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## The Determinants of Policing Unfounding and Prosecutorial Case Rejections in San Diego, California Sexual Assault, Cases

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**The Determinants of Policing Unfounding and Prosecutorial Case Rejections in San  
Diego, California Sexual Assault Cases**

**A Thesis**

**Presented to the**

**Department of Criminal Justice**

**and the**

**Faculty of the Graduate College**

**University of Nebraska**

**In Partial Fulfillment**

**of the Requirements for the Degree**

**Master of Arts**

**University of Nebraska at Omaha**

**by**

**Elizabeth M. Keller**

**August 2003**

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THESIS ACCEPTANCE

Acceptance for the faculty of the Graduate College,  
University of Nebraska, in partial fulfillment of the  
requirements for the degree Master of Arts,  
University of Nebraska at Omaha.

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8-18-03

# The Determinants of Policing Unfounding and Prosecutorial Case Rejections in San Diego, California Sexual Assault Cases

Elizabeth M. Keller, M.A.

University of Nebraska, 2003

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The vast amount of research that has been done on sexual assault in the past thirty years has yielded a great amount of knowledge about the phenomenon of sexual assault and the way the criminal justice system responds to it. One hypothesis that emerges from this literature is that certain cases of sexual assault may be treated differently by police and prosecutors because of characteristics of the victim, the suspect, or of the case itself. This study tests that hypothesis, using data collected by the San Diego Police Department's Sex Crimes Unit over a multi-year period in the 1990s. This study specifically focuses on the determinants of police decisions to unfound a case (or to declare that no crime occurred) and prosecutorial decisions to decline to file charges in a case.

The current study builds on past research by identifying variables (i.e. the offense severity or the relationship between the suspect and victim) that have been previously cited as important elements in sexual assault case processing. Regression analyses will be conducted, testing both police and prosecutorial decision-making. Further regression analyses will then be conducted on sexual assault and attempted sexual assault cases

specifically, allowing for comparison between these more serious cases and the others that are handled by the San Diego Police Department's Sex Crimes Unit (i.e. unlawful intercourse). The results of these analyses will be presented and comparisons between police and prosecutorial decision-making processes will be made. These results will be discussed in several different ways. First, they will be considered in relation to the specific department from which they originated and policy implications for that department will be suggested. Next, more general policy implications will be discussed, including those suggested by the variables that were not predictors of police and prosecutorial decision-making in this study. Finally, suggestions for future research will be made.

## Acknowledgements

Though it is a great personal accomplishment to have this thesis done, it would never have been possible without the help and support of numerous people. Please indulge me for a moment as I take time to give credit where it is due.

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I must, if it is possible, find the words to express my gratitude to my husband, Joseph Charbonneau, for all of his love and support as I worked on this thesis. He is my partner and my best friend, and I thank him with all of my heart for being the man that he is. Finally, I thank God for all of the gifts He has given me, including the people listed here.

Any omissions from this list are unintentional. My sincere thanks to anyone I may have missed.

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## Introduction

Sexual assault is an interesting phenomenon. It is something that is always somewhat present in the minds of many members of the public, especially women. On the other hand, given the very personal nature of sexual assault, it is one that many people avoid talking about. Researchers in criminology are an exception to that rule. In the past thirty years, the field of sexual assault research has virtually exploded. Many aspects of sexual assault are now covered within the literature: prevalence rates, the experiences of victims, the psychology of perpetrators, and, more recently, the handling of sexual assault cases by the criminal justice system.

Though the criminal justice system has always dealt with sexual assault, researchers have only recently sought to understand the ways in which it does so. Much attention (i.e. Frohmann, 1991 and 1998 and Spohn and Horney, 1991, 1992 and 1996) has been paid thus far to understanding the ways prosecutors handle sexual assault cases. This is logical, given the critical role prosecutors play in securing convictions against those accused of sexual assault, thereby securing punishment and (ideally) deterring future crimes.

Less attention has been focused on police handling of sexual assault. Police officers, however, are the first professionals within the criminal justice system to encounter a report of sexual assault. They provide victims with their first contact with the system, and make decisions about individual cases that will affect the way those cases are handled within the system. In fact, depending on the decisions of the police officer involved, a case may or may not even enter the criminal justice system for formal processing.

Those cases on which police and prosecutors choose not to take formal action do not receive as much attention within the literature as those that they do choose to act upon, for obvious reasons. If a police officer does not choose to take an official report about a crime, or determines upon investigation that a crime did not really occur, it will not enter the criminal justice system for formal processing. Similarly, if a prosecutor is presented with a case but chooses for some reason not to proceed with prosecution against a defendant, that case will go no further within the system. In either case, no suspect will be punished. Given that police officers and prosecutors are professionals within the same system, working toward the same goal (catching and punishing those who commit crimes), it could be hypothesized that they would use the vast discretion they are afforded in much the same ways. Currently, research is not available to demonstrate whether or not this is so.

This study is designed to begin to fill that gap. Using data provided by the San Diego, California Police Department's Sex Crimes Unit, this study will test the determinants of police decisions to unfound a report of a crime (a decision that no crime occurred after investigation of a report) and prosecutorial decisions to decline to file charges against suspects arrested for sexual assault. Both those variables police and prosecutors are legally permitted to consider (i.e. crime seriousness) and those variables they are legally prohibited from considering (i.e. race of the suspect or the victim) will be included in the applicable models. Once these determinants have been tested using statistically appropriate models, relevant research and policy suggestions will be made.

### Foundation of the Current Study

The foundations of the current study are rooted in Estrich's (1987) work *Real Rape*, a substantial piece of literature in the field of sexual assault research, and follows the tradition of those pieces that also drew from this work (i.e. Horney and Spohn, 1996). In her book, Estrich not only recounts the development of sexual assault law up to its then-current state, but also sets forth certain hypotheses about the ways in which sexual assault cases will be handled by the criminal justice system.

All sexual assault cases are not created equal, according to Estrich (1987). The criminal justice system and society have traditionally held the belief that sexual assaults are perpetrated by "the stranger in the bushes" on unsuspecting victims who have no characteristics that could in any way make them culpable in the crime (i.e. alcohol use). These victims also immediately report their assaults to police, according to this stereotype.

Estrich (1987) asserts throughout the book, however, that this stereotype simply does not reflect contemporary reality. Most victims are attacked by people they know, in locations where other persons are unlikely to witness the assault (i.e. a home). Moreover, most victims do not report their assaults (Estrich, 1987).<sup>1</sup> Thus, according to Estrich (1987), victims who conform to the traditional image and who are attacked by strangers will find themselves with a much easier experience in the criminal justice system, as police and prosecutors will be more likely to believe them and take serious action on their

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<sup>1</sup> More recent comparisons of official crime reports, such as the FBI's Uniform Crime Report, and victimization studies (such as the National Crime Victimization Survey) demonstrate that while sexual assault is indeed underreported, it is no more underreported than many other Index Crimes listed in the Uniform Crime Report (Sample, 2001). A recent publication by the Bureau of Justice Statistics lend further credibility to this statement, noting that 31% of victims who reported being sexual assaulted between 1992 and 2000, a period almost identical to the timeframe in which data for this study were collected, reported their victimization to police. This rate compares favorably to the 38% reporting rate of victims of simple assaults (Hart and Rennison, 2003).

complaints. This will be especially so if the case is what Estrich (1987) calls an “aggravated rape,” or one with weapon involvement, victim injury, or multiple offenders.

Other victims, however, including those who knew their attackers (especially those who had prior romantic relationships with them), those who were not injured, and those whose lifestyles or activities at the time of the assault may be at all questionable will find the reporting and prosecution experiences much more difficult. In fact, Estrich (1987) considers it somewhat doubtful these cases, which she terms “simple rapes,” will be taken seriously and fully processed through the criminal justice system.

The present study will follow the tradition started by Estrich (1987) by considering case processing decisions by both police and prosecutors in light of both victim and case characteristics. Data from the San Diego Police Department Sex Crimes Units will be utilized for this study. Specific details of the data will be discussed in the Data and Methods section.

### **Literature Review**

#### *Historical Development of Sexual Assault Law*

Society has always been aware of sexual assault. Donat and D’Emilio (1992) detail the evolution of societal attitudes and criminal justice system responses over the past four centuries. For much of history, women were not seen as full persons in the same way as men were. Instead, they were seen as the property of their fathers and husbands. Women’s sexual purity and ability to bear legitimate children was of paramount importance to their fathers and husbands. Their sexuality, then, was not regulated by notions of personal autonomy, but rather by the notions of property rights and honor for their husbands and fathers (Donat and D’Emilio, 1992). Sexual assault

was, in fact, not really seen as a crime against a person in many cases, but rather a crime against a man's property.

The 19<sup>th</sup> century brought some changes in the ways both women and sexual assault were viewed. Donat and D'Emilio (1992) detail the decline of the role of the church in society and the increased societal emphasis on the rights of individual persons to choose their own dating and marital partners, rather than allowing family and church members to dominate that aspect of their lives, as was previously the case. Toward the end of the century, women became a greater part of the paid labor force (Donat and D'Emilio, 1992), thus further weakening traditional patriarchal controls over women's time and behavior. At the same time, however, women's sexual purity continued to be important to their possibilities of finding a husband. Women who used their newfound freedom to engage in premarital sex still found themselves considered "immoral" or even "depraved" (Donat and D'Emilio, 1992).

Patriarchal standards of the time, however, did not hold men to the same standard. Women were expected to maintain chastity prior to marriage and display no real interest in sex; men were allowed to not only show interest in sex, but in fact, to seek it out, sometimes aggressively (Donat and D'Emilio, 1992). Women who were victims of sexual assault frequently found themselves considered to be at least partially responsible for the crime, either because they did not prevent it from happening or because they "must have" in some way "encouraged" the perpetrator (Donat and D'Emilio, 1992). Women who did report sexual assault frequently found themselves stigmatized.

The 20<sup>th</sup> century saw many developments in the area of rights for women. Sexual autonomy for women, including the issues of reproductive freedom and protection from

sexual assault were among the areas important to those who worked to further the cause of women's rights.<sup>2</sup> Donat and D'Emilio (1992) comment that this became especially prominent with the development of the larger women's rights movement that began in the late 1960s and continued well into the 1970s and 1980s. Women began to participate in the labor force in greater numbers than ever before, and began to seek independence within the social sphere as well. One of the most important developments that occurred during this period was the redefinition of sexual assault as a crime against a person, coinciding with a new belief that women are, in fact, persons and citizens with the same autonomy and rights as men (Donat and D'Emilio, 1992).

It was, in fact, during this time that criminal justice scholars began to take an interest in sexual assault. Whereas previous research efforts into sexual assault focused primarily on the cause of sexual assault by studying the men who perpetrated it, new research efforts sought both to understand the impact of sexual assault on its victims and the response of the criminal justice system to reports of sexual assault. The variables included in the statistical models employed in this study will reflect the findings of research that began during this period.

#### *Prior Research on Sexual Assault Case Processing by Police and Prosecutors*

Although police officers are typically the first criminal justice professionals to encounter and evaluate a report of sexual assault, prosecutors' charging decisions have received the bulk of researchers' attention. This is not surprising. Prosecutors are the criminal justice professionals charged with obtaining convictions against those accused of sexual assault, and are sometimes amenable to allowing researchers insight into their

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<sup>2</sup> Throughout much of the literature on the history of sexual assault law, the issue of sexual assault is framed as primarily a women's issue or a feminist issue. This does not in any way diminish the fact that men have been and are victimized by sexual assault.

offices and decision-making processes. Frohmann (1991), for example, was granted access to two branches of a district attorney's office in a "metropolitan area on the West Coast" for eight months in one office and nine months in another in order to conduct an ethnographic study on the handling of sexual assault cases in those offices. Very little comparable literature on the mechanisms police employ to make decisions in sexual assault cases is available. Although the findings of these studies of police decision-making inform the current study, many of the assumptions this study will make about police decision-making in sexual assault cases will be based on the literature available regarding prosecutorial decision-making.

*Police Decision Making: The Decision to Unfound*

Police take action on reports of sexual assault upon the decision of the victim to report the crime. Upon arriving at the victim's location, whether that is the scene of the crime, a hospital, the victim's home or another location, the responding officer must take several actions. First, he or she must talk with the victim and gather the victim's account of what happened, including information about the circumstances of the alleged event and information about the suspect. Next, he or she must evaluate the case at hand and determine whether it is reasonable to believe that a crime did, in fact, occur.

Should the police officer charged with taking the initial report of a sexual assault conclude that a crime did, in fact, occur and that the case warrants further action by the criminal justice system, it is said that he or she chooses to "found" the case (Frazier and Haney, 1996). If, however, upon investigation (whether initial or more detailed) of a case, the responding officer should determine that the case lacks the elements necessary to convince him/her that a crime did occur, he or she will then take the opposite action

and “unfound” the case (Frazier and Haney, 1996). In such cases, no additional action will be taken by the criminal justice system, barring an unforeseen turn of events. This decision to unfound will be the police decision at issue in this study. Bryden and Lengnick (1997) report that the overall rate of unfounding in sexual assault cases in the U.S. is approximately eight percent.<sup>3</sup>

Several previous authors have addressed the issue of the police decision to unfound a case. Two authors, LaFree (1989) and Kerstetter (1990) comment on the discretion with which police make founding decisions, and reached different conclusions. LaFree (1989) comments on the relative lack of supervision that police in his Indianapolis study had, noting that he “never witnessed” an exchange between a police officer and a supervisor in which the officer was called upon to justify the decision to unfound a case. Kerstetter (1990), on the other hand, found that in Chicago, officers were required to submit a report founding or unfounding each case they handled within seven days of the incident. These decisions were then approved by a supervisor and investigated further by a detective if warranted. Finally, the entire case would be reviewed by “specialists at detective division headquarters” in order to ensure that the proper decision had been made (Kerstetter, 1990).

LaFree (1989) also comments on the rates of unfounding in his study. In his Indianapolis study consisting of 904 cases, LaFree (1989) found an overall unfounding rate of only 6.6%, for a total of 60 cases being unfounded. Kerstetter (1990) expands this notion somewhat by comparing sexual assault cases in his Chicago data to other cases and examining the decisions made by the previously mentioned review panel as to

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<sup>3</sup> Some authors (Kerstetter, 1990) suggest that the rate of unfounding for cases in which the victim and suspect are non-strangers may be higher.



whether the decision to unfound a case was appropriate. Kerstetter (1990) found that only 18% of sexual assault cases were improperly unfounded (presumably meaning that the review panel determined a crime had occurred when the officer had not). This compared to a rate of 36% of robbery cases that the panel found had been improperly unfounded, leading Kerstetter (1990) to suggest that police unfounded more cases of sexual assault appropriately than other crimes.

