the case and the victim's race/ethnicity and age). Hypothesis ten was tested by logistic regression; the results from the logistic regression equation are presented in Table 10. In Kansas City, Missouri there was a statistically significant effect for the victim risk-taking variable; i.e. those cases that involved no risk-taking by the victim had a greater likelihood of having charges dismissed in their case ($b=1.236$; $p < .05$). Other variables that produced a statistically significant factor were race of the victim and the presence of physical evidence. If the victim was white there was less likelihood that charges would be filed ($b = -1.300$; $p < .05$) If the case had available physical evidence there was a greater likelihood that charges would be filed by the prosecutor ($b=1.698$; $p < .05$).

In Philadelphia, hypothesis ten was not supported. Race of the victim and the age of the victim did, however, produce a statistically significant result. In line with the sexual stratification theory, white victims were granted more protection by the legal system; that is white victims had a greater likelihood of having charges filed in their cases ($b=1.179$; $p < .05$). There was a greater likelihood for older victims to see charges filed in their cases ($b=.063$; $p < .05$). Hence hypothesis ten was not supported in the Kansas City, Missouri sample or in the Philadelphia sample.

Interaction of Timeliness of the Report and Evidence of Prior Consensual Sex and the Decision to File Charges

Hypothesis eleven predicted that the interaction of the timeliness of the report of the assault to the police and evidence of prior consensual sex between the offender and the victim will result in the highest likelihood of charges being filed by the prosecutor for cases that are reported to the police within 24 hours and for women who have not had prior consensual sex with the offender (while controlling for the available physical evidence in the case and the victim's race/ethnicity and age) and the lowest likelihood of charges being filed by the prosecutor for cases that are not reported within 24 hours and for women who have had prior consensual sex with the offender (while controlling for the available physical evidence in the case and the victim's race/ethnicity and age). Logistic regression was used to test hypothesis eleven; results from the logistic regressions are presented in table 11. Hypothesis eleven was not supported in either of the samples. In Kansas City, Missouri the race of the victim and the presence of physical evidence produced a statistically significant effect. The relationship between the decision to file charges and the race of the victim produced a negative statistically significant result; that is if the victim was white there was less likelihood that the prosecutor would file charges ($b = -1.365$; $p < .05$). Another statistically significant relationship was available physical evidence and the decision to file charges. Sexual assault cases that had available physical evidence resulted in a greater likelihood that the prosecutor would file charges ($b = 1.473$; $p < .05$).

In the Philadelphia sample, the hypothesis was not supported. There were no variables in this jurisdiction that produced a statistically significant relationship. Hence, hypothesis eleven was not supported by either of the samples.

CHAPTER 5

CONCLUSION

This study tested for the relationship, if any, between evidence of prior consensual sex between the victim and the offender and the prosecutor's decision to file charges in a sexual assault case; to this point, research on sexual assault case processing has not examined this research question. Using data from a study funded by the National Institute of Justice on sexual assault case processing, I tested eleven hypotheses that represented variations in line with the following theoretical models: (1) Albonetti's (1986, 1987) Uncertainty Avoidance Theory, (2) The Sexual Stratification Theory (LaFree, 1980; Walsh, 1987), and (3) Estrich's (1987) Theory of Real Rape.

Albonetti's Uncertainty Avoidance Theory-Hypotheses Support

Albonetti's Uncertainty Avoidance Theory holds that prosecutors seek to reduce the amount of uncertainty in their case loads. Prosecutors seek to reduce uncertainty to help maintain a successful conviction record. As presented in Chapter 1, this theory was used to frame the present study; specifically, this theory has been applied to the present study in that I hypothesized that evidence of prior consensual sex between the victim and the offender would decrease the likelihood of the prosecutor filing charges in a sexual assault case. This hypothesis was predicting that evidence of prior consensual sex between the

victim and the offender would be seen as a type of uncertainty in the case, and therefore, the prosecutor would seek to avoid this type of case.

All 11 hypotheses that were tested in this study were designed to test Albonetti's Uncertainty Avoidance Theory; this theory was not supported by hypothesis one through hypothesis three or hypothesis six. The Kansas City, Missouri sample showed support for Albonetti's Uncertainty Avoidance Theory in Hypothesis Five in that those victims who had evidence in their file indicating that they were involved in risk-taking behaviors prior to the assault had a greater likelihood of the prosecutor dismissing charges in the case. Hypothesis seven through hypothesis eleven showed support for the theory of uncertainty avoidance in that the presence of physical evidence produced a statistically significant effect in at least one of the samples for this variable. In line with Albonetti's uncertainty avoidance theory, the presence of physical evidence in a sexual assault case decreases the amount of uncertainty in the case and, therefore, increases the likelihood that the prosecutor will file charges in the case.

