

**Prosecuting Sexual Assault: A Comparison of
Charging Decisions in Sexual Assault Cases
Involving Strangers, Acquaintances, and
Intimate Partners***

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The prosecutor plays a key role in the criminal justice system. She or he decides who will be charged, what charge will be filed, who will be offered a plea bargain, and the type of bargain that will be offered. The prosecutor also may recommend the offender's sentence. Although each of these decisions is important, none is more critical than the initial decision to prosecute or not to prosecute. Prosecutors have broad discretion at this stage in the process. There are no legislative or judicial guidelines about charging, and a decision not to file charges ordinarily is immune from review. According to the Supreme Court, "So long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury generally rests entirely in his discretion" (*Bordenkircher v. Hayes*, 434 U.S. 357, 364 [1978]).

The fact that the "prosecutor controls the doors to the courthouse" (Neubauer, 1988, p. 200) may be particularly important in cases in which the credibility of the victim is a potentially important issue, such as sexual assault cases. Studies of the charging process conclude that prosecutors attempt to avoid uncertainty (Albonetti, 1987) by filing charges in cases in which the odds of conviction are good and by rejecting charges in cases for which conviction is unlikely. These studies suggest that although prosecutors' assessments of convictability are based primarily on legal factors such as the seriousness of the offense, the strength of evidence in the case, and the culpability of the defendant, legally irrelevant characteristics of the suspect and victim also come into play. In fact, Stanko (1988, p. 170) concludes that "the character and credibility of the victim is a key factor in determining prosecutorial strategies, one at least as important as 'objective' evidence about the crime or characteristics of the defendant."

In sexual assault cases, the victim's character, behavior, and credibility may play an especially important role in charging decisions. In these types of cases, little physical evidence may be present to connect the suspect to the crime, and typically eyewitnesses who can corroborate the victim's testimony may not be available. The likelihood of conviction depends primarily on the victim's ability to articulate what happened and to convince a judge or jury that a sexual assault occurred. Thus, prosecutors' assessments of convictability and their charging decisions rest on predictions regarding the way the victim's background, character, and behavior may be interpreted and evaluated by other decisionmakers and potential jurors. Frohmann (1997, p. 535) notes that this "downstream orientation" leads prosecutors to rely on stereotypes about "genuine victims" and appropriate behavior. Victims whose backgrounds and behavior conform to these stereotypes will be taken more seriously, and their allegations will be treated more seriously than victims whose backgrounds and behavior differ from these stereotypes.

Although some researchers contend that victim characteristics come into play in all cases of sexual assault, others argue that their effect is conditioned by the nature of the case. For example, Estrich (1987, pp. 28–29) maintains that "all women and all rapes are not treated equally." Instead, criminal justice officials differentiate between the "aggravated, jump-from-the-bushes stranger rapes and the simple cases of unarmed rape by friends, neighbors, and acquaintances." This is consistent with the assertions of Black (1976) and Gottfredson and Gottfredson (1988), who argue that the offender-victim relationship is an important predictor of the outcome of legal proceedings and that crimes between intimates are perceived as less serious than crimes between strangers.

If, as these scholars contend, crimes involving strangers are viewed as more serious than crimes involving nonstrangers, victim characteristics—particularly those relating to victim credibility—should be

better predictors of case outcomes in sexual assault cases in which the victim and the defendant are intimates or acquaintances than in cases in which the victim and defendant are strangers. Previous research has demonstrated that in more serious cases the outcome is determined primarily by legally relevant factors (Kalven and Zeisel, 1966; Spohn and Cederblom, 1991). In these types of cases, criminal justice officials have relatively little discretion and thus few opportunities to consider the victim's background or behavior at the time of the incident. On the other hand, in less serious cases the appropriate outcome is not indicated clearly by the nature of the crime or other legally relevant factors. This may leave criminal justice officials, including prosecutors, more disposed to take extralegal factors into consideration.

This study addressed that issue. The researchers examined the effect of victim, suspect, and case characteristics on prosecutors' charging decisions in three types of sexual assault cases: those involving strangers, acquaintances, and intimate partners. They tested the hypothesis that the effect of victim characteristics is conditioned by the relationship between the victim and the suspect. They hypothesized that the victim's character, reputation, and behavior at the time of the incident would not affect charging decisions in cases involving strangers but would affect charging decisions in cases involving acquaintances and intimate partners.