LaFree (1989), Kerstetter (1990) and Bryden and Legnick (1997) also address the reasons given by police for deciding to unfound cases. LaFree (1989) suggests that both legally relevant and irrelevant variables play a role in the decision-making process of the Indianapolis police he studied. Most notably, more than 70% of officers he spoke to cited “problems with the victim’s moral character or credibility” as the reason they unfounded a particular case. The victim’s unwillingness to cooperate with police was cited in only 20% of cases, and technical reasons were cited by only 9.1% of officers. Similarly, Kerstetter (1990) found that victim cooperation was the most important variable influencing the police decision to unfound in Chicago.

Bryden and Lengnick (1997) provide a comprehensive review of the literature published up to the time of their study, and document several reasons consistently emerging as reasons police officers unfound a case. They are not convinced that legally relevant variables, those that should play a paramount role in police decision-making, actually do so. The victim’s credibility, her marital status, substance use at the time of the offense, corroboration of her story (or lack thereof), risk-taking behavior (i.e. inviting the suspect into her home), victim and suspect race, victim and suspect relationship, promptness of report, and even the perceived attractiveness of the victim have all been

cited by police as reasons for unfounding a case. While some of these may be legally relevant (i.e. lack of corroborating evidence), many of these variables are clearly beyond the scope of what is outlined in any sexual assault statute.<sup>4</sup> As the literature on prosecutorial decision-making will soon establish, many of these variables are also the same ones prosecutors cite for declining to file charges in a case.

### *Prosecutorial Decision-Making: The Decision to File Charges*

Prosecutors can only make decisions on those cases of sexual assault presented to them by police. Usually, this information will be presented to a prosecutor after a suspect in a sexual assault case has been identified and arrested. The prosecutor then has the option to make one of several choices. He or she may evaluate the strength of the case, including the strength of the evidence available against the defendant, the willingness of the victim to cooperate in prosecution, and the credibility of the victim. Upon reviewing this information, the prosecutor must then choose to proceed with prosecution by filing charges or seeking an indictment against a defendant, or to decline to prosecute a case (Frazier and Haney, 1996).<sup>5</sup> This decision to decline to prosecute will be the prosecutorial decision at issue in this paper.

Prior research has identified numerous factors as playing a role in prosecutorial decision-making or at least potentially doing so. Two broad categories of variables have been identified by previous research. The first are those variables police and prosecutors are legally permitted to consider when making case processing decisions. Examples of these include offense severity, weapon involvement, and the strength of the evidence

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<sup>4</sup> This is LaFree's (1989) definition of a legally relevant variable.

<sup>5</sup> The prosecutor may have additional options, depending upon the jurisdiction. He or she may choose to send the case back to police for additional investigation, or may choose to file a misdemeanor charge against the defendant rather than a felony (LaFree, 1989).

available to assist in prosecution. On the other hand, many legally irrelevant or “extralegal” variables (Frazier and Haney, 1996), meaning that police and prosecutors are to give them no consideration in making case processing decisions, have also been established within the literature. These variables include the relationship between the victim and the suspect, race of the victim or the suspect, and the behavior of the victim, either prior to or at the time of the assault (i.e. whether the victim willingly invited the suspect into his/her home or was under the influence of alcohol or drugs at the time of the assault). Many of these factors appear repeatedly within the literature, and each will now receive separate consideration and review.

### *Legally Relevant Variables*

#### Offense Severity

Certainly, among the most important considerations a police officer or prosecutor has when deciding the appropriate action to take on a case is the seriousness of the crime alleged. The seriousness of the charge(s) alleged by a victim, or for which a suspect is arrested or that are eventually filed against the defendant is likely to impact the processing of the case from that point on. Felony cases will be treated differently and eventually punished more harshly than misdemeanor cases, for example. Similarly, it can be logically inferred from the assertions of Estrich (1987) that prosecutors may also feel a great compulsion to seek a conviction against a suspect who used a weapon and/or seriously injured or traumatized a victim, as opposed to a suspect in a “simple rape” case.

Unfortunately, no one single characteristic of a case determines how serious it will in fact be deemed by police or prosecutors. Rather, several factors must be considered in tandem in order to determine the severity of an offense. The offense

alleged is the logical place to start. A case of sexual assault will be considered a serious offense in any situation, whether it is forced sexual intercourse, forced sodomy or forced oral copulation, or another kind of sexual assault entirely (i.e. unlawful sexual intercourse between an adult and a teenager). Many researchers have suggested that the seriousness of the offense a suspect is charged with should impact the eventual outcome of that case, given that a criminal justice system with limited resources could be assumed to be more likely to focus on those cases deemed more serious (Kingsnorth, MacIntosh, and Wentworth, 1999; Frazier and Haney, 1996; Kingsnorth, Lopez, Wentworth and Cummings, 1990; LaFree, 1989; Estrich, 1987); support for this hypothesis has been mixed.

#### *Use of Force and Weapon Involvement*

Non-consent by the victim is inherent in most charges of sexual assault.<sup>6</sup> Some form of force by the suspect, whether by stated or implied threats, is usually present in cases of sexual assault (Estrich, 1987). That force becomes more tangible, and thus a case more serious, when a weapon is present in a case, and especially so if the suspect actually uses that weapon against the victim. Numerous studies suggest that the involvement of a weapon, especially if it is used, is among the most serious aggravating factors that should be expected to impact case processing decisions, either by police or by prosecutors (Spohn, Beichner and Davis-Frenzel, 2002; Spohn and Holleran, 2001; Kingsnorth, *et al.*, 1999; Frazier and Haney, 1996; Kingsnorth, *et al.*, 1990; LaFree, 1989; Estrich, 1987; LaFree, 1981). Results of these studies are also mixed. LaFree (1981), for example, did find that suspects were more likely to be arrested (thereby

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<sup>6</sup> A notable exception to this is a charge of "unlawful intercourse," typically made when a victim is underage and is presumed unable to consent because he or she is too young to do so.

implying that police did not unfound the case) when a weapon was present in the case. Spohn *et al.*, (2002) also found that the presence of a gun or knife in a sexual assault case did result in a greater likelihood of prosecutors choosing to file charges. On the other hand, neither Spohn and Holleran (2001) nor Kingsnorth *et al.*, (1999) found the presence of a weapon to be a significant predictor of the prosecutorial charging decision.

### Evidentiary Variables

#### *Physical Evidence*

Another critical factor both police and prosecutors must consider in their determination of whether or not to proceed on an individual case is the strength of the evidence available to support the victim's complaint, and eventually to assist in securing a conviction against the suspect. Several types of evidence and other related factors can be identified. The presence of physical evidence, either fingerprints, semen or other bodily fluid, fibers, etc. are all consistently identified within the literature as potentially important factors in police and prosecutorial decision-making (Spohn *et al.*, 2002; Spohn and Holleran, 2001; Horney and Spohn, 1996; Estrich, 1987). Spohn and Horney (1992) point out the fact that until very recently in most states, some independent corroboration of the victim's account of an alleged sexual assault, either in the form of physical evidence or a witness, was required in order to succeed with prosecution<sup>7</sup>.

#### *Injury to the Victim*

Closely associated with the presence of physical evidence in a case is the presence of collateral physical injury to the victim. In fact, injury to a victim's body is fact a piece

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<sup>7</sup> This corroboration requirement was historically one of many laws and legal provisions designed to protect men against false accusations of sexual assault and to require women who made a complaint of sexual assault to provide "proof" that the crime did occur (Spohn and Horney, 1992). These laws have largely been repealed as the result of the efforts of advocates for rape law reform and victims' rights (Spohn and Horney, 1992).

of physical evidence that a sexual assault did indeed occur. This variable is worthy of separate consideration, however, for a number of reasons. First, if a victim sustained injury, it is more likely that those to whom he or she repeats the account of the assault will find it credible and not question the issue of consent. Injury may help to provide the corroboration that the law previously required (Spohn and Horney, 1992) and that some authors still assert police and prosecutors may “unofficially” require to provide corroboration of a victim’s story (Frazier and Haney, 1996).

Most contemporary studies do separate physical injury into a distinct independent variable when considering or testing its impact on case processing decisions (Spohn *et al.*, 2002; Spohn and Holleran, 2001; Kingsnorth *et al.*, 1999; Frazier and Haney, 1996). When considered separately, it consistently appears to predict a prosecutor’s decision to proceed with charges against a defendant (Spohn *et al.*, 2002; Spohn and Holleran, 2001; Kingsnorth *et al.*, 1999; Frazier and Haney, 1996). Frohmann (1991) further suggests that it was relevant in her conversations with prosecutors regarding their decisions to file charges in her ethnographic study. Finally, LaFree (1989; 1981) suggests that it is also an important factor in determining the level of seriousness police will assign to a case.

### *Important, Though Unclassified, Variables*

#### Assignment to a Sex Crimes Detective

Some variables listed within the literature and available within the dataset do not fit nicely into either the category of “legally relevant” or “legally irrelevant.” The assignment of a case to a specifically designated Sex Crimes detective is one such variable. LaFree’s (1989) work attests to the importance of having properly trained and educated police officers assigned to investigate reports of sexual assault. Similarly, Lord

and Rassel (2000) provide contemporary evidence to support this claim. They studied the implementation of practices previously identified as critical in assisting police in dealing with sexual assault victims and in effectively processing sexual assault cases in order to ensure favorable outcomes for law enforcement. This study, conducted in nine North Carolina counties, emphasizes the importance of written policies regarding sexual assault cases, proper training for all officers who may encounter sexual assault cases, the establishment of Sex Crimes Units when possible, and maintaining good working relationships with local victim-assistance services, such as rape crisis centers and hospitals (Lord and Rassel, 2000).

Two additional studies are available to support Lord and Rassel's (2000) assertion regarding the importance of proper training and education regarding sexual assault for police officers. Krahe (1991) presented various prototypes of sexual cases and victims to police officers to study their responses. She found that police now generally do acknowledge the serious nature of sexual assault and the serious impact it will have on the life of a victim, though she also found that police may still tend to minimize the harm done to victims in certain cases (i.e. cases where a prior relationship between the parties existed). Lonsway, Welch, and Fitzgerald (2001) furthered this research approach by comparing police performance on simulated sexual assault investigation interviews both before and after the officers received specific training classes at their applicable police academy. Lonsway *et al.*, (2001) found that although officers' personal attitudes toward sexual assault victims did not improve following the training, they performed markedly better in the actual simulated interview (measured by adherence to departmental policies and procedures regarding interview techniques and professional approaches to victims).

Taken together, the work of Lord and Rassel (2000), Krahe (1991) and Lonsway *et al.*, (2000) suggest that proper training for police officers in the dynamics of sexual assault, as well as on the legal definitions of the crime (without regard to victim characteristics) could be assumed to facilitate more professional, thorough report-taking and investigation in sexual assault cases. Establishment of a specific Sex Crimes Unit within a police department and designation and training of officers specifically for such a unit could therefore be predicted to facilitate this.

At the same time, however, it seems somewhat unfair to overstress the importance of assigning a Sex Crimes Unit officer to a specific sexual assault case. It could easily occur, for example, that no such officer is available at the time of a particular report. This could either be because all of the officers are otherwise occupied at the time or because the jurisdiction in question simply doesn't have a Sex Crimes Unit. Lord and Rassel (2000) point out that some of the counties in their North Carolina study were very small (with as few as five officers comprising the entire police force) and therefore could not specifically designate officers to particular tasks.<sup>8</sup> This variable, then, has the potential to be important, and may certainly suggest policy implications, but is not one that should be overstated. Moreover, given the many factors that can impact whether a Sex Crimes officer is assigned to a case, this variable should be considered neither entirely legally relevant nor irrelevant.

In San Diego, cases that fell within the jurisdiction of the San Diego Police Department were assigned to the Sex Crimes Unit. Reports of crimes that did not fall into the department's jurisdiction (i.e. crimes that occurred in other counties or crimes

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<sup>8</sup> The primary criterion for inclusion in Lord and Rassel's (2000) study was the existence of a rape crisis center within the county.



involving currently or previously married persons) were assigned accordingly (Spohn, personal communication, 2003).<sup>9</sup>

#### Location of the Crime

Another characteristic of a sexual assault case that cannot be considered entirely legally relevant or irrelevant is the location where the crime occurs. This variable presents challenges for researchers. A crime is a crime, no matter where it occurs; this fact is not in dispute. The fact remains, however, that sexual assault varies from other crimes in that it frequently occurs in secluded locations, where only the victim and the suspect are likely to be present (Estrich, 1987). Case processing decisions in sexual assault cases frequently hinge on this fact. Frohmann (1991) comments on the fact that many cases prosecutors choose to reject are cases in which no independent verification of the crime exists beyond the word of the victim, a word that they feel is insufficient to convince a jury of the crime. Frohmann (1998) also points out that prosecutors may choose to reject cases that occurred in areas of a city that he or she feels jurors will look judgmentally on (i.e. an area of the city with a reputation for crime or with a high minority population). Such a decision is based less on the merits of the actual case than on the merits of the location where it was alleged to have occurred.<sup>10</sup>

Spohn and Horney's (1992) discussion of corroboration requirements in many states that required someone other than the victim to verify his/her account of the assault lends further credibility to the notion that crimes that occurred in a place where third

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<sup>9</sup> Cases involving currently or formerly married persons are referred to the Domestic Violence Unit of the San Diego Police Department; cases involving victims under the age of 12 are referred to the Child Abuse Unit.

<sup>10</sup> Closely related to this variable (location) would be the presence of witnesses in a particular case. Some researchers (Spohn et al. 2002) have found this variable to be a significant predictor of prosecutors' decisions to file charges. Such information, however, is not available in the dataset at hand.

parties would see them would be taken more seriously by the criminal justice system, a notion supported by Estrich (1987). Such laws have been repealed in most states (Spohn and Horney, 1992). Thus, location may no longer be important in police and prosecutorial decision-making. Spohn and Horney (1992) point out that these laws were repealed for the specific purpose of making it easier to prosecute and convict in cases of sexual assault. Nonetheless, it is important to determine if the location of a crime does still enter into the decision-making of either police or prosecutors. In this study, information about the location of the crime was available in many (but not all) cases. Cases that occurred in public places (i.e. outdoors or at a business) will be the reference category.

#### *Legally Irrelevant Variables*

While some case variables and characteristics are clearly relevant and others may be deemed potentially so, other variables are clearly legally irrelevant and should not be considered by either police or prosecutors. Many of these characteristics are based on individual characteristics of the suspect or the victim, or on particular aspects of the victim's behavior at the time of the assault. The literature in this area is based in part on the emerging field of victimology, and can be linked to the study of victim precipitation of crime (Schneider, 2001). Victim precipitation studies, which originally focused on homicide but have now been extended to include sexual assault, view crime as a result of a "misguided offender-victim interaction" (Schneider, 2001). These studies and their authors do not, however, hold the position that victims of homicide or sexual assault are responsible for the crimes against them, a proposition many who research sexual assault and work with sexual assault victims would find very offensive. Schneider (2001) points

out that when scholars who support the notion of victim precipitation undertake research, they do so with the belief that offenders retain exclusive responsibility for their crimes. Implications of the literature about to be cited should be considered in that context.