The Sexual Stratification Hypothesis-Hypotheses Support

The sexual stratification hypothesis (LaFree, 1980; Walsh, 1987) was also tested in this study. This hypothesis explains that the criminal justice system places more value on white victims; minority victims are not deemed as "valuable", and therefore, have a lower likelihood of having their cases prosecuted. Hypotheses two, three, and eight tested the sexual stratification theory. Hypothesis two, hypothesis three, and hypothesis eight did not show

support for the sexual stratification hypothesis, in fact, white victims had a lower likelihood of having the prosecutor file charges in their case in the Kansas City, Missouri. This finding may be in part due to the victim/offender race dyad; most of the sexual assaults from this jurisdiction were intra-racial. If this explanation is true, then this finding would shadow the sexual stratification hypothesis in that since white victims from this jurisdiction are overwhelming assaulted by white offenders there is not an increase in the likelihood for prosecutors to file charges; the increase in the likelihood for the prosecutor to file charges should only occur if the offender is a minority and the victim is white.

Although the following hypotheses were not designed to test the sexual stratification hypothesis they resulted in results that did not support the hypothesis. In the Kansas City, Missouri sample, the results from hypothesis seven, hypothesis nine, hypothesis ten, and hypothesis eleven indicated that white victims have a negative statistically significant relationship; if the victim was white there was a decreased likelihood of the prosecutor filing charges which contradicts the assertions of the sexual stratification hypothesis. In hypothesis ten, however, the Philadelphia sample produces a statistically significant result based on victim's race, i.e. there is a greater likelihood that the prosecutor will file charges in the case if the victim is white ($b= 1.179$; $p < .05$). Therefore, the Philadelphia sample, in hypothesis ten supports the sexual stratification hypothesis.

Estrich's Theory of Real Rape-Hypotheses Support

Estrich's theory of real rape explains that the criminal justice system distinguishes between "real rape" i.e., (stranger rape) and "simple rape" i.e., (acquaintance rape). She explains that victims of simple rape are often blamed for their assault and their cases are not taken seriously by the criminal justice system. This theory applied to the present study because the main research question examined the effect of prior consensual sex between the victim and the offender on the prosecutor's decision to file charges, therefore the cases examined in this study would be classified as simple rapes. Because all of the hypotheses examined cases involving prior consensual sex between the victim and the offender they all tested Estrich's theory of real rape. Little support, however, was found for Estrich's theory of real rape. All of the cases in this study follow Estrich's definition of "simple rape" in that they involve victims and offenders that are acquaintances, more specifically victims and offenders who have had prior consensual sex. This study did not support Estrich's claim that cases involving acquaintances, i.e. "simple rapes" are taken less seriously by the criminal justice system.

Discussion

This study examined if evidence of prior consensual sex between the victim and the offender would decrease the likelihood of the prosecutor filing charges in a sexual assault case. The results of this study did not show support for the proposed research question. A summary of all the hypotheses tested are presented in Table 12 by jurisdiction. It is important to note that there were

contextual differences between the two jurisdictions examined in this study. There is clearly something atypical occurring in the Philadelphia sample. For example, contrary to the majority of previous research on sexual assault case processing, the presence of available physical evidence had no statistically significant effect in any of the equations that were computed.

There was also a difference between the two jurisdictions in terms of demographics, i.e. the Philadelphia sample was composed mostly of black victims, whereas, there was a more equal distribution of white victims and black victims in Kansas City, Missouri. Finally, it seems that the prosecutors in Kansas City, Missouri were more likely to use both legal and extra-legal factors than were the prosecutors in the Philadelphia sample.

Hypothesis one was not supported in either of the jurisdictions (see table two). The results may be explained in that it is not evidence of prior consensual sex between the victim and the offender alone that affects the prosecutor's decision to file charges, but that prior consensual sex combined with other factors affects the likelihood of the prosecutor filing charges. Another explanation for the lack of support may be that evidence of prior consensual sex between the victim and the offender is not a substantial reason to alter the decision to file charges in comparison to other important case characteristics that are available to the prosecutor.