Research Design

The study analyzed data on sexual assaults that resulted in arrests in Kansas City and Philadelphia. The data file included 259 cases in Kansas City and 267 cases in Philadelphia. In Kansas City, selected cases met the following criteria:

- , The defendant was arrested in 1996, 1997, or 1998 for rape, forcible sodomy, sexual assault, deviate sexual assault, first-degree statutory rape, or first-degree statutory sodomy.
- , The case was referred to the Office of the Prosecuting Attorney for the Sixteenth Judicial Circuit of Missouri by the Kansas City Police Department.
- , The victim was age 12 or older.

In Philadelphia, selected cases met these criteria:

- , All cases of rape, involuntary deviate sexual intercourse, and sexual assault that resulted in an arrest during 1997 were selected.
- , The victim was age 12 or older.
- , Cases that involved male victims and female suspects were eliminated.

Researchers examined the effect of victim characteristics, offender characteristics, and case characteristics on charging decisions in cases involving strangers, acquaintances, and intimates. Victim characteristics were subdivided into background factors (i.e., the victim's gender, race, and age) and "blame and believability" factors, which are characteristics of the victim that might cause criminal justice officials to blame the victim and/or question her credibility. The researchers controlled for whether the victim physically resisted her attacker or made a prompt report to the police, whether the victim's "moral character" was in question, and whether the victim engaged in any type of risk-taking activity at the time of the incident. The moral character variable was coded 1 if the police file contained information about the victim's prior sexual activity with someone other than the suspect, out-of-wedlock pregnancy or birth, pattern of alcohol and/or drug abuse, prior criminal record, work as a prostitute, or work as an exotic dancer or in a massage parlor. The risk-taking variable was coded 1 if the police file indicated that at the time of the assault the victim was walking alone late at night, was hitchhiking, was in a bar alone or was using alcohol or drugs, or if she willingly accompanied the suspect to his residence or invited him to her residence.

The suspect's age, race, and prior criminal record were included in the analysis. The analysis also included several case characteristics that reflect either the seriousness of the offense or the strength of evidence in the case. Measures of offense seriousness include whether the suspect used a gun or knife during the assault and whether the victim suffered collateral injuries, such as bruises, cuts, burns, or internal injuries. The strength of evidence in the case was measured by the existence of a witness to the assault and the presence of physical evidence, such as semen, blood, clothing, bedding, or hair, that could corroborate the victim's testimony.

The study used logistic regression to model the relationship between victim, suspect, and case characteristics and the decision to file charges in sexual assault cases. To test for the effect of type of relationship, the researchers first estimated a model for the entire sample. This stage in the analysis included two dummy variables (acquaintance and intimate partner) that measured the type of relationship between the victim and the offender; the stranger category was omitted. The researchers then estimated separate logistic regression models for each of the three types of relationships to test their hypothesis concerning the contextual effects of victim characteristics.

Findings

Examination of prosecutors' charging decisions for sexual assault cases confirmed that the "prosecutor controls the doors to the courthouse" (Neubauer, 1988, p. 200). Within the two large urban jurisdictions included in this study, approximately half of the sexual assault cases that resulted in an arrest were prosecuted. The decision to charge was found to be based on a combination of victim, suspect, and case characteristics. Prosecutors were more likely to file charges if there was physical evidence to connect the suspect to the crime, if the suspect had a prior criminal record, and if there were no questions about the victim's character or behavior at the time of the incident. This suggests that prosecutors' concerns about convictability lead them to file charges when they believe the evidence is strong, the suspect is culpable, and the victim is blameless.

The results also revealed that the relationship between the victim and the suspect had no effect on the decision to charge. This finding is consistent with the results of a recent study about sexual assault case processing decisions (Kingsnorth, MacIntosh, and Wentworth, 1999), but the results are inconsistent with the assertions of Black (1976) and others who contend that the victim-suspect relationship is an important predictor of case outcomes and that crimes between intimates are perceived as less serious than crimes between strangers.