### Relationship Between Victim and Suspect

Among the most important of the legally irrelevant characteristics cited in the literature on sexual assault case processing is the relationship between the victim and the suspect. Estrich (1987) points out that although many people have the perception that sexual assaults are typically committed by strangers, most victims (more than half by most reports) know their assailants. While estimates on the precise proportion of victims who know their assailants may vary, Estrich's (1987) general assertion, that many victims know their assailants, is widely accepted.

Relationships between suspects and victims have been widely considered in the literature on prosecutorial decision-making in sexual assault cases. One relationship, marriage, has historically made it impossible to sustain a charge of sexual assault. Beginning with the assertions of Lord Hale in the 17<sup>th</sup> century that women, upon entering into a marital contract, gave consent to sexual relations with their husbands that they could not retract (Harvard Law Review, 1986), the notion of implied consent has shielded many husbands from prosecution for sexually assaulting their wives. These laws have also been largely, though not entirely, repealed as a result of efforts that brought about other changes in sexual assault law (Donat and D'Emilio, 1992).

Dating and other social relationships are also critical considerations when considering sexual assault case processing. Whereas many cases of assault by strangers hinge on the ability of victim to properly identify the suspect, cases involving

acquaintances or romantic partners may frequently turn on the ability of victims and prosecutors to adequately demonstrate the victim's lack of consent to the sexual act alleged. Estrich (1987) provides a very pointed example of such a case by recounting a conversation with a friend who worked as a prosecutor. The prosecutor tells the story of a case recently presented to him in which the victim and suspect had a prior sexual relationship and spent an evening together in the suspect's home. The victim alleged that the suspect forced her to have sex with him, though she sustained no injury and could provide no additional evidence of non-consensual sex (Estrich, 1987). Though the prosecutor in Estrich's (1987) account indicated a belief that the victim had indeed been raped, he felt it would be impossible to obtain a conviction given the fact that this particular encounter followed the pattern of many dates the suspect and victim had together prior to this incident (i.e. the victim willingly accompanying the suspect to his home). Thus, because the victim had previously engaged in a romantic relationship with the suspect, had previously engaged in conduct similar to her conduct with the suspect on the night in question, and previously had consented to having sexual relations with the suspect, the prosecutor deemed it unlikely that a judge or jury would believe that on this occasion, the suspect raped the victim. Similar accounts abound within the literature, including accounts of cases not involving romantic partners (i.e. LaFree, 1989).

It is difficult to find a contemporary study of sexual assault case processing that does not include the relationship between the victim and suspect as an independent variable. Most such studies seek to test the impact of a pre-existing relationship between the two parties and therefore use cases in which the victim and suspect are strangers as their reference category. Despite the fact that the relationship between the victim and

suspect is not legally relevant, many studies do still find it to be a significant predictor of prosecutorial decision-making. A pattern of evolution in these findings may be seen by evaluating a sample of recently published research. Earlier authors (Donat and D'Emilio, 1992; LaFree, 1989; Estrich, 1987) asserted that both police and prosecutors would evaluate a victim's claim of sexual assault based largely on the victim's relationship with the alleged assailant, considering both the likelihood that the victim did, in fact, consent to the act or even that the victim might have had some motive to seek prosecution when none was warranted. (The prosecutor quoted by Estrich, for example, commented that he felt the victim was pushing heavily for prosecution because of anger toward the suspect unrelated to the alleged rape.) Most authors making this assertion further expanded it and hypothesized that when victim/suspect relationship was considered by the criminal justice system, victims who knew their assailants would wind up on the losing end.

Certainly, this hypothesis is not unfounded within the literature. Consider again Donat and D'Emilio's (1992) discussion regarding the difficulty women who knew their attackers in any way had in proving that they did not consent to having sexual intercourse with them. Consider also the history of marital rape, which was not illegal for many years (Harvard Law Review, 1986) and which Finklehor and Yllo (1995) point out many people do not even consider to "actually" constitute rape. Even some judges, criminal justice professionals thought to be well-trained in the importance of applying law in a neutral manner, reported to Spohn and Horney (1991) that they felt that evidence of a prior sexual relationship between the victim and the suspect in a case would, in fact, be relevant in a criminal case.<sup>11</sup>

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<sup>11</sup> These findings were particularly noteworthy, considering that Spohn and Horney (1991) interviewed judges in jurisdictions that had recently implemented rape law reforms.

More recent studies, however, do not categorically support the notion that a prior relationship between the victim and suspect will always result in a diminished likelihood of arrest or prosecution of a suspect. Horney and Spohn (1996) considered both the type of relationship between the victim and suspect (dichotomized as stranger and acquaintance) and the nature of the relationship between those parties who did know one another (dichotomized as intimate and non-intimate based on prior sexual relationships). They found that neither of these relationship variables had any effect on case outcomes. Kingsnorth *et al.*, (1999) also did not find that stranger cases were more likely to be prosecuted than non-stranger cases, though they did find that certain case characteristics (i.e. victim injury) did play a larger role in prosecutors' decisions in non-stranger cases than in stranger cases. This is consistent with the assertions made by Bryden and Lengnick (1997) that although stranger and non-stranger cases may not be treated entirely differently, the characteristics of the victim may play a more important role in prosecutorial decision-making in non-stranger cases.

Spohn and Holleran (2001), on the other hand, found relationship had no impact on prosecutorial charging decisions. They also found, similar to Kingsnorth *et al.*, 's (1999) results, that victim injury resulted in a greater likelihood of charges in non-stranger cases.

Spohn *et al.*, (2002) found, on the other hand, that prosecutors in Miami were more likely to file charges in cases when the parties involved were acquaintances or intimate partners. Given the variability of the findings in recent research, it is important that relationship between the victim and the suspect be tested in this study. The comprehensiveness of the available data allows this study to follow the pattern proposed

by Horney and Spohn (1996) and Spohn *et al.*, (2002) of making distinctions not only between stranger and non-stranger cases, but also of making distinctions between the types of relationships among non-strangers. In this case, the victim and suspect dyads will be categorized as strangers (the reference category), acquaintances (i.e. friends or coworkers), dating partners or relatives.

### Race of the Suspect and Victim

Race has always been an explosive issue, a fact that is certainly demonstrated in the literature on sexual assault. Several of the most important contemporary authors in the field have tackled the issue. LaFree (1989), for example, comments on the historical practice, dating to the pre-Civil War Era, of treating black men and white men accused of sexual assault differently. Black men accused of sexually assaulting white women could be (and frequently were) sentenced to death, though white men accused of sexual assault against a woman of any race could receive prison time or even fines. LaFree (1989) also points out that black women and white women who claimed to have been victims of sexual assault were also treated differently. In fact, in some states, it was not even illegal for a slave master to rape a black woman (LaFree, 1989).

Kennedy (1997) picks up the discussion after the Civil War, describing how laws regarding sexual assault were frequently used to reinforce the segregated social structure. Blacks, Kennedy (1997) asserts, were legally “free” but still very much under the control of whites. The practice of differential treatment of sexual assault suspects by race continued well into the 20<sup>th</sup> century, with black men accused of assaulting white women facing more severe penalties. Kennedy (1997), in fact, describes proceedings against these men as “legal lynchings,” given that many black men accused of raping white

women were, in fact, sentenced to death for their crimes.<sup>12</sup> Others faced vigilante justice at the hands of lynch mobs. Rise (1995) supports this claim of differential treatment, noting that between 1600 and 1949, 588 black men were executed for sexual assault in southern U.S. states, compared to only 48 white men.

Though considerable progress has been made toward the equal treatment of the races in the past 50 years, many researchers continue to believe that race plays at least some role in the way sexual assault cases are processed by the criminal justice system. LaFree (1989), in fact, goes so far as to suggest what he terms the Sexual Stratification Hypothesis.<sup>13</sup> This hypothesis is based on his belief that sexual assault law did previously and still does serve to protect sexual access to those women in society who are most valued, namely white women. These same laws serve to preserve the sexual access of the most powerful members of society (white men) to the “prized” white women. By contrast, according to LaFree (1989), sexual assault laws have traditionally offered lesser protection against sexual assault to women of lesser status (minority women) and simultaneously afforded greater punishment to those men of lesser status (minority men) who were accused of sexually assaulting white women. Thus, according to LaFree’s (1989) hypothesis, black men accused of sexually assaulting white women should face harsher prosecution and punishment than any other sexual assault suspects. White men should expect to receive less vigorous prosecution and punishment for sexually assaulting white women and even less for sexually assaulting black women. Black men accused of sexually assaulting black women should face similarly lenient treatment by the criminal justice system (LaFree, 1989).

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<sup>12</sup> The death penalty was a legal penalty for sexual assault until the U.S. Supreme Court deemed it unconstitutional in its 1976 ruling in *Coker v. Georgia* (Rise, 1995).

<sup>13</sup> LaFree (1989) included only white and black suspects and victims in the formation of this hypothesis.



In a pattern similar to that observed with regard to the literature on the effect of the victim/suspect relationship, different studies reach different conclusions regarding the impact of suspect and victim race. Spohn and Spears (1996), for example, found that cases involving black suspects and white victims were more likely to result in charges than other cases. Race of the suspect or victim did not attain significance in Spohn *et al.*'s (2002) study. Kingsnorth *et al.*, (1998) similarly failed to find a difference in prosecutor's charging decisions when considering the racial makeup of the suspect/victim dyad. These factors were also not significant in Horney and Spohn's (1996) models examining the likelihood of a case being referred to the prosecutor's office or the likelihood that cases would be fully prosecuted.

Given the conflicting nature of the research in this area, adding race to the models employed in this study is appropriate. This study will follow the model proposed by LaFree (1989) of considering the race of the suspect and the race of the victim in tandem. Cases involving black suspects and white victims will constitute the reference category. This study will have the additional advantage, as a result of the comprehensive nature of the dataset, of being able to also include Hispanic suspects and victims. Given that 26.7% of the population in San Diego County, California in 2000 claimed to be of Hispanic heritage (U.S. Census Bureau, 2001), this will enhance the generalizability and utility of the data and results from this study.

#### *Substance Use by the Victim or Suspect*

Information on a few other variables less commonly considered in the literature on sexual assault is available within the dataset to be employed for this study. These variables merit some review. One such variable is substance use by the victim or the

suspect. Many studies (i.e. Kingsnorth *et al.*, 1999; Horney and Spohn, 1996) have included alcohol or drug use by the victim or offender indirectly, by considering the broader variables of “risk-taking behaviors” (Horney and Spohn, 1996) or “negative victim characteristics” (Kingsnorth *et al.*, 1999). Frohmann (1998; 1991) and Estrich (1987) also provide qualitative evidence that prosecutors look unfavorably on victims who were using alcohol or drugs at the time of the assault. In a more recent study, Schuller and Stewart (2000) found that police ascribed increased culpability to victims who were using alcohol at the time of the assault and less culpability to offenders who did so.

#### *Age of the Victim and Suspect*

A final variable to be considered in this study, given its availability within the dataset, is the age of both the suspect and the offender. The literature is also somewhat silent on how this variable will impact case processing in adolescent and adult sexual assault cases.<sup>14</sup> The references available, however, are conflicting. Estrich (1987) suggests that younger victims may be seen as more innocent and therefore less culpable in their assaults, thereby inspiring the criminal justice system to take them more seriously. LaFree (1989) found the opposite in Indianapolis when he found that cases involving older victims were more likely than others to result in guilty pleas. Kingsnorth *et al.*, (1999) found that the victim’s age (if the victim was younger) was a significant predictor of prosecutors’ decisions to proceed with full prosecution of a suspect, rather than declining to file charges or subsequently dismissing charges against a suspect. They suggest that prosecutors may view cases involving younger victims as more serious and/or abusive, given the victim’s youth. They further suggest that prosecutors may

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<sup>14</sup> Of course, the literature on the sexual assault of children is expansive.

consider a younger victim to be one that jurors would find more credible and sympathetic, thereby increasing the likelihood of conviction at trial (Kingsnorth *et al.*, 1999). Finally, Spohn and Holleran (2001) found that neither suspect nor victim age affected prosecutors' charging decisions in their study of data from Kansas City and Philadelphia.

### **The Current Study**

As mentioned in the Foundation of the Study section, this study will test the determinants of police and prosecutorial decision-making in light of the characteristics of the victim, suspect and the case itself. The variables outlined in the Literature Review section of this study will constitute the independent variables in each model. Given the importance Estrich (1987) placed on the likelihood that certain cases would not result in action by the criminal justice system, this study will focus on the decision of police to unfound a case (determining that no crime occurred and no action is warranted) and the decision of prosecutors not to file charges against a sexual assault suspect.

Although there is limited research examining the police officer's decision to unfound a sexual assault case, the findings of the studies that have been conducted suggest that the factors that affect this decision are similar to those affecting the prosecutor's decision to file charges. Therefore, the primary hypothesis to be tested in this study is that the determinants of police decisions to unfound a case and prosecutorial decisions to decline to file charges will be the same ( $H_1$ ). Consistent with previous research, this study will also test the following hypotheses:

*H<sub>2</sub>: Police will be less likely to unfound and prosecutors will be less likely to decline charges in cases involving the use of a weapon.*

*H<sub>3</sub>: Police will be less likely to unfound and prosecutors will be less likely to decline charges in cases in which the victim and suspect are strangers than in case in which the victim and suspect are intimate partners, acquaintances or relatives.*

*H<sub>4</sub>: Police will be less likely to unfound and prosecutors will be less likely to decline charges in cases in which the victim is white and the suspect is either black or Hispanic.*

*H<sub>5</sub>: Police will be more likely to unfound and prosecutors will be more likely to decline charges in cases in which the victim was under the influence of alcohol or drugs at the time of the incident.*

### **Data and Methods**

#### **Data**

The data for this study were provided to the Department of Criminal Justice of the University of Nebraska at Omaha by the San Diego, California Police Department for research purposes. The data consist of 10,365 cases of sexual assault and other sexual crimes reported to the San Diego Police Department between January of 1992 and May of 2002. All cases of sexual offenses of which the police became aware during this period are included in the data set, regardless of the action eventually taken. This fact will allow the present study to be more comprehensive than previous studies in some respects; many prior studies have not had the advantage of being able to include data on cases of sexual assault that were reported to police but that did not result in an arrest or prosecution. Previously cited literature (Hart and Rennison, 2003; Sample, 2001) support the use of official police data to study sexual assault case processing by establishing that reporting rates for sexual assaults are similar to the reporting rates of other Index crimes.