Hypothesis two was not supported in either the Kansas City, Missouri sample or the Philadelphia sample (see table 3). An explanation for the lack of support may be that the race of the victim alone is not enough to influence the

prosecutors decision to file charges, but when the race of the victim links up with other influencing factors it has an affect of the prosecutor's charging decision. Hypothesis three was not supported in the Kansas City, Missouri sample, or in the Philadelphia sample (see table 3). The results from the Kansas City, Missouri sample did produce a significant Pearson's chi-square, however, that suggested that the prosecutor's decision to file charges in a case that involves prior consensual sex between the victim and the offender is affected when the victim is white, but in the opposite direction of what was predicted. The results from the Philadelphia sample suggest that the race of the victim alone is not enough to influence the prosecutor's charging decision. A possible explanation for this lies within the sexual stratification theory; white victims are viewed as valued victims by the criminal justice system and this may have more influencing power on the prosecutor than the evidence of prior consensual sex between the victim and the offender. Another possible explanation for the findings from both jurisdictions may be that the majority of these sexual assaults were intra-racial; furthermore, that it is not the race of the victim alone that influences the prosecutor's decision to file charges, but that of the victim and the offender.

Hypothesis four was not supported in the Kansas City, Missouri sample, or in the Philadelphia (see table 4). The lack of support for hypothesis four may be explained by the fact that the prosecutors in these jurisdictions did not use the extra-legal information concerning victim's moral character when making the decision to file charges. Another explanation may be that there was no

information collected about the victim's moral character in the initial report that the prosecutor used when deciding whether to file charges.

Hypothesis five was supported in the Kansas City, Missouri sample, but not in the Philadelphia sample. The findings from the Kansas City, Missouri sample suggest that the prosecutors use extra-legal factors such as victim risk-taking in combination with legal factors when making the decision to file charges. The results from the Philadelphia sample suggest that evidence of risk-taking on the part of the victim did not affect the prosecutor's decision to file charges in the sexual assault case. This lack of support may be explained in that it is not victim risk-taking alone that influences the prosecutor's charging decision, but the interaction of victim risk-taking with other factors that affect the charging decision. Another explanation for non-support of hypothesis five may be that prosecutors in this sample relied more on legal factors from the incident than extra-legal factors such as victim risk-taking.

Hypothesis six was not supported in either of the samples. Contrary to prior research, the prosecutor's decision to file charges from the jurisdictions analyzed in this study was not influenced by the timeliness of the report to the police. Nonsupport for hypothesis six may be explained due to the large percentages of cases that involved victims that waited more than 24 hours to report the incident to the police; (57.8%) in the Kansas City, Missouri sample and (72.1%) in the Philadelphia sample. Perhaps due to the large number of cases that involve victims who waited more than 24 hours to report the incident to the police

the prosecutor does not view timeliness of the report to police as a factor that will deem the case “unwinnable”.

Hypothesis seven was not supported by either of the samples. A surprising finding in relation to the race of the victim was found; if the victim was white there was less likelihood that the prosecutor would file charges in the case in the Kansas City, Missouri sample. The presence of physical evidence and the age of the offender also produced a statistically significant result; a greater likelihood of the prosecutor filing charges if physical evidence was present and as the offender age increased. The results from hypothesis seven seem to explain the nonsupport in that the prosecutors’ used legal factors more than the extra-legal factors such as prior consensual sex between the victim and the offender in a sexual assault case.

Hypothesis eight was not supported by either of the samples. Hypothesis eight found other statistically significant results: (1) if the victim was white there was less likelihood that the prosecutor would file charges and (2) if there was physical evidence available then there was a greater likelihood that the prosecutor would file charges in the case, and (3) the older the offender was the more likely that the prosecutor was to file charges in the case. Nonsupport for hypothesis eight was somewhat surprising because it contradicts both the assertions of the sexual stratification theory and prior research.

Hypothesis nine was not supported in either of the samples. An explanation for this may be that the prosecutors from Kansas City, Missouri and Philadelphia did not use the extra-legal information concerning questions of

victim's moral character when deciding whether to file charges in the sexual assault case. Another explanation for nonsupport may be that the available legal factors, such as the availability of physical evidence, in the case made the case strong enough that evidence of a questionable moral character would not be sufficient enough to deem the case as "unwinnable" in the eyes of the prosecutor filing charges.