The fact that prosecutors were equally likely to file charges in all three types of cases does not mean, however, that they used the same criteria to determine the likelihood of conviction for sexual assault cases in each category. As shown in the exhibit, the presence of physical evidence to connect the suspect to the crime had a strong and statistically significant effect on charging in all three types of cases, but it had a more pronounced effect in cases involving strangers than in cases involving acquaintances or relatives. Moreover, the other predictors of charging were not invariant. Consistent with our hypothesis, in cases involving strangers, the decision to charge was determined primarily by legally relevant factors. In these cases, the odds of charging were increased if there was physical evidence and if the suspect used a gun or knife.

The study's findings regarding the influence of victim characteristics also are consistent with its premise. With the exception of the victim's race (which influenced the decision to charge in cases in which the victim and suspect were strangers), victim characteristics affected charging only in cases that involved nonstrangers. In cases that involved friends, acquaintances, and relatives, prosecutors were significantly less likely to file charges if the victim engaged in risk-taking behavior at the time of the incident or if her reputation or character were questioned. If the victim and suspect were or had been intimate partners, prosecutors were less likely to file charges if the victim engaged in risky behavior or physically resisted the suspect but were more likely to file charges if the victim was injured.

Implications for Researchers

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

Exhibit. Logistic Regression Results for Prosecutors' Decision to File Charges for Sexual Assault Cases Involving Strangers, Acquaintances, and Intimate Partners

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

*p < .05

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

The current study suggests that these results may reflect the fact that researchers typically classify the relationship between the victim and the suspect in only two categories: strangers and nonstrangers. Doing so ignores the diversity in these relationships and, as Decker (1993, p. 585) asserts, “mask[s] important within-group differences.” The nonstranger category, which includes both close and distant relationships, is particularly problematic; it includes victims and suspects who are intimate partners, relatives, good friends, and casual acquaintances. Although consent is more likely to be the defense in each type of nonstranger case than in cases that involve strangers, it does not necessarily follow that victim characteristics play an identical role in each type of case. This study demonstrates that cases that involve intimate partners are qualitatively different from those that involve friends, relatives, and acquaintances. Therefore, future research should abandon the stranger/nonstranger dichotomy and use more refined measures of the victim-suspect relationship.

Implications for Practitioners

The study’s results have important policy implications. The relationship between the victim and suspect was found to have no effect on the likelihood of charging: Prosecutors were no more likely to file charges whether the victim and suspect were acquaintances, relatives, or intimate partners than if the victim and suspect were strangers. This finding clearly contradicts assertions that sexual assaults that involve acquaintances are not regarded as “real rapes” (Estrich, 1987) and that women victimized by these crimes are not regarded as “genuine victims” (LaFree, 1989).

This result may be attributed to the rape law reforms enacted during the past three decades. Beginning in the mid-1970s, most States adopted reforms designed to shift the focus in a rape case from the victim’s character and behavior to the offender’s behavior (see Spohn and Horney, 1992). The most common reforms included changes in the definition of rape, elimination of the resistance and corroboration requirements, and enactment of rape shield laws, which were designed to preclude testimony concerning the victim’s sexual history. As Spohn and Horney (1992) note, these reforms were designed primarily to increase the odds of successful prosecution in cases in which the victim and the suspect were acquainted and the suspect claimed that the victim consented. Although research evaluating the impact of the rape law reforms generally concludes that the statutory changes did not produce the widespread instrumental changes that reformers anticipated, there is evidence that the

reforms did encourage arrests and prosecutions in borderline cases. This study's finding that prosecutors were no more likely to screen out cases involving acquaintances and intimate partners than cases involving strangers is consistent with other research on this point.

However, this study also found that legally irrelevant victim characteristics did influence the decision to charge in cases in which the victim and the suspect were acquaintances, relatives, or intimate partners. In these types of cases, prosecutors' anticipation of a consent defense and downstream orientation toward judges and juries apparently leads them to scrutinize more carefully the victim's character and behavior. Evidence that challenges the victim's credibility or fosters a belief that she was not entirely blameless increases uncertainty about the outcome of the case and thus reduces the odds of prosecution. Notwithstanding the rape law reforms promulgated during the past three decades, victim characteristics continue to influence charging decisions in at least some sexual assault cases.

Note

* See 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: 651–688.

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