The dataset includes information that enables one to track the progress of a case from the point of report to its disposition within police jurisdiction. It should be noted, however, that because the data set does not include information from the applicable district attorney's office, the final disposition of cases that resulted in charges is not

known. Therefore, cases may be tracked as far as the district attorney's decision to file charges or to any disposition before that.

Although the original data set consisted of data from a ten-year period, only data collected from 1999 to 2002 are included in this study. This decision was made for a critical reason. Given the importance of the victim/offender relationship hypothesized and/or asserted by many prior researchers (Spohn and Horney, 1996; Estrich, 1987), it was determined that for this study, only the subset of cases in which the San Diego Police Department had already identified a relationship between the two parties should be included for analysis.<sup>15</sup> This subset consists of the most complete and relevant information available, and is still large enough to allow for regression analysis. Some loss of generalizability is expected as a result of the choice to limit the data to include only a few of the many years included within the dataset. This, however, should be considered in light of the greater comprehensiveness afforded by the more complete information included within the subset and the enhanced usefulness of the results when they are used to suggest research and policy implications.

In order to consider the data presented, it is important to note the context of the jurisdiction from which the data originated. San Diego, California is situated in San Diego County, with a population of 2,862,819 in 2001 (U.S. Census Bureau, 2001). Whites represent the majority of the population (66.5%), while Blacks comprise 5.7% of the total. Hispanics represent a sizeable minority group, at 26.7% of the total population. Asians comprise 8.9% of the total population, while less than one percent of the

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<sup>15</sup> Though it would have been possible to go through the dataset in its entirety and code relationship information based upon the information available in the descriptions of the crime included with each case, it was more practical and ensured a greater level of consistency to only use the data already coded by the San Diego Police Department, according to their standards, for this study.

population claims either Native American or Pacific Islander as their nationality. Almost 13 percent of the population (12.8%) claims a different nationality, listed by the Census Bureau simply as “other” (U.S. Census Bureau, 2001). Slightly less than one-half of the county’s population in 2000 was female (49.7%) and slightly more than one-quarter of the population (25.7%) was under the age of 25 (U.S. Census Bureau, 2001).<sup>16</sup>

The data include all cases of sexual assault reported to police and all victims and offenders included within those cases, with a few notable exceptions. First, victims under the age of 12 are excluded, as their cases are referred to the San Diego Police Department Child Abuse Unit for investigation. As a result, cases that might be seen by some as actual cases of child abuse or incest (i.e. a case involving a father or uncle and a teenage girl) are included in the sample, provided that the victim was over the age of 12. Cases involving parties who are currently or were formerly married are also excluded, as these cases are referred to the Domestic Violence Unit. Both male and female suspects and victims, however, are included, given the gender neutrality of California’s statutes regarding sexual assault.

### Exclusions

A few cases did have to be excluded from the analysis in order to ensure comparability of the cases included in the models. More than 90 percent of the cases in the sample included one suspect and one victim. Most of the literature previously reviewed for this study also focuses on an assault on one victim by one suspect.

Although cases involving more than one victim or suspect may actually be more likely to fit the model proposed by Estrich (1987) of “real rapes,” other significant dynamics (i.e.

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<sup>16</sup> These data are important, given that most of the literature suggests that sexual assault occurs most commonly to females and more frequently to younger victims than older ones (Fisher, Daigle, Cullen and Turner, 2003).

credibility of multiple victims or the heinous nature of an attack by multiple suspects) could come into play when police and prosecutors begin to make case processing decisions. The 260 such cases in the sample are too dissimilar from the others to allow for meaningful comparison and were therefore be eliminated from the models in this study.

Similarly, cases involving suspects or victims who were not white, black or Hispanic were filtered out. The cases eliminated from the sample were the cases in which suspect or victim race was listed as “other” or the cases in which the information about either party was missing. This allows for the Sexual Stratification Hypothesis, as LaFree (1989) formulated it and as this study expanded it to include Hispanics, to be tested without the confounding influence of “other” races. A total of 1547 cases remained following the application of these two filters, and will be used for this study.

#### Statistics on Victims and Suspects

The profiles of the victims and offenders included in this dataset do not vary significantly from what is known to be true of victims and offenders nationwide. It is important to note that the information contained in the datafile provided by the San Diego Police Department is based on the information provided by the victim at the time the crime was reported to police. This includes information regarding the victim’s age, race, prior relationship (if any) with the suspect, the location of the crime, and any information the victim was able to provide about the suspect in the case. (Please refer also to Table 1 for statistics on victims and suspects.)

### *Gender*

The vast majority of victims in the sample were female (93.1%). Similarly, the vast majority of suspects were male (97.9%).

### *Age*

The mean age of victims in the sample was 22.8 years old, while the mean age of suspects was 29.32 years old.

### *Race*

Both victims and offenders in the sample were likely to be members of minority groups, with 53.6% of victims describing themselves as black or Hispanic and 67.9% of suspects also falling into those categories. The majority of crimes represented in this sample are found to be primarily intraracial crimes. Four hundred six cases involved a white suspect and white victim, 203 cases involved a black suspect and black victim, and 462 cases involved a Hispanic suspect and Hispanic victim. This compares to only 30 cases of white suspects and black victims, 61 cases of white suspects and Hispanic victims, 156 cases of black suspects and white victims, 42 cases of black suspects and Hispanic victims, 31 cases of Hispanic suspects and black victims<sup>17</sup>, and 156 cases of Hispanic suspects and white victims.

### *Relationships*

Consistent with previous research suggesting that most sexual assault victims do, in fact, know their assailants, the majority of cases in the sample involved parties with some pre-existing relationship. Data were available identifying a relationship between

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<sup>17</sup> These cases were later excluded from the regression models employed, as the standard errors produced were too large for the variable to be properly included. This is likely a result of the small number of cases involving Hispanic suspects and black victims.



the suspect and the victim in all 1547 cases included in the sample. (Again, this particular subset of the data was chosen for this very reason; recall again that this information is coded based on the victim's report to the police.) The victim and suspect were strangers in only 270 (17.5%) of all cases. The two were non-strangers (i.e. acquaintances, friends, neighbors or coworkers) in nearly half of all cases (795 cases, or 51.4%). The victim and suspect had been dating in 288 cases (18.6% of the total) and were related in some way in 194 cases (12.5% of the total).<sup>18</sup>

## Methods

### Dependent Variables

This study is designed to test the determinants of official decision-making in sexual assault cases. Those decisions, therefore, represent the dependent variables for this study. A number of case outcomes are listed within the data: the prosecutor decides to file charges, an arrest is made, the prosecutor declines to file charges, the victim declines to prosecute with a suspect identification, the victim declines to prosecute without a suspect identification, the police unfound the report, or the police took information only on the case. For the purposes of this study, only the police officer's decision to unfound a case (in other words, determining no crime had occurred after investigating the report) and the prosecutor's decision to decline to file charges upon arrest of a suspect in a case are to be considered. The model was designed in this way to ensure that the negative decision of police and the negative decisions of prosecutors are compared to one another.

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<sup>18</sup> More specific information regarding the types of relationships between those victims and suspects identified as being related is unfortunately not available.

Police unfounded 76, or 4.9%, of the cases in the sample; prosecutors filed charges in 210 cases and declined to file charges in 202 cases. It is interesting to note here that while the number of total cases in the sample in which the prosecutor declined to file charges upon the arrest of a suspect is low, prosecutors actually rejected almost half of the cases (49%) presented to them for charging.<sup>19</sup>

Two other outcomes within the data are especially interesting, namely the decision of the victim to decline to cooperate with prosecution, with or without an identified suspect. While these decisions are interesting and inquiry into them would be worthwhile, it cannot be undertaken in this study for one important reason. The decision of a prosecutor to file charges is based upon the prosecutor's training, experience and applicable departmental policy; a victim's decision to decline to prosecute, by contrast, can be based on any number of factors, including emotion. The two, therefore, are not really comparable and would most appropriately be considered in separate studies.

### Independent Variables

#### Legally Relevant Variables

##### *Crime Type*

Certainly, sexual assault is viewed as a crime and generally taken seriously by most professionals within the criminal justice system. Not all crimes fitting under the general heading of "sexual assault" or even "sex crime" are alike, however. They vary by the degree of contact between the suspect and the victim and the degree of harm done to the victim. A completed rape or sodomy is qualitatively different from a situation in

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<sup>19</sup> The other case outcomes, those not included in this model, occurred in the following frequencies: Victim declined to cooperate with prosecution with an identified suspect (12.6% of cases), victim declined to cooperate with prosecution without an identified suspect (8.5% of cases) and police took information only, concluding that no crime occurred without an investigation (34.8% of cases).

which the suspect attempted to commit those acts but did not complete them for whatever reason; both such cases are significantly different from a case of indecent exposure. The dataset in its original form included separate codes for each of the possible sexual crimes (i.e. rape, sodomy and oral copulation) and separate codes for attempts at each of those crimes. Dichotomous variables were therefore established to measure the most commonly reported offenses and to allow for the qualitative differences in each category to be represented: rape, sodomy, oral copulation or rape with an object (yes = 1, no = 0), attempted rape, sodomy, oral copulation or rape with an object (yes = 1, no = 0), unlawful sexual intercourse<sup>20</sup> (yes = 1, no = 0), child molestation<sup>21</sup> (yes = 1, no = 0) and other sexual crimes (yes = 1, no = 0). Frequencies for each of these variables are presented in Table 1.

### *Weapon Involvement*

The seriousness of any crime will be enhanced if a weapon is involved. Data were available regarding the suspect's use of a weapon in each case. The variable representing these data was coded in order to represent both the overall prevalence of weapon involvement and the type of weapon involved in individual cases (No weapon = 0<sup>22</sup>, firearm, knife, other weapon or strong arm tactics =1). Overall, the vast majority of cases (92.9%) did not include weapon involvement.

### *Evidence Variables*

Several variables included within the dataset measuring the presence of physical evidence in the case had to be excluded because of inconsistencies in the way the San

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<sup>20</sup> These are most commonly cases of statutory rape.

<sup>21</sup> In these cases, the crime alleged was, in fact, child molestation despite the fact that cases involving victims under the age of 12 were referred to the Child Abuse Unit for processing.

<sup>22</sup> It is likely that verbal threats, though not represented as weapons, were used in these cases.

Diego Police Department collected and coded the data. Thus, the effect of physical evidence such as DNA or fingerprints cannot be tested in this model.

### *Victim Injury*

The dichotomous variable of victim injury was coded as follows (victim sustained injury = 1, victim not injured = 0). 13.1% of victims in the sample sustained some collateral physical injury.<sup>23</sup>

### *Assignment to a Sex Crimes Detective*

Reports of sexual assaults received by the San Diego Police Department could be assigned to one of two types of detectives for investigation: a Sex Crimes Detective or another investigator, depending upon the location of the crime and whether it fell into the San Diego Police Department's jurisdiction. This, too, is a dichotomous variable (coded yes = 1, no = 0). The majority of cases (1405, or 90.8%) were, in fact, assigned to a Sex Crimes Detective.

### *Location of the Crime*

Another variable that cannot be deemed entirely relevant or irrelevant is the location where the alleged crime took place. Data were available regarding the location where the crime was alleged to have taken place in the majority of cases in the sample (N = 1390). Given the potential impact of location on the potential outcome of a case, it was included in this model as an independent variable.

In almost two-thirds of cases including information regarding the location of the crime (960, 62.1% of the total), the crime was alleged to have occurred in a non-public area such as a residence (either the victim's, the suspect's, or another person's) or a hotel

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<sup>23</sup> No precise definition of what constituted an "injury" was provided by the San Diego Police Department, nor were degrees of injury (i.e. minor v. severe injuries) delineated.

or motel room.<sup>24</sup> Only 27.8 % of the cases occurred in public places (i.e. a vehicle, a business or outdoors).

### Legally Irrelevant Variables

#### *Relationship Between the Victim and Offender*

Central to the assertion made by Estrich (1987) is that the relationship between the victim and the suspect will play a primary role in both police and prosecutorial decision-making in a case; subsequent authors have confirmed the importance of this belief. Thus, several variables identifying the relationship between the victim and the suspect were included in this model. Cases involving suspects unknown to the victim (the classic “stranger rapes”) were excluded as the reference category. Other relationships were coded in the following manner: suspect and victim were non-strangers (i.e. friends, acquaintances, coworkers), suspect and victim were relatives, and suspect and victim had a romantic relationship. Each of these were dichotomous variables (yes=1, no=0). The specific frequencies of each of these variables were previously discussed in the Data section of this study, and can be found in Table 1.

#### *Race of the Victim and Offender*

Given the previously cited literature (i.e. LaFree, 1989) that stressed the importance of considering the race of the suspect and the race of the victim simultaneously, dichotomous variables (yes = 1, no = 0) were set up for each of the following racial dyad compositions: Black offender/ black victim, black offender/Hispanic victim, Hispanic offender/Hispanic victim, Hispanic offender/ black victim, Hispanic offender/white victim, white offender/white victim, white

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<sup>24</sup> Given the private nature of hotel and motel rooms and the private activities (i.e. sleeping) commonly conducted in these places, it was deemed appropriate to consider them non-public places.

offender/Hispanic victim, and white offender/black victim.<sup>25</sup> Black offenders and white victims are excluded as the reference category. Total numbers and percentages for each racial combination were previously discussed in the Data section of this piece and are presented in Table 1.<sup>26</sup>

### *Substance Use by Victim or Offender*

Substance use, including either alcohol or drugs, was coded for each case based upon the account given by the victim. Victims reported their own use of substances as well as their knowledge or belief about the offender's substance use. Substance use by each party was coded separately, and coded as yes = 1, no = 0. Victims reported that they themselves had been using alcohol or drugs at the time of the assault in 29% of cases, and believed that their assailants had been doing so in 20.7% of cases.

### *Methods*

Logistic regression analysis will be used to determine the impact, if any, of the independent variables on each of the two dependent variables. Sirkin (1999) suggests that regression is the most appropriate way to determine the relationship between multiple independent and dependent variables in social science equations, given that it can provide meaningful results for situations in which the individual case outcomes be may unpredictable, as social scientific models typically are.

Each of the two official decisions (police unfounding and prosecutorial case rejection) will be considered separately in distinct regression models. Once this is

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<sup>25</sup> Information regarding other races of victims and offenders (i.e. Asian or Native American) was available within the dataset, but the total numbers of these cases were too small to allow for them to be included.