Hypothesis ten was not supported in the Kansas City, Missouri sample or in Philadelphia sample. A possibility for the lack of support may be that prosecutors in these jurisdictions do not consider extra-legal factors such as risk-taking on the part of the victim when making charging decisions. Another explanation may be that legal factors such as physical evidence have more impact on the prosecutor's decision to file charges than the extra-legal factor of victim risk-taking. In the Kansas City, Missouri sample, if the victim in the case was white there was less likelihood that the prosecutor would file charges in the case. If there was physical evidence then there was a greater likelihood that the prosecutor would file charges in the case. The lack of support for this hypothesis from the Philadelphia sample may come from some unfamiliarity that is occurring within that jurisdiction.

Contrary to previous research on the amount of time between the incident and the report to the police I found no support in either jurisdiction for timeliness of the report, i.e. hypothesis eleven. This nonsupport may be explained due to the large number of cases in these jurisdictions that prosecutors review that involve victims that have waited longer than 24 hours to report the incident to the police.

Another possible explanation is that the timeliness of the report to the police was not a strong enough factor to deem the case as “unwinnable” because there was enough physical evidence or other legal factor that made the case “worthy” of charges being filed by the prosecutor.

Limitations of the Study

No study, at this point, has examined the effect, if any, that prior consensual sex between the victim and the offender has on the prosecutor’s decision to file charges in sexual assault cases. This study, therefore, was exploratory in the sense that it had little prior research to reference. There were some limitations to this study. This study only examined sexual assault cases in two jurisdictions, i.e. Kansas City, Missouri and Philadelphia; therefore, the findings from this study cannot be generalized to other jurisdictions. Although this research question was not supported in this study, I feel that this is an area that should be further investigated. I think that continued research in this area could lead to possible policy implications for jurisdictions such as the one presented by Meyers and Torney (1981) in which victims are not allowed to charge a man with first-degree rape if they have had prior consensual sex with him in the previous 12 months. If there are multiple jurisdictions following such legislation, research in this area will be needed in order to change these biased laws. Research in this area might also help to provide victim’s rights organizations with insightful information on factors that are used in the

prosecution of a sexual assault case which would help them to better inform the general public with this knowledge.

Suggestions for Future Research

For future research in this area, I suggest examining several jurisdictions. A study that would include a host of jurisdictions would lend itself to the possibility of increased knowledge concerning the use of the extra-legal factor of prior consensual sex between the victim and the offender and the decreased likelihood of the prosecutor to file charges. Another suggestion for future research would be to examine the extra-legal factor of prior consensual sex between the victim and the offender in a longitudinal study. A longitudinal study of the likelihood of the prosecutor to file charges in a sexual assault case based upon extra-legal factors could examine the effects of outside factors such as the current political atmosphere, the prosecutor's standing (in terms of re-election, conviction rates, and pay scale), and current events. Contrary to previous studies, this study did not find any statistically significant effect between the time it took for the victim to report the crime and the prosecutor's decision to file charges, however, the variable for "time reported" was measured as less than twenty-four hours or greater than twenty-four hours. I would suggest that future studies record the raw number given for the amount of time between the incident and the report to the police. Future studies might also consider examining the effect, if any, that the race of the prosecutor has on the decision to file charges in cases involving prior consensual sex between the victim and the offender based upon

the race of the victim/offenders involved in the case. Finally, it would be insightful to look at the effect of prior consensual sex between the victim and the offender and the effect that it has on the prosecutor's decision to file charges in a sexual assault case through a qualitative study. A qualitative study in this area should include interviews with prosecutors and other courtroom actors that are involved in cases involving prior consensual sex between the victim and the offender.

Conclusion

This study pursued one overall objective: to determine if prior consensual sex between the victim and the offender would negatively affect the prosecutor's decision to file charges in a sexual assault case. First, this study did not find support for the hypothesis that prior consensual sex between the victim and the offender results in a lower likelihood of the prosecutor filing charges in the case. As previously stated, this finding cannot be generalized to other jurisdictions; therefore there is a need for continued research in this area. Findings from this study suggest that prosecutor's utilize both legal and extra-legal factors when making a decision to file charges. Furthermore, there is a need for continued research in this area in order to provide convincing statistics necessary for policy implications in the current sexual assault laws. Further research in this area might also help put into place guards over the amount of discretion that can be used by prosecutors when deciding which cases to pursue, i.e. explanations would have to

be given for the use of extra-legal factors such as evidence of prior consensual sex between the victim and the offender.

