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THE EFFECT OF LEGAL AND EXTRALEGAL FACTORS
ON PROSECUTORS' CHARGING DECISIONS
IN 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

Jeffrey W. Spears

July 1994

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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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ABSTRACT

Most studies of criminal justice decision making have focused on the decision to arrest, the pretrial release decision, the decision to enter a guilty plea, and the sentencing decision. There has been very little research on the prosecutor's decision to file charges against persons suspected of crimes.

The present study examined the effect of legal and extralegal variables on the prosecutor's decision to file charges in sexual assault cases. Using a sample of all complaints of sexual assaults received by the Detroit Police Department in 1989, we tested the hypothesis that prosecutors' charging decisions are related to the strength of evidence in the case. We also tested the hypothesis that victim characteristics influence the decision to charge. Lastly, we tested the hypothesis that victim characteristics will