<sup>26</sup> Though data on Asian suspects and victims are excluded from the model because they occurred too infrequently, it might be interesting to note that these cases did tend to follow patterns similar to those observed for other racial groups. Of 128 cases involving Asian victims, 69 involved Asian offenders, while 33 involved white offenders, 17 involved black offenders and only nine involved Hispanic offenders.

complete, z-scores will be calculated for those variables found to be significant predictors of official decision-making. The statistical method of calculating z-scores allows one to determine if there is a statistically significant difference between the impact of a particular variable on the two decisions (i.e. the police officer's or prosecutor's decision). Z-scores are calculated by utilizing the following equation, with a result greater than 1.96 representing statistical significance:

$$Z = \frac{b_1 - b_2}{\sqrt{(\text{Standard error}_1)^2 + (\text{Standard error}_2)^2}}$$

Paternoster, Brame, Mazerolle and Piquero (1998) assert the appropriateness of using z-scores to determine the differences in the effect of independent variables on dependent variables in different models. To do so in this study will allow for comparisons to be made between the predictors in each of the models, and appropriate conclusions to be drawn.

## **Findings**

### *All Cases*

Regression analyses of both police and prosecutorial decisions were undertaken, at first including all of the cases in the sample. One variable, Hispanic suspects and black victims, had to be eliminated from the model. Only 31 total cases of this combination of suspect and victim existed within the data set. Regression analysis on this particular variable yielded a standard error too large to be properly included in a logistic regression model.

Logistic regression analysis of the two models proposed yielded a number of interesting findings. Six variables were significant predictors of the police decision to unfound a case. Offense severity played a key role in the police decision to unfound.

Police were less likely to unfound cases of unlawful sexual intercourse, child molestation and other sex crimes. Police were also less likely to unfound cases in which the victim sustained injury or cases involving weapons.

All of the previously listed variables are legally relevant. Another variable, previously described as neither entirely legally relevant nor legally irrelevant, namely whether the case was handled by the Sex Crimes Unit of the San Diego Police Department, was also a significant predictor of the police unfounding decision. Cases that were handled by the Sex Crimes Unit were about 77% less likely to be unfounded than cases handled by other officers.

Only one legally irrelevant independent variable was a significant predictor of police decision-making. In cases in which both the victim and the suspect were white, police were nearly three times more likely to unfound.

Similarly, four independent variables were significant predictors of the prosecutor's decision to reject charges in a case. Offense severity also played a role in this decision. Prosecutors were less likely to reject cases in which the primary charge was attempted (rather than completed) sexual assault and cases involving other sex crimes. Prosecutors, like police, were also less likely to reject cases in which the victim had sustained injury. In these cases, prosecutors were only about half as likely to reject the case as they were in cases involving no injury to the victim.

One legally irrelevant variable, again involving the relationship between the suspect and the victim, was a significant predictor of the prosecutorial decision to reject a case. Prosecutors were three times more likely to decline to file charges if the suspect



and victim were non-strangers (i.e. acquaintances, coworkers or neighbors) rather than strangers.

The overall explanatory value of each of these two models, as defined by the r-square values generated from logistic regression analyses, was not particularly large. The regression equation for unfounding yielded an r-square of only .143, meaning that only 14.3% of the variance observed in the data was explained by this model. Similarly, the regression equation for prosecutorial case rejection yielded an r-square of only .204, meaning that only 20.4% of the variance observed in those data was explained by the model.

#### *Sexual Assault Cases Only*

Given that sexual assaults and attempted sexual assaults are the most serious crimes handled by the San Diego Police Department's Sex Crimes Unit, it was decided that it would be appropriate to consider the models with only those cases included. Thus, for this series of analyses, cases involving unlawful sexual intercourse, child molestation or other sex crimes are excluded, resulting in a total N of 847 cases. It is important to note here that cases involving Hispanic suspects and black victims were again eliminated from the overall sample, given the small number of cases involved. The independent variable of the case being assigned to the Sex Crimes Unit was also eliminated from the overall model, given that regression analysis yielded a standard error greater than 20, far too large to be properly included in a regression model.

The results of analyses of data involving only sexual assaults and attempted sexual assaults vary somewhat from the results obtained from the larger dataset. Police were slightly less likely to unfound cases involving a weapon in these cases, as they had

been in the analysis including all cases. Race of the suspect and the victim was also a predictor of police decision-making in this model, as it had in the model for all cases, and in fact, more combinations of suspect/victim race were found to be significant or near-significant predictors<sup>27</sup> of police decision-making. Compared to cases involving black suspects and white victims, which constituted the reference category, police were nearly three times more likely to unfound a case of sexual assault or attempted sexual assault when the suspect and victim were both Hispanic (a racial combination that approached significance), almost five times more likely to do so in cases involving white suspects and black victims, and three-and-a-half times more likely to do so when both parties were white. Somewhat surprisingly, police were less likely to unfound a case of sexual assault or attempted sexual assault if the victim reported being under the influence of alcohol or drugs at the time of the assault. (This variable also approached statistical significance but did not actually achieve it at the .05 level. Nonetheless, these results are interesting, unusual, and worthy of commentary.)

The predictors of prosecutorial decision-making were also different when considering sexual assaults and attempted sexual assaults only. Offense severity continued to play an important role in prosecutorial decision-making. When comparing attempted sexual assault cases (the less serious of the two types of crimes included in this model) to sexual assault cases, prosecutors are less likely to decline to file charges. Prosecutors were slightly less than half as likely to reject cases involving injury to the victim, consistent with the results from analysis of the complete data set. Victim age

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<sup>27</sup> Several variables that did not achieve significance at the .05 level would have achieved significance at the .10 level, and are therefore referred to as approaching significance or "near-significant." Though these variables do not achieve statistical significance at the chosen level for this study, the lower number of cases in the sexual assault and attempted sexual only subset combined with the fact that they were close to achieving statistical significance makes it important to mention them in the findings of this study.

(measured as whether or not the victim was age 16 or younger), which did not predict prosecutorial decision-making in the full model, was a significant predictor of prosecutorial decision-making specifically in sexual assault and attempted sexual assault cases. In cases involving these younger victims, prosecutors were less likely to reject charges.

Relationships between the suspect and the victim played key roles in prosecutorial decision-making in sexual assault cases. Prosecutors were almost six times more likely to decline to file charges when the suspect and victim were non-strangers rather than strangers (the reference category); if the suspect and victim were dating rather than strangers, prosecutors were almost seven times more likely to decline to file charges. Finally, just as in the analysis of police unfounding, one independent variable measuring race predicted prosecutorial decision-making. In cases involving black suspects and black victims, prosecutors were almost three times more likely to decline to file charges than they were if the suspect was black and the victim was white. (This racial combination approached statistical significance but did not actually achieve it at the .05 level. Given the potential importance of a finding such as this, however, it is important to disclose it and include it in the overall discussion.)

As had been the case in the analyses of the larger dataset, these analyses did not yield especially large r-square values, meaning that the explanatory value of the models was limited. In the analysis of unfounding, the r-square value was only .125, meaning that only 12.5% of the observed variance was explained. The prosecutorial rejection model yielded a higher r-square value, with an r-square of .292 and overall explained variance of 29.2%.

### *Z-Scores*

Two variables were significant predictors of official decision-making in both of the regression analyses involving all of the cases in the dataset: other sex crimes as the primary offense alleged and injury to the victim. Police were less likely to unfound and prosecutors were less likely to reject charges in these types of cases. As Table 2 demonstrates, however, neither z-score achieved statistical significance in this model, indicating that police and prosecutors give equal weight to these factors in their respective decisions to unfound or reject charges.

### **Discussion**

This study was designed to test many of the preconceived notions and commonly held beliefs about the nature of sexual assault and sexual assault case processing within the criminal justice system. The existing literature was used to design regression models that could test some of these assumptions by using data collected by the San Diego Police Department's Sex Crimes Unit, with that statistical testing subsequently undertaken.

A number of interesting results emerge from the analyses of these data. It is most appropriate to consider and discuss these results in several stages. First, the research hypotheses proposed by this study will be discussed and the results, with their implications for the practices and policies of the San Diego Police Department, considered at that time. Next, these results will be considered in relation to the previously cited literature to determine where the current study fits into the larger body of literature. Considering the current work in the context of previous work will then lead into a discussion of the research implications suggested by these results.

*Hypotheses**7. Results*

The first hypothesis ( $H_1$ ) proposed in this study is that the determinants of police unfounding decisions and the determinants of prosecutorial decisions to decline to file charges in sexual assault cases would be the same. The results of this study provide only partial support for this hypothesis. Although it is true that legally relevant variables (i.e. offense severity or weapon involvement) dominated the list of predictors of police and prosecutorial decision-making in each of the four regression models tested, the specific predictors varied in each equation. For example, in regression models including all cases, the race of the suspect and victim predicted the decisions of police, but not prosecutors. The victim-suspect relationship, on the other hand, was a significant predictor of the decision-making of prosecutors, but not police. It is also important to note that while two variables, other sex crimes as the primary alleged offense and injury to the victim, were significant predictors of both police and prosecutorial decision-making, the z-scores indicated that the effect of these factors did not vary. That is, these factors had similar effects on police unfounding and prosecutorial charging decisions.

A similar pattern held true when sexual assault and attempted sexual assault cases were analyzed separately. Again, race of the suspect and victim was important only to police, while relationships between the two were important only to prosecutors. Furthermore, the analysis of police unfounding decisions specifically in these types of cases revealed that whether the victim was under the influence of alcohol or drugs at the time of the alleged assault played a significant role in this decision, but had no effect on police decision-making in the full data set, nor any effect on prosecutorial charging

decisions. Given these conflicting findings, it is appropriate to say the results provide only partial support for this hypothesis.

The second hypothesis ( $H_2$ ) proposed in this study, that police would be less likely to unfound and prosecutors less likely to decline to file charges in cases involving weapons, is supported with regard to the findings on police, but not prosecutors. In both regression models of police unfounding decisions, police were indeed less likely to unfound cases in which the suspect carried or used a weapon.

The third hypothesis ( $H_3$ ), that police would be less likely to unfound and prosecutors less likely to decline to file charges in cases in which the suspect and victim were strangers than in cases in which they were non-strangers, relatives or had been dating, is supported only in the case of prosecutors. Prosecutors were substantially more likely to decline to file charges in cases in which the suspect and victim were non-strangers (rather than strangers) when all cases in the dataset were analyzed. They were also much more likely to do so in sexual assault and attempted sexual assault cases involving suspects and victims who were non-strangers or who were dating. Similar effects were not observed in police decision-making.

The fourth hypothesis in this study ( $H_4$ ), predicted that police will be less likely to unfound the complaint and prosecutors would be less likely to decline to file charges in cases in which the victim is white and the suspect is either black or Hispanic. The results of these analyses do not support this hypothesis. Consider the regression analyses involving the full dataset first. There were no differences in the likelihood of charging between cases involving black suspects and white victims (the reference category) and any of the other suspect/victim racial combinations. With respect to the police decision

to unfound a case, cases involving white suspects and white victims were more likely than those involving black suspects and white victims to be unfounded; stated another way, cases in which the suspect was black and the victim was white were less likely to be unfounded than cases in which both the suspect and victim were white. Although this finding is consistent with the prediction of  $H_4$ , the likelihood of unfounding did not vary between cases involving black suspects and white victims and any of the other suspect/victim racial dyads.

The results of the analyses on sexual assault and attempted sexual assault cases provide more support for the fourth hypothesis, at least with respect to the police officer's decision to unfound a complaint. Compared to cases in which the suspect was black and the victim was white, police were more likely to unfound if both the suspect and the victim were Hispanic, if both the suspect and the victim were white and if the suspect was white and the victim was black. Turning to the prosecutor's decision not to file charges, only one of the suspect/victim racial combinations – black suspect and black victim – had a significant effect. Prosecutors were more likely to reject charges if both the suspect and victim were black than if the suspect was black and the victim was white.

The final hypothesis ( $H_5$ ) proposed in this study, that police will be more likely to unfound and prosecutors more likely to decline to file charges in cases in which the victim was under the influence of alcohol or drugs at the time of the incident, is not supported by the regression analyses performed in this study. Police were less likely, not more, to unfound cases involving victims who were under the influence of alcohol or drugs, when only sexual assault and attempted sexual assault cases were considered. The effect was not observed when the full dataset, including cases of unlawful intercourse,

child molestation and other sex crimes, was analyzed. No relationship was observed between this variable and prosecutorial decision-making.

### *General Findings*

It is important and interesting to consider the results of this study beyond their strict applications to the research hypotheses proposed. Many of the findings from this study are unexpected, and worthy of individual consideration and discussion.

### Police Unfounding

Analysis of police unfounding decisions in all of the cases in the sample was conducted first, and thus should be discussed first. Six independent variables were significant predictors of police decision-making, and five of those were legally relevant variables. Police officers in this study seemed to give the most consideration to the severity of the offense involved, including the actual offense alleged, the involvement of a weapon (an aggravating factor in any crime) and injury to the victim when making their decisions as to whether a crime occurred. The appearance of the weapon and injury variables seems logical, when one considers that accounts of crimes involving weapons and/or injuries may generally attract more serious police attention and may be less likely to “seem” fabricated or otherwise untrue. The fact that police were less likely to unfound cases of unlawful sexual intercourse, child molestation and other sex crimes, as opposed to cases of sexual assault, however, is somewhat more perplexing. A number of potential explanations could apply.

It is entirely possible, for example, that differences in the nature of the reporting of unlawful intercourse, child molestation or other sex crimes could explain some of the differences observed here. Unlawful intercourse and child molestation are crimes



involving victims who are legally children; therefore, laws mandating certain adults (i.e. teachers or physicians) to report suspected sexual abuse of children apply. In such cases, if the report is made by an adult or professional to whom police ascribe credibility, they may be more likely to ascribe credibility to the report itself.<sup>28</sup>

It may also be that some physical evidence of the crime may exist in these kinds of cases. A brief description of each case is included in the larger dataset, and allows for a very limited qualitative understanding of the case. A number of the descriptions of cases involving unlawful intercourse note not only the ages of the suspect and victim, but also the fact that the victim was pregnant at the time of the report, presumably by the suspect. Similarly, a child abuse investigation, such as might be initiated once a claim of child molestation was made, might include physical examinations that could also provide valuable evidence.

Along similar lines, crimes encompassed under the headings include crimes such as indecent exposure and failure to register as a sex offender. These crimes may also be more easily investigated by police. The former is a crime that occurs in where others can see it, which presumably means that multiple persons could observe the suspect's behavior, lending credibility to the report. (A reading of the descriptions of the cases indeed bears this out in some such cases.) The latter crime, failure to register as a sex offender, is one that may actually be easy for police to investigate and found. If a suspect is among those listed with government officials as a sex offender but has failed to register his/her current address as required by law, little investigation on the part of police may actually be necessary in order to found the case.