ENDNOTES

¹ Exceptions to these findings were the studies by Spohn and Spears (1996), and Kingsnorth et al. (1999) in which they found there were no statistically significant differences in the prosecution of stranger vs. nonstranger sexual assault cases.

² In an acquaintance rape the interaction between the offender and victim after the incident is a critical element in assessing the validity of a rape complaint (Frohmann, 1991).

³ Morally questionable job has been defined as work as a prostitute, exotic dancer, or work in a massage parlor (Spohn & Holleran, 2001).

⁴ Although there are important legal definition differences for sexual assault and rape, for this study the two terms will be used interchangeably to simplify the distinctions from historical to recent studies on the topic of sexual assault.

⁵ For the purpose of this study, LaFree's non-traditional behaviors and victim risk-taking behaviors will be used interchangeably.

⁶ "Morals" was a variable that was created to measure the victim's moral character. Items in the police file about the victim's prior sexual activity with someone other than the suspect, pattern of alcohol and/or drug abuse, prior criminal record, information about alleged prostitution, or history of working as a go-go dancer and/or in a massage parlor were all considered to be items that operationalized the victim's "morals" (Spears & Spohn, 1997).

⁷ Kerstetter (1990) defined nonsexual discrediting information as, a history of false complaints, mental illness, or drug abuse.

⁸ Negative characteristics are an interval level construct measuring the following eight victim Negative characteristics: use of alcohol or drugs at time of arrest; reference in the crime report to possible past or present involvement in prostitution; transient; alone in public at night; assisted in removing her clothing; hitchhiking, alone in a bar; and accepted a ride in suspect's car (Kingnorth, et al. 1999).

⁹ The reason for this type of classification is that the categories of only stranger versus nonstranger ignore several combinations. This type of classification defines stranger cases as those in which the suspect and offender are complete strangers. Acquaintance cases included suspects and victims who were relatives, friends or acquaintances, or in which the suspect was either an authority figure or the boyfriend of the victim's mother or another relative. Intimate partner cases included suspects and victims who were (or had been) dating, were currently living together, or were (or had been) married to each other (Spohn & Holleran, 2001).

¹⁰ Victim's moral character was a measure that obtained information from the police report about the victim's prior sexual activity, patterns of alcohol or drug abuse, prior criminal record, and occupation as a prostitute, go-go dancer or worked in a massage parlor.

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APPENDIX

Tables

Table 1: Frequencies and Percentages for Kansas City and Philadelphia Samples

	Kansas City (n=154)	Philadelphia (n=129)
<u>Dependent Variable</u>		
Final charge made by the prosecutor		
Charges dismissed by the prosecutor (coded =0)	80 (53.3%)	48(42.1%)
Charges filed by the prosecutor (coded =1)	70 (45.5%)	66 (51.2%)
<u>Independent Variables</u>		
Prior Consensual Sex	95 (61.7%)	87 (67.4%)
No (coded =0)	59 (38.3%)	42 (32.6%)
Yes (coded=1)		
Victim Risk-taking Behavior-none		
No (coded =0)	78 (50.6%)	47 (36.4%)
Yes (coded =1)	76 (49.4%)	82 (63.6%)
Victim Moral Character-none		
No (coded =0)	67 (43.5%)	52 (40.3%)
Yes (coded =1)	87 (56.5%)	77 (59.7%)
Physical Evidence		
No Physical Evidence (coded =0)	77 (50.0%)	48 (37.2%)
Physical Evidence Available (coded =1)	77 (50.0%)	81 (62.8%)
Incident Reported within 24 hours		
Less than or equal to 24 hours (coded =0)	63 (41.4%)	36 (27.9%)
More than 24 Hours (coded =1)	89 (58.6%)	93 (72.1%)
Victim's Race		
Black (coded =1)	79 (53.4%)	95 (79.2%)
White (coded =0)	69 (46.6%)	25 (20.8%)
Victim's Age (mean)	22.71	26.71
Offender Age (mean)	31.76	33.58

Table 2: Crosstabulation Results for Charges Made by Prosecutor by Prior Consensual Sex (PCS)