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<sup>28</sup> Information regarding the party who notified the police was not available in the dataset, except in a few cases in which the information was mentioned in the brief case description.

It is also not surprising that cases investigated by the Sex Crimes Unit were less likely than other cases to be unfounded. These investigators are, after all, specifically trained in the investigation of sexual assault cases and spend their time working exclusively on sex crime cases. Both LaFree (1989) and Lord and Rassel (2000) suggest the importance of specialized training and job designation for officers investigating sexual assault in order to ensure more favorable case outcomes. These data support that assertion.

The sole legally irrelevant variable that was a significant predictor of the police unfounding decision was the race of the suspect and the race of the victim in cases in which both parties were white. Police were less likely to unfound cases in which the suspect was black and the victim was white than they were if both the suspect and victim were white. A more detailed discussion of the implications of the results of this study with regard to race and the Sexual Stratification Hypothesis will be undertaken shortly, but for now one point must be made. LaFree (1989) and Estrich (1987) assert that interracial cases of sexual assault will be taken most seriously; by extension, then, one could assume that intraracial cases of sexual assault will be taken less seriously. It appears that this is true in these data. In cases in which the victim was white, police appeared to take interracial cases more seriously (as demonstrated by a decreased likelihood of unfounding) than intraracial cases.

Police decision-making specifically in sexual assault and attempted sexual assault cases followed similar, but not identical, patterns as those observed in the analysis involving all cases in the data set. Weapon involvement remained a significant predictor

of police decision-making, suggesting that police use similar criteria in evaluating sexual assault cases as they use in evaluating other kinds of sex crimes.

The fact that the race of the suspect and victim had been a significant predictor of police decision-making in the larger analysis and that it remained so in the analysis specifically of sexual assault and attempted sexual assault cases is noteworthy. In fact, more significant effects were found when the analysis was restricted to sexual assault and attempted sexual assault cases. Compared to cases involving black suspects and white victims, police were more likely to unfound cases involving the following suspect/victim dyad racial combinations: white suspect/white victim, Hispanic suspect/Hispanic victim<sup>29</sup>, and white suspect/black victim. The previous suggestion that intraracial cases would be treated as less serious offenses and pursued less vigorously than interracial cases (especially the stereotypical black suspect/white victim cases) would seem to again be applicable. Another suggestion by LaFree (1989), that crimes against black victims would be treated as less serious crimes, especially when the accused is white, also seems to be supported by these data.

The final variable that predicted the police unfounding decision in sexual assault and attempted sexual assault cases was whether the victim was under the influence of alcohol or drugs at the time of the assault<sup>30</sup>. Police were about 50% less likely to unfound these cases. These results are inconsistent with Stewart and Schuller's (2000) findings that police assigned more blame to the victim when she had been drinking at the

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<sup>29</sup> Recall again that this variable approached, but did not actually achieve statistical significance, though it is still important to discuss.

<sup>30</sup> Recall again that this variable approached, but did not actually achieve statistical significance, though it is still important to discuss, given how unusual it is and the potential implications.

time of the alleged assault.<sup>31</sup> They are also inconsistent with the assertions of those who incorporated substance use into the larger categories of “victim risk-taking” or “victim credibility” (i.e. Horney and Spohn, 1996). The result comes as a surprise. The literature would clearly predict that police should be more skeptical of a victim’s account when she admits to having been under the influence of alcohol or drugs at the time of the assault, yet police in San Diego actually appeared more likely to take the victim’s account seriously if she had been under the influence.

A satisfactory explanation for this finding is hard to produce. Given the lack of qualitative information included in this study, it is entirely possible that other dynamics are entering the police decision to unfound that this study simply has not been able to capture. It may be, for example, that the victims in this study who were intoxicated somehow “compensated” for any lack of credibility ascribed to them by virtue of their intoxication. For example, these victims may have made prompt reports (a variable unfortunately missing from this data set), may have been able to produce physical evidence of their assaults (another missing variable), or may have seemed credible and committed to cooperation with prosecution in the eyes of the investigating officers. Another possibility about which one could only speculate is that some of the victims who were intoxicated may have been given one of the so-called “date-rape drugs” by their assailants in order to produce that intoxication. If this were to be the case, evidence of the drug’s presence in the victim’s blood would certainly serve to corroborate her story of being drugged and assaulted. Any of these explanations are potentially viable, but none can be definitively accepted, given some of the limitations of the dataset.

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<sup>31</sup> It is interesting to point out here that Stewart and Schuller (2000) also found that police assigned less blame to the alleged offender if he had been drinking, a finding these data do not support.

### Prosecutorial Case Rejection

The results of regression analysis of prosecutorial decision-making from the larger dataset are also interesting. One piece of research, Frohmann's (1998) work describing the "downstream orientation" of prosecutors when making charging decisions, comes to mind when looking at these results. In this piece, Frohmann (1998) asserts that prosecutors consider the potential opinions of judges and juries when making decisions about whether or not to file charges against a suspect, thus taking into consideration much more than the strict merits of the case. Prosecutors in San Diego seem to have been working with similar attitudes and considerations in mind.

Offense severity was important in prosecutorial decision-making, though the specific of prosecutorial decision-making vary slightly from the predictors of the police decision to unfound. Other sex crimes remained important in this model, as it had been in the police unfounding model; attempted sexual assault was also a significant predictor. The reasons for this are not readily apparent. Certainly, the reasons previously given why other sex crimes cases might be less likely to be unfounded could also explain why prosecutors are more willing to file charges in those cases. Why attempted sexual assault cases are less likely to be rejected for prosecution than actual sexual assault cases is somewhat mysterious, however. Sexual assault is the more serious of the two crimes. It would also seem to be the crime that would be more easily prosecuted. A victim who claims that an assailant tried to assault her might have very little to corroborate her story compared to the victim of an actual sexual assault, who would seem to be more likely to have her story corroborated by physical evidence and/or injuries.

The fact that victim injury decreased the likelihood that prosecutors would decline to file charges by nearly 50% follows that same line of logic, and is not at all surprising. Prosecutors, Frohmann (1991) points out, take into consideration the chances that they could secure a conviction when deciding whether or not to file charges against a defendant. Frohmann (1991) and Estrich (1987) both noted comments from prosecutors that the lack of visible injuries to the victim in question weakened her overall account of the assault. A case in which the victim sustained injury would seem to be one a prosecutor could present to a jury and feel more confident of a victory. This does appear to be a consideration in the decision-making of prosecutors in San Diego.

Considerations of the ability to secure a conviction in a case also seem to play key roles in prosecutorial decision-making in sexual assault and attempted sexual assault cases specifically. Prosecutors were almost six times less likely to file charges in cases in which the suspect and victim were non-strangers (i.e. acquaintances) rather than strangers. Certainly, the potential for the case to turn upon the word of the victim and her credibility is high in these cases, especially if no corroborating evidence or witnesses are available. Defendants who had prior relationships with the alleged victims could easily claim consent at trial, whereas those who were accused of assaulting strangers would most typically claim that the victim had misidentified the suspect as her attacker. Thus, if a case was already weak or questionable, prosecutors might evaluate the relationship between the two parties, consider the difficulties in securing a conviction coupled with the prior relationship between the two parties, and reject the case.<sup>32</sup>

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<sup>32</sup> Unfortunately, it is not possible to test the interaction of relationship and evidence in this study, as the available data on evidence in the case are not suitable for analysis.

This logic would also help to explain the fact that a prior dating relationship between the suspect and victim made prosecutors nearly seven times more likely to decline to file charges. After all, a consent defense would likely be most believable in a case involving a dating relationship, and could make a conviction very difficult to secure.

Given that the fact that the suspect's and victim's prior dating relationship had such a strong influence on prosecutorial decision-making, some further consideration is warranted as to why this is so. One possible explanation rests in a combination of Frohmann's (1998) downstream orientation hypothesis and some of the comments recorded by Spohn and Horney (1991). Frohmann (1998) asserts the importance of potential judges' and jurors' opinions in prosecutorial decision-making; Spohn and Horney (1991) provide an example of how this could manifest itself.

Judges whom Spohn and Horney (1991) interviewed told them that despite the fact that the victim's sexual history was largely prohibited from being introduced in sexual assault trials, they felt that a prior sexual relationship between the suspect and victim would, in fact, be relevant at trial.<sup>33</sup> If these judges' attitudes in any way reflect the attitudes of other professionals in the criminal justice system, which it seems likely that they do at least in part, it may not be surprising that prosecutors in San Diego would look skeptically at cases involving suspects and victims who had been dating, based on their beliefs about what a judge or jury might think. This would seem to be especially applicable if the prosecutor had personal experience with cases in which the judge or jury had been skeptical of a victim's account because she had been dating her assailant, or if colleagues of the prosecutor had shared accounts of similar difficulties.

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<sup>33</sup> One judge even commented, "The law's the law, but fair is fair," a quote Spohn and Horney (1991) later chose to use as the title of their work.

Another possible explanation rests in the fact, asserted by Estrich (1987), that many sexual assaults occur between parties who are not only dating, but using alcohol at the time of the offense. Recall that victim alcohol or drug use was found to be a significant predictor of police unfounding decisions in sexual assaults and attempted sexual assaults in this study, and is consistently listed as a measure of victim credibility in other studies (i.e. Kingsnorth *et al.*, 1999; Horney and Spohn, 1996). It could be hypothesized that an interaction effect might be observed in the present data. If the suspect and victim had been dating at the time of the assault, whether or not the victim had been under the influence of alcohol or drugs might play a role in the prosecutor's decision to file charges that has not yet been statistically observed.

Cross-tabulations of the data support this notion, but with very small numbers. The analysis was performed by selecting cases of sexual assault or attempted sexual assault in which the suspect and victim had been dating and the victim was under the influence of alcohol or drugs at the time of the assault. Only 16 cases emerged when these cases were cross-tabulated with cases that prosecutors rejected. Prosecutors filed charges in only six of those cases. It is interesting to note, however, that in all but one of those six cases, the victim was not under the influence of drugs or alcohol at the time of the assault. Six of the ten cases in which they declined to file charges also involved victims who had been under the influence of alcohol or drugs. Therefore, it seems logical to presume that victim intoxication did play some role in prosecutors' decisions to file charges, but these numbers are too small for a definitive conclusion.

Considerations of success at trial may also help to explain why the victim's youth (age 16 or under) was a significant predictor of prosecutorial decision-making. Both



LaFree (1989) and Estrich (1987) suggest that age may matter in official case processing decisions. Estrich (1987) specifically suggests that younger victims may be preferred by prosecutors because they may appear less culpable and more believable than similarly situated older victims, and that therefore cases involving younger victims may be more likely to go to trial. These results would seem to support that assertion, as prosecutors in San Diego were less likely to decline to file charges in cases involving teenage victims age 16 or less.

The race of the suspect and victim, a factor considered in this study and so many others, is only a significant predictor of prosecutorial decision-making in sexual assault and attempted sexual assault cases in one circumstance. In cases involving black suspects and black victims, prosecutors were almost three times more likely to decline to file charges than in cases in which the suspect was black and the victim was white. (This variable approached significance at the .05 level, but it nonetheless important to discuss, as it would have achieved significance at the .10 level, and has some very serious potential implications.)

It would not seem at first glance that considerations of the ability to succeed when taking a case to trial should be applicable here, as it had been when considering the other statistically significant variables in this equation. After all, a crime ought to be a crime and a case ought to be a case, regardless of the race or ethnicity of the people involved.

Frohmann's (1998) work, however, may suggest contradictions to this. Frohmann (1998) reports that many prosecutors in her samples took the potential opinions of potential jurors into consideration when making charging decisions. One factor these prosecutors considered was whether potential jurors would be able to "relate

to the victim,” or whether they might look upon her actions skeptically (i.e. by asking the question, “What was she doing in that part of town at night?”). It could be that prosecutors in San Diego, a city that is more than two-thirds white and less than six percent black (U.S. Census Bureau, 2002), had similar thoughts about jurors’ potential opinions and biases in cases involving black suspect and black victims.

### Sexual Stratification Hypothesis

A more likely explanation for the results observed in the prosecutorial decision-making analyzed here, however, is that some support for LaFree’s (1989) Sexual Stratification Hypothesis is observed. Recall that LaFree (1989) predicted that crimes committed by black men against white women would be treated the most seriously, based on the relative positions of social power each held, and that assaults committed against minority women and/or by white men would be treated less seriously, for the same reason. Recall also that this study proposed that Hispanic suspects and victims in San Diego would be treated similarly to the way LaFree (1989) proposed blacks would be treated.<sup>34</sup> The results of this study suggest that this hypothesis may serve to explain some of the differences observed in police and prosecutors’ decisions in San Diego.

Consider especially the results of regression analysis specifically on prosecutors’ charging decisions in sexual assault and attempted sexual assault cases. It is not clear from these results that an assault by a black man on a white woman (the reference category) is always treated more harshly in San Diego, as the Sexual Stratification

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<sup>34</sup> Indeed, conflict theory, the larger theory on which the Sexual Stratification Hypothesis is based, would suggest that in San Diego this should be especially true. Conflict theory holds that members of socially powerful classes seek to maintain their own power and will use their power to keep other social groups powerless as the need arises. Hispanics currently represent 26.7% of the population of San Diego County (U.S. Census Bureau, 2002), and are second only to whites in terms of racial group size. If conflict theory were to apply to this situation, it might not be surprising to find Hispanics in an increasingly disadvantaged position.

Hypothesis would propose. However, the fact that sexual assaults and attempted sexual assaults committed by black men against black women are the only ones that prosecutors were statistically significantly more likely to unfound does lend support to LaFree's (1989) belief that black women are seen as less "important" than white women and less in need of the criminal justice system's protection from sexual assault, especially when the crimes were committed by black men.

Results from regression analyses of the police decision to unfound also suggest support for the Sexual Stratification Hypothesis. When considering specifically sexual assaults and attempted sexual assaults, this study found that cases involving Hispanic suspects and Hispanic victims (a racial combination that approached statistical significance) and cases involving white suspects and black victims were more likely to be unfounded by police than those involving black suspects and white victims. This would suggest that the Sexual Stratification Hypothesis is correct in its suggestion that minority victims will be treated differently and crimes against them treated less harshly than crimes against white victims, especially if the suspect is black. The finding that cases involving white suspects and black victims and cases involving white suspects and white victims are more likely to be unfounded by police also lends support to the premise of the Sexual Stratification Hypothesis that not only are sexual assault laws used to protect certain women, but they are also used to reinforce and protect the privilege of certain men. The fact that police were more likely to unfound in two of the three suspect/victim dyads involving white men suggests that the power and position of white men relative to other men (a central tenet of the Sexual Stratification Hypothesis) is considered in police decision-making.

### *Explanatory Power of the Models*

Overall, each of the four models proposed in this study did not do well in explaining the differences observed within the data. Only 14.3% of the observed variance in police unfounding decisions was explained in the model analyzing all cases; this number dropped to 12.5% when considering only sexual assault and attempted sexual assault cases. Similarly, only 20.4% of the observed variance was explained by the model testing prosecutorial decisions to reject charges in all cases, though this number rose to 29.2% when considering only sexual assault and attempted sexual assault cases.

One factor immediately emerges as a potential reason for the low r-square values observed. Though the dataset did include information regarding the presence of physical evidence in individual cases, discussions with the San Diego Police Department revealed too many problems in the ways the data were collected and recorded to allow for their inclusion in these models (Spohn, personal communication, 2003). Thus, it was impossible for this study to test the impact of the availability of that evidence on police or prosecutorial decision-making. One would have to assume that both would be more likely to take action in cases in which clear physical evidence could be produced. This study, however, could not consider that possibility.

It is also entirely possible, perhaps likely, that Frohmann's (1998; 1991) hypotheses and comments about the personal opinions and even prejudices of prosecutors playing a role in their decision-making may apply here. Bryden and Lengnick (1997) seem to suggest that a similar phenomenon may occur in police unfounding decisions, especially when they list the most commonly cited factors given by police for unfounding a case, many of which are highly subjective and subject to the application of personal

values (i.e. victim risk-taking behaviors). Police and prosecutors may have been simply following what their instincts, developed both by professional and personal experiences, told them about a case and acting accordingly. No statistical or qualitative measures of a police officer or prosecutor's general opinion of a case were available in these data. Indeed, it may be hard to construct a statistical measure of a criminal justice professional's personal instinct about a case. Nevertheless, the very real possibility that this phenomenon played a role in the results observed should not be discounted.

It is interesting that the regression model for police unfounding explained more of the observed variance when considering all cases in the sample and less when considering just sexual assaults and attempted sexual assaults. The opposite is true when considering the regression model of prosecutorial decisions to reject charges. The percentage of overall explained variance was higher when considering all cases than it had been in either police unfounding model, but was higher still when considering only sexual assault cases.

These results seem somewhat counterintuitive. Why would it be that the model considering only sexual assault and attempted sexual assault cases would be better at explaining the variance in prosecutorial decisions and worse at explaining police decisions? Some consistency would seem to be expected. The literature might help to explain some of the mystery. LaFree (1989) reported that he never saw police officers asked to account for their decisions to unfound in his research in Indianapolis, whereas Frohmann (1991) reported on the standardized forms prosecutors in the offices she studied were to fill out when they decided not to file charges in a case. Exceptions to these notions exist (i.e. Kerstetter, 1990), but it may be that police, who work in the field,

perhaps alone, operate with more discretion in doing their daily tasks than do prosecutors, who work in the larger context of their jurisdiction's district attorney's office and frequently as part of a team. If this is so, then it is possible that the predictors of prosecutorial decision-making in the previous literature (the source of the independent variables chosen for this study) may be more accurately defined, because better information about those decisions may have been available. If this also is true, then the model created in this study to test prosecutorial decision-making may have simply been more precise than the model created to test police decision-making. It would seem logical to expect that police and prosecutorial decisions would be based on the same factors, but the results of this study would suggest that this is not necessarily the case.

The possibility that better information was available to assist in the development of the prosecutorial decision-making model may also serve to explain some of the increased explanatory power observed in the regression model of prosecutorial decision-making in sexual assault and attempted sexual assault cases specifically. If these are, in fact, the cases that have received the most research attention and about which the most empirical information is available, then it should make sense that the model testing this decision should exhibit the greatest explanatory power.

#### *Non-Significant Variables*

A few words of commentary on some of the variables that did not achieve statistical significance are warranted. It is very interesting that weapon involvement in a case was not a significant predictor of prosecutorial decision-making in either model tested. This is a surprise in some sense, given that weapon involvement is an aggravating factor in any crime and it should seem logical that prosecutors would be more likely to

file charges in cases involving weapons. No explanation as to why they did not appear more likely to do so in this study is readily apparent, though it is possible that no effect was observed given the very low number of cases involving weapons in the total dataset. (Recall that 92.9% of the cases in the larger sample did not include weapons.)

This study worked under the proposition that Hispanics suspects and victims in San Diego would be treated in a manner similar to the manner the Sexual Stratification Hypothesis suggested that black suspects and victims would be treated. It does not appear that this proposition is well supported by the results of this study. Cases involving Hispanic victims were only more likely to be unfounded by police in one situation, when the suspect was also Hispanic<sup>35</sup>. Compare that to the experience of black victims in this study; both police and prosecutors seemed to demonstrate a greater reluctance to take action in their cases compared to others.

It is also interesting to find that each of the suspect/victim relationship combinations was a significant predictor of official decision making in at least one of the models except when the suspect and victims were relatives. It is entirely possible that a dynamic not captured here is at work in police and prosecutorial decision-making. Most notable among the possibilities is that cases involving such a close relationship between the suspect and victim might result in reluctance on the part of the victim to aggressively push for official action in a case; victims may feel loyalty to the suspect, despite the alleged offense, or may feel pressure from other family members to let the matter drop in order to preserve family harmony. If either of these factors is involved, police and prosecutors, faced with limited resources, may be reluctant to pursue a case that appears

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<sup>35</sup> This combination of suspect and victim race approached statistical significance, and is important to discuss.

futile.<sup>36</sup> The possibility of including the victim's decision to decline to participate in prosecution as a dependent variable in this study was eliminated given the different criteria victims would use to make those decisions compared to police and prosecutors. Nonetheless, if victim willingness to prosecute were to be important in explaining the results in this study, it would seem that cases involving suspects and victims who were related would be a logical situation in which it would apply.

It might have seemed logical to expect that the location of the crime (in a public v. non-public location) would have been relevant in the decisions of police and prosecutors, but this did not turn out to be the case. Most of the cases in the dataset did include information about the location of the crime, so missing information cannot be used to explain these results. What actually appears to be the case is that this variable is simply not one police and prosecutors are considering when making their decisions.<sup>37</sup>

This is actually an encouraging result, given the large proportion of the cases in the sample that did occur in non-public places, such as residences. It indicates two things. First, police and prosecutors appear to no longer be relying on the stereotype of the "real rape" being one that occurs in a public place, but instead acknowledging the private nature of many sexual assaults. It also suggests that the location of the crime may not be one that police and prosecutors in San Diego are using to assign responsibility for the crime to the victim. Frohmann (1998; 1991) noted that several prosecutors with whom she spoke seemed to question the victim's "wisdom" in being in certain locations at all or specifically being there with the suspect, and seemed to imply that cases

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<sup>36</sup> It is, after all, likely to be very difficult to investigate and prosecute a case of sexual assault without the cooperation of the victim.

<sup>37</sup> This variable is one that it would be ideal to be able to combine with the physical evidence information not available in this study, in order to test for interactions between the two and the potential cumulative impact on official decision-making.



involving victims who were in questionable or private locations could not be as easily prosecuted. This skepticism does not appear to be part of the decision-making of police or prosecutors in San Diego. Though not all of the results of this study are as encouraging as this one (many of the results with regard to race and relationship seem to indicate the police and prosecutors do still consider legally irrelevant variables), this importance of this finding should not be overlooked.

*The Results of This Study and the “Real Rape” Stereotype*

This study was founded in the work of Estrich (1987) and those who followed her work, all of whom suggested that police and prosecutors will take some sexual assaults more seriously than others based on characteristics of the case, suspect and victim. What do the results of this study suggest about the applicability of the “real rape” stereotype in these cases and the decision-making of San Diego officials?

First, as Estrich (1987) suggests is the case in most sexual assault cases, most of the cases in the study are “simple rapes,” meaning that the suspect and victim were not strangers but instead had a prior relationship, no weapon or significant injury to the victim were involved, and the assault occurred in a private, rather than public, location. The suspect and victim were also of the same race in most of the cases in the sample, contrary to the stereotypical notion of the assault of a white woman by a black man.

Thus, the “real rape” stereotype does not appear to describe the cases in this study. It does, however, appear to have some applicability to the decision-making patterns observed. Police were less likely to unfound cases involving weapons or injury to the victim, two key elements of the “real rape” stereotype. Prosecutors followed that line of thinking by being less likely to decline to file charges in cases in which the victim

was injured. Curiously, though, police were less likely to unfound cases in which the victim was intoxicated<sup>38</sup>, when the “real rape” stereotype would have predicted the opposite. Finally, the fact that race was a significant predictor of police unfounding decisions and that both race and relationship were predictors of prosecutorial decisions to reject charges suggests that they are both still accepting some of the aspects of the “real rape” stereotype.

### *Research and Policy Implications*

Two omissions from this study stand out as being necessary in any future research and important in making policy suggestions specifically for the San Diego Police Department. The first is the need to include information regarding the available physical evidence in individual cases in order to determine its impact on official decision-making. Certainly, one would like to assume that this important and legally relevant evidence did play a role in official decision-making that simply could not be captured in this study. It would be hard to imagine that it did not. Officials from the San Diego Police Department would be wise to investigate the problems associated with the collection and coding of physical evidence information. It is entirely possible that the problem may simply be clerical, a problem for researchers but not for police and prosecutors themselves. It is also possible that the department is getting reports of sexual assault too long after the assaults occurred for the collection of physical evidence to be feasible. If this were true, it would seem to indicate a greater need for victim outreach by the department, and perhaps greater collaboration with local victim service agencies (i.e. rape crisis centers or hospital emergency rooms) in order to encourage more victims to make the prompt reports necessary to collect evidence and pursue convictions.

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<sup>38</sup> As measured by the fact that this variable approached statistical significance

The second element that would be crucial to any attempts at future research or policy suggestions would be the incorporation of a qualitative element into this study, allowing a researcher an opportunity to pose the questions raised by this study to police and prosecutors.<sup>39</sup> Many suggestions have been made in this study about the way police and prosecutors think when doing their jobs; a logical next step in the research process would be to endeavor to find out whether any of these suggestions are accurate.

Any researcher undertaking this task would be wise, however, to approach the qualitative research process tactfully. It would not be wise to simply sit down with a police officer or prosecutor and say, "The results of my analysis show that officials in your department treat date-rape cases less seriously than others. Why is that?" This would serve only to stifle discussion. A better suggestion would be to use the results of this study or a similar one to formulate questions to ask police and prosecutors, but to allow them to express their own feeling via open-ended questions. Many of the implications in this study could be potentially offensive to criminal justice officials (especially the implications that black victims are treated differently than others). It is also possible that many of the factors this study indicates are important to police and prosecutors are not ones they consciously seek to consider. One would like to believe that criminal justice officials are not racist and that they do not specifically seek to discriminate against victims who know their attackers. It could even be that these observed differences are actually based on other factors (i.e. prior negative experiences in acquaintance rape cases), including ones not considered by this study. An important extension of this study would be to expand it so that it can explore some of the issues raised in a qualitative manner.

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<sup>39</sup> The time and budgetary restrictions of this study made it impossible for this element to be included.

A final benefit to the incorporation of a qualitative element into future efforts at research such as this would be the ability to tap into the organizational and structural factors that may influence police and prosecutorial decision-making. It is entirely possible, though it is not observable from these data, that either of the two departments involved in this study (the San Diego Police Department and the local district attorney's office) could have been under the leadership of a strong supervisor with specific attitudes about the way cases ought to be handled. If this were to be so, it is quite likely that this attitude would be passed on to the members of that supervisor's team and subsequently reflected in the way they did their jobs. A strong advocate for victims' rights, for example, could encourage police to found all cases unless a clear reason not to existed (i.e. the victim recanted the account); conversely, a lack of strong leadership or a supervisor with a skeptical attitude toward victims could encourage police and prosecutors not to pursue questionable cases. Elements such as this could be present in any department, and an effort to incorporate them would greatly enhance future studies like this one.

In the meantime, however, these results should serve to alert policy makers in the San Diego Police Department and the San Diego County District Attorney's Office that some evidence exists that their staff may not be as "blind" to race or prior relationship as upper management (including legislators) and the public might intend for them to be. These results alone are not sufficient evidence to assert that the officials in these departments are acting in a biased manner, given the limitations previously noted. They should, however, give pause to policy makers in these departments and encourage them to think about whether it is possible that bias may exist and what steps should be taken in

order to combat that possibility. Perhaps discussion about the official departmental policies regarding race and relationship and their legally defined roles in sexual assault cases should be undertaken, with additional training or counseling available for those who seem to indicate a need or desire for better understanding of official policy.

In a more academic sense, this study once again raises the issues of whether race or relationship matter in sexual assault cases, but does not provide a definitive answer. The answer to the question “Does race or relationship matter?” produced by this study appears to be, “It depends.” In some instances, it clearly matters. Police still seem likely to take race into consideration in some cases, despite legal prohibitions against doing so. Prosecutors also seem likely to consider prior relationships more than other factors (note the strong odds ratios observed in the sexual assault and attempted sexual assault only model in Table 3). It does not appear, however, that race and relationships are the primary considerations of police and prosecutors in all cases, as some past research has suggested it might be. Thus, it seems appropriate to suggest that this study should serve as a model for others to question whether what has been traditionally assumed to be true about sexual assault case processing. This study did not find that none of the stereotypical factors mattered, but the findings do suggest that the stereotypes no longer carry the weight with police and prosecutors that they were once thought to.

On a purely methodological note, future researchers, upon reading the results of this study, should consider altering it in one significant way. The hypotheses in this study were all posed in a collective sense when it came to police and prosecutors. The first hypothesis suggested that the predictors of police and prosecutorial decision-making would be the same. Subsequent hypotheses then listed specific propositions and asserted

that police and prosecutors would act on them in a similar manner. In all but one case, the hypothesis was supported on the part of one decision-maker but not the other. Future researchers might consider restating the hypotheses and stating police and prosecutorial decisions separately. In reality, once  $H_1$  was determined to be only somewhat supported, it became clear that few if any of the other hypotheses could be accepted or rejected in their current forms.

Future researchers would also be wise to continue to question the conventional wisdom regarding sexual assault and to formulate research questions that test those assumptions. This is perhaps the most important implication this study presents for future research. It is unwise for policy makers to use outdated information when making policy, and research such as this is one way in which more updated information can be gained. This study clearly indicates that not all of what is commonly accepted regarding sexual assault case processing was, in fact, true in San Diego. If this was the case in San Diego, it could quite possibly be true in other jurisdictions as well. More investigation on the current context of sexual assault case processing is clearly warranted.