Prosecutor's Charging Decision	Kansas City (n=150)		Philadelphia (n=113)	
	PCS (No)	PCS (Yes)	PCS (No)	PCS (Yes)
Charges Dismissed	52 (55.9%)	28 (49.1%)	29 (39.2%)	19 (47.5%)
Charges Filed	41 (44.1%)	29 (50.9%)	45 (60.8%)	21 (52.5%)
	$\chi^2=.655$		$\chi^2=.736$	
df=1				

Table 3: Crosstabulation Results for Charges Made by Prosecutor by Prior Consensual Sex (PCS) for White Victims and Black Victims

Prosecutor's Charging Decision	<u>Kansas City</u>		<u>Philadelphia</u>	
	Black Victims (n=77)	White Victims (n=67)	Black Victims (n=84)	White Victims (n=23)
	PCS (No)	PCS (Yes)	PCS (No)	PCS (Yes)
Black Victims				
Charges Dismissed	18 (38.3%)	14 (46.7%)	22 (41.5%)	17 (54.8%)
Charges Filed	29 (61.7%)	16 (53.3%)	31 (58.5%)	14 (45.2%)
	$\chi^2=.528$		$\chi^2=1.397$	
White Victims				
Charges Dismissed	34 (79.1%)	13 (54.2%)	5 (35.7%)	2 (22.2%)
Charges Filed	9 (20.9%)	11 (45.8%)	9 (64.3%)	7 (77.8%)
	$\chi^2=4.562^*$		$\chi^2=.471$	

df=1
*p<.05

Table 4: Crosstabulation Results for Charges Made by Prosecutor by Prior Consensual Sex (PCS) by Victim Moral Characteristics

<i>Prosecutor's Charging Decision</i>	Kansas City (n=57)		Philadelphia (n=40)	
	<i>Moral Character Victim-Yes</i>	<i>Moral Character Victim-No</i>	<i>Moral Character Victim-Yes</i>	<i>Moral Character Victim-No</i>
Charges Dismissed	14(41.2%)	14(60.9%)	9(42.9%)	10(52.6%)
Charges Filed	20(58.8%)	9 (39.1%)	12(57.1%)	9(47.4%)
df=1	$\chi^2=2.129$		$\chi^2=.382$	

Table 5: Crosstabulation Results for Charges Made by Prosecutor by Prior Consensual Sex (PCS) by Victim Risk-Taking

<i>Prosecutor's Charging Decision</i>	Kansas City (n=57)		Philadelphia (n=40)	
	<i>Risk-taking Behavior-Yes</i>	<i>Risk-taking Behavior- No</i>	<i>Risk-taking Behavior-Yes</i>	<i>Risk-taking Behavior-No</i>
Charges Dismissed	19(70.4%)	9(30.0%)	9(60.0%)	10(40.0%)
Charges Filed	8(29.6%)	21(70.0%)	6(40.0%)	15(60.0%)

df=1
*p<.05

$\chi^2=9.267^*$

$\chi^2=1.504$

Table 6: Crosstabulation Results for Charges Made By the Prosecutor by Prior Consensual Sex By Incident Reported Within 24 Hours

<i>Prosecutor's Charging Decision</i>	Kansas City (n=57)		Philadelphia (n=40)	
	<i>Greater than 24 hours</i>	<i>Within 24 hours</i>	<i>Greater than 24 hours</i>	<i>Within 24 hours</i>
Charges Dismissed	17(42.5%)	11(64.7%)	17(50.0%)	2(33.3%)
Charges Filed	23(57.5%)	6(35.3%)	17(50.0%)	4(66.7%)

df=1

*chi-square results not reported because expected cell counts for the Philadelphia sample were less than 5.

Table 7: Logistic Regression for the Prosecutor's Decision to File Charges for Cases Involving Prior Consensual Sex

Control Variables	Kansas City		Philadelphia	
	b	e ^b	b	e ^b
Consensual Sex	.162	1.176	-.566	.568
Victim White	-1.351*	.259	-.886	2.425
Victim Age	-.018	.983	.050	1.052
Offender Age	.041*	1.041	-.022	.979
Physical Evidence	1.456*	4.288	.681	1.975
Constant	-1.308*	.270	-.816	.442
Model Chi-Square	28.530*		10.029	
Nagelkerke R Square	.242		.122	
Number of cases	154		129	

p<.05

Table 8: Binary Logistic Regression Estimates for the Prosecutor's Decision to File Charges for Cases Involving Prior Consensual Sex and Control Variables for Kansas City and Philadelphia Samples

Control Variables	<u>Kansas City</u>		<u>Philadelphia</u>	
	b	e ^b	b	e ^b
Consensual Sex	-.376	.687	-.805	.447
Victim White	-1.868*	.154	.428	1.534
Black Victim/Consensual Sex	1.257	3.514	1.217	3.375
Victim Age	-.016	.984	.052	1.053
Offender Age	.040*	1.041	-.023	.977
Physical Evidence	1.400*	4.056	.681	1.976
Constant	-1.082	.339	-.721	.486
Model Chi-Square	31.192*		11.270	
Nagelkerke R Square	.262		.136	
Number of Cases	154		129	

* p < .05

Table 9: Binary Logistic Regression Estimates for the Prosecutor’s Decision to File Charges for Cases Involving Prior Consensual Sex and Control Variables for Kansas City and Philadelphia Samples

<u>Independent Variables</u>	<u>Kansas City</u>		<u>Philadelphia</u>	
	b	e^b	b	e^b
Consensual Sex	.816	2.262	.221	1.247
Victim White	-1.384*	.251	.960	2.613
Moral Character None	.380	1.462	.986	2.680
Moral Character/Prior Consensual Sex	-1.422	.241	-1.427	.240
Victim Age	-.011	.989	.057*	1.059
Offender Age	.041*	1.042	-.020	.980
Physical Evidence	1.497*	4.467	.797	2.220
Constant	-1.723*	.179	-1.744	.175
Model Chi-Square	31.911*		8.003	
Nagelkerke R Square	.268		.097	
Number of Cases	154		106	

*p< .05

Table 10: Binary Logistic Regression Estimates for the Prosecutor's Decision to File Charges for Cases Involving Prior Consensual Sex and Control Variables for Kansas City and Philadelphia Samples

<u>Independent Variables</u>	<u>Kansas City</u>		<u>Philadelphia</u>	
	b	e^b	b	e^b
Consensual Sex	-.441	.644	-.780	.459
Victim White	-1.300*	.272	1.179*	3.251
Victim Risk-taking/None	1.236*	3.442	.977	2.655
Victim Risk-taking /Prior Consensual Sex	.879	2.408	.198	1.220
Victim Age	-.015	.985	.063*	1.065
Offender Age	.035	1.035	-.019	.982
Physical Evidence	-1.698*	5.464	.754	2.126
Constant	-1.872*	.154	-1.928	.145
Model Chi-Square	45.712*		15.435*	
Nagelkerke R Square	.366		.183	
Number of Cases	154		129	

*p< .05

Table 11: Binary Logistic Regression Estimates for the Prosecutor's Decision to File Charges for Cases Involving Prior Consensual Sex and Control Variables for Kansas City and Philadelphia Samples

<u>Independent Variables</u>	<u>Kansas City</u>		<u>Philadelphia</u>	
	b	e^b	b	e^b
Consensual Sex	-.488	.614	.264	1.302
Victim White	-1.365 *	.255	.851	2.341
Time Reported within 24 Hours	-.485	.616	-.354	.702
Time Reported > 24 hours/Prior Consensual Sex	.980	2.666	-.979	.376
Victim Age	-.015	.985	.056	1.057
Offender Age	.033	1.034	-.024	.977
Physical Evidence	1.473*	4.364	.944	2.570
Constant	-.848	.428	-.798	.450
Model Chi-Square	29.876*		11.958	
Nagelkerke R Square	.252		.144	
Number of Cases	154		106	

*p< .05

Table 12: Summary Table of Hypotheses

	<u>Kansas City Sample</u>	<u>Philadelphia Sample</u>
Hypothesis One	Not Supported	Not Supported
Hypothesis Two	Not Supported	Not Supported
Hypothesis Three	Not Supported	Not Supported
Hypothesis Four	Not Supported	Not Supported
Hypothesis Five	Supported	Not Supported
Hypothesis Six	Not Supported	Not Supported
Hypothesis Seven	Not Supported	Not Supported
Hypothesis Eight	Not Supported	Not Supported
Hypothesis Nine	Not Supported	Not Supported
Hypothesis Ten	Not Supported	Not Supported
Hypothesis Eleven	Not Supported	Not Supported

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