### **Conclusion**

This study set out to test whether conventionally held beliefs about the predictors of police and prosecutorial decision-making are similar and whether they follow the conventionally held wisdom about sexual assault cases. A clear-cut answer does not emerge. Police and prosecutors seem to consider the same kinds of factors, more of them legally relevant than legally irrelevant, but do not seem to consider the same factors. It is also not clear that police and prosecutors still accept the stereotype of the “real rape”

wholeheartedly, nor is it clear that they have definitively rejected it, despite evidence that it does not apply in most cases.

Despite these inconclusive findings, this study does make one thing clear. What is traditionally thought to be true and what may actually be true about sexual assault case processing decisions can no longer be assumed to be the same thing. Thus, it points to the need for critical thought in this area and an increased willingness to question the status quo. It was only when researchers in the 1970s began to question traditionally held stereotypes about women and sexual assault that the current body of knowledge began to be amassed and critical policy changes began to occur. It is now incumbent upon this generation of scholars and policy makers to continue in that tradition in order to ensure that sexual assault case processing is properly explored and appropriate policies enacted as needed.

**Table 1: Statistics on Victims and Offenders and Dependent and Independent Variables: Codes and Frequencies**

<u>Statistics</u>	<u>Code</u>	<u>N</u>	<u>%</u>
Gender (Suspect)	Male = 1	1515	97.9%
Gender (Victim)	Female = 1	1441	93.1%
Mean Age (Suspect)		29.32 years	
Mean Age (Victim)		22.8 years	
Race (Suspect)	Black	401	25.9%
	Hispanic	649	42.0%
	White	497	32.1%
Race (Victim)	Black	264	17.1%
	Hispanic	565	36.5%
	White	718	46.4%
Race (Suspect/Victim Dyad)	White/White	406	26.2%
	Black/Black	203	13.1%
	Hispanic/Hispanic	462	29.9%
	Black/White	156	10.1%
	Black/Hispanic	42	2.7%
	White/Black	30	1.9%
	White/Hispanic	61	3.9%
	Hispanic/White	156	10.1%
	Hispanic/Black	31	2.0%
Relationship	Strangers	270	17.5%
	Acquaintances	796	51.4%
	Dating	288	18.6%
	Relatives	194	12.5%



**Table 1: Statistics on Victims and Offenders and Dependent and Independent Variables: Codes and Frequencies<sup>40</sup>**

<u>Variable</u>	<u>Code</u>	<u>N</u>	<u>%</u>
<i>Dependent Variables</i>			
Police Unfounded	Yes = 1	76	4.9%
	No = 0	967	62.5%
Prosecutor Declined Charges	Yes = 1	202	49.02%
	No = 0	210	50.98%
<i>Independent Variables</i>			
Crime Type (dummy variables)			
	<i>Rape</i> <sup>41</sup>	721	53.4%
	Attempted Rape <sup>42</sup>	147	9.5%
	Unlawful Intercourse	321	20.7%
	Child Molestation	181	11.7%
Weapon	Yes = 1	110	7.1%
	No = 0	1437	92.9%
Injury to Victim	Yes = 1	203	13.1%
	No = 0	1344	86.9%
Assigned to Sex Crimes Detective	Yes = 1	1405	90.9%
	No = 0	141	9.1%
Location <sup>43</sup>	Non-public = 1	960	62.1%
	Public = 0	430	27.8%
Relationship	<i>Strangers</i>	270	17.5%
	Acquaintances	796	51.4%
	Dating	288	18.6%
	Relatives	194	12.5%

<sup>40</sup> Categories within the independent variables listed in italics constitute the reference category for each variable.

<sup>41</sup> Includes rape, oral copulation, sodomy or rape with an object.

<sup>42</sup> Includes attempted rape, oral copulation, sodomy or rape with an object

<sup>43</sup> Does not add up to 100% due to missing data.

**Table 1: Statistics on Victims and Offenders and Dependent and Independent Variables: Codes and Frequencies**

<u>Variable</u>	<u>Code</u>	<u>N</u>	<u>%</u>
Race (Suspect/Victim Dyad)	White/White	406	26.2%
	Black/Black	203	13.1%
	Hispanic/Hispanic	462	29.9%
	<i>Black/White</i>	156	10.1%
	Black/Hispanic	42	2.7%
	White/Black	30	1.9%
	White/Hispanic	61	3.9%
	Hispanic/White	156	10.1%
	Hispanic/Black	31	2.0%
Substance Use Victim	Yes = 1	448	29.0%
	No = 0	1099	71.0%
Suspect	Yes = 1	321	20.7%
	No = 0	1226	79.3%

**Table 2: Logistic Regression: All Cases**

Variable	Unfounded by Police			Rejected by Prosecutor			Z-Score
	B	S.E.	Odds Ratio	B	S.E.	Odds Ratio	
Attempted Sexual Assault	-.428	.450	--	-1.747*	.549	.174	--
Unlawful intercourse	-3.140*	.797	.043	-.638	.372	--	--
Child molestation	-1.434*	.634	.238	.321	.459	--	--
Other sex crime	-1.711*	1.077	.181	-1.550*	.730	.212	1.3
Victim injured	-.780*	.453	.458	-.736*	.333	.478	-0.07
Weapon Involvement	-2.106*	1.026	.122	-.293	.526	--	--
Victim ≤16 years old	.294	.392	--	-.661	.292	.516	--
Assigned to SCU	-1.485*	.768	.227	-.513	.964	--	--
Location	-.147	.307	--	.277	.288	--	--
Victim/suspect nonstrangers	-.056	.394		1.135*	.539	3.110	--
Victim/suspect relatives	.209	.604	--	.585	.679	--	--
Victim/suspect dating	.914	.503	--	.887	.645	--	--
Black suspect/Black victim	.434	.596	--	.439	.465	--	--
Black suspect/Hispanic victim	.786	.825	--	.419	.747	--	--
Hispanic suspect/Hispanic victim	.772	.555	--	-.083	.425	--	--
Hispanic suspect/white victim	-.487	.751	--	.032	.507	--	--
White suspect/Black victim	1.151	.795	--	.301	.898	--	--
White suspect/Hispanic victim	.312	.874	--	-.009	.632	--	--
White suspect/white victim	1.060*	.506	2.888	.305	.397	--	--
Victim under the influence	-.422	.358	--	.435	.357	--	--
Suspect under the influence	.145	.365		.141	.334	--	--

**R-Square: .143****R-Square: .204**

\*P&lt;.05

**Table 3: Logistic Regression: Sexual Assault and Attempted Sexual Assault Cases Only**

Variable	Unfounded by Police			Rejected by Prosecutor			Z-Score
	B	S.E.	Exp(B)	B	S.E.	Exp(B)	
Attempted Sexual Assault	-.606	.459	--	-1.857*	.568	.156	--
Victim injured	-.751	.458	--	-.826*	.382	.438	--
Weapon Involvement	-2.090*	1.020	.124	-.370	.560	--	--
Victim ≤16 years old	.033	.489	--	-1.162*	.489	.313	--
Location	-.109	.325	--	-.081	.391	--	--
Victim/suspect nonstrangers	-.089	.409	--	1.779*	.737	5.926	--
Victim/suspect relatives	-.735	.862	--	.528	1.016	--	--
Victim/suspect dating	.739	.538	--	1.928*	.965	6.876	--
Black suspect/Black victim	.397	.669	--	1.024 <sup>†</sup>	.620	2.785	--
Black suspect/Hispanic victim	.679	.933	--	.917	.620	--	--
Hispanic suspect/Hispanic victim	1.040 <sup>†</sup>	.617	2.829	.495	.602	--	--
Hispanic suspect/white victim	-.347	.786	--	.353	.605	--	--
White suspect/Black victim	1.550*	.854	4.711	-.737	1.483	--	--
White suspect/Hispanic victim	.51	.906	--	.465	.778	--	--
White suspect/white victim	1.243*	.557	3.466	.718	.499	--	--
Victim under the influence	-.638 <sup>†</sup>	.378	.528	.565	.442	--	--
Suspect under the influence	.154	.387	--	-.111	.416	--	--

**R-Square: .125**

**R-Square: .292**

\*P<.05

<sup>†</sup>Near significant (P <.10)

10. 11. 2019. 10. 11. 2019. 10. 11. 2019. 10. 11. 2019. 10. 11. 2019.

## References

- Bryden, David P. and Sonja Lengnick. (1997) Rape in the Criminal Justice System. *Journal of Criminal Law and Criminology*, 87(4), pp. 1194-1384.
- Donat, Patricia L.N. and John D'Emilio. (1992) A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change. *Journal of Social Issues*, 48(1), pp. 9-22.
- Estrich, Susan. (1987) *Real Rape*. Cambridge: Harvard University Press.
- Finklehor, David and Kersti Yllo. (1995). Types of Martial Rape. In Patricia Searles and Ronald J. Berger (Eds.) *Rape & Society: Readings on the Problem of Sexual Assault*. Boulder: Westview Press.
- Frazier, Patricia A. and Beth Haney. (1996) Sexual Assault Cases in the Legal System: Police, Prosecutor and Victim Perspectives. *Law and Human Behavior*, 30(6), pp. 607-628.
- Frohmann, Lisa. (1991) Discrediting Victims' Allegations of Sexual Assault: Prosecutorial Accounts of Case Rejections. *Social Problems*, 38(2), pp. 213-236.
- Frohmann, Lisa. (1998) Convictability and Discordant Locales: Reproducing Race, Class, and Gender Ideologies in Prosecutorial Decisionmaking. *Law & Society Review*, 31(3), pp. 531-555.
- Hart, Timothy C. and Callie Rennison. (2003) *Reporting Crime to the Police, 1992-2000*. Washington, D.C.: Bureau of Justice Statistics.
- Hazelwood, Robert R. and Ann Wolbert Burgess. (2001) *Practical Aspects of Rape Investigation: A Multidisciplinary Approach, 3<sup>rd</sup> Ed.* Washington, D.C.: CRC Press.
- Horney, Julie and Cassia Spohn. (1996) The Influence of Blame and Believability Factors on the Processing of Simple Versus Aggravated Rape Cases. *Criminology*, 34(2), pp. 135-162.
- Kennedy, Randall. (1997) *Race, Crime and the Law*. New York: Vintage.
- Kerstetter, Wayne A. (1990) Gateway to Justice: Police and Prosecutorial Response to Sexual Assaults Against Women. *Journal of Criminal Law and Criminology*, 81(2), pp. 267-313.
- Kingsnorth, Rodney F., Randall C. MacIntosh, and Jennifer Wentworth. (1999) Sexual Assault: The Role of Prior Relationship and Victim Characteristics in Case Processing. *Justice Quarterly*, 16(2), pp. 275-302.

- Kingsnorth, Rodney F., John Lopez, Jennifer Wentworth, and Debra Cummings. (1998) Adult Sexual Assault: The Role of Racial/Ethnic Composition in Prosecution and Sentencing. *Journal of Criminal Justice*, 26(5), pp. 359-371.
- Krahe, Barbara. (1991) Police Officers' Definition of Rape: A Prototype Study. *Journal of Community & Applied Social Psychology*, 1, pp. 223-244.
- LaFree, Gary. (1981) Official Reactions to Social Problems: Police Decisions in Sexual Assault Cases. *Social Problems*, 28, pp. 582-595.
- LaFree, Gary. (1989) *Rape and Criminal Justice: The Social Construction of Sexual Assault*. Belmont, CA: Wadsworth.
- Lonsway, Kimberly A., Susan Welch, Louise Fitzgerald. (2001) Police Training in Sexual Assault Response: Process, Outcomes, and Elements of Change. *Criminal Justice and Behavior: An International Journal*, 28(6), pp. 695-730.
- Lord, Vivian and Gary Russell. (2000) Law Enforcement's Response to Sexual Assault: A Comparative Study of Nine Counties in North Carolina. *Women & Criminal Justice*, 11(1), pp. 67-88.
- Paternoster, Raymond, Robert Brame, Paul Mazerolle, and Alex Piquero. (1998) Using the Correct Statistical Test for the Equality of Regression Coefficients. *Criminology*, 36(4), pp. 859-866.
- Renzetti, Claire M., Jeffrey L. Edleson and Raquel Kennedy Bergen. (2001) *Sourcebook on Violence Against Women*. Thousand Oaks: Sage.
- Rise, Eric W. (1995) *The Martinsville Seven: Race, Rape and Capital Punishment*. Charlottesville: University Press of Virginia.
- Sample, Lisa L. (2001) *The Social Construction of the Sex Offender*. Dissertation. Unpublished.
- Schneider, Hans Joachim. (2001) Victimological Developments in the World During the Past Three Decades: A Study of Comparative Victimology. *International Journal of Offender Therapy and Comparative Criminology*, 45(4), pp. 449-468.
- Schuller, Regina A. and Anna Stewart. (2000) Police Responses to Sexual Assault Complaints: The Role of Perpetrator/Complainant Intoxication. *Law and Human Behavior*, 24(5), pp. 538-551.
- Sirkin, R. Mark. (1999) *Statistics for the Social Sciences, 2<sup>nd</sup> Edition*. Thousand Oaks: Sage.
- Spohn, Cassia. (2003) Personal communication.

Spohn, Cassia, Dawn Beichner and Erika Davis-Frenzel. (2002) Prosecutorial Justifications for Sexual Assault Case Rejection: Guarding the "Gateway to Justice." *Social Problems*, 48(2), pp. 206-235.

Spohn, Cassia and David Holleran. (2001) The Imprisonment Penalty Paid by Young Unemployed Black and Hispanic Male Offenders. *Criminology*, 38, pp. 281-306.

Spohn, Cassia and David Holleran. (2001) Prosecuting Sexual Assault: A Comparison of Charging Decisions in Sexual Assault Cases Involving Strangers, Acquaintances and Intimate Partners. *Justice Quarterly*, 18(3), pp. 651-688.

Spohn, Cassia and Julie Horney. (1996) The Influence of Blame and Believability Factors on the Processing of Simple Versus Aggravated Rape Cases. *Criminology*, 34(2), pp. 135-162.

Spohn, Cassia and Jeffrey Spears. (1996). The Effects of Offender and Victim Characteristics in Sexual Assault Cases. *Justice Quarterly*, 13(4), 649-679.

Spohn, Cassia and Julie Horney. (1992) *Rape Law Reform: A Grassroots Revolution and Its Impact*. New York: Plenum.

Spohn, Cassia and Julie Horney. (1991) "The Law's the Law, But Fair is Fair." Rape Shield Law and Officials' Assessments of Sexual History Evidence. *Criminology*, 29(1), pp. 137-161.

Temkin, Jennifer. (1998) Medical Evidence in Rape Cases: A Continuing Problem for Criminal Justice. *Modern Law Review*, 61(6), pp. 821-848.

U.S. Census Bureau. (2003) San Diego County Quick Facts.  
<http://quickfacts.census.gov/qfd/states/06/06073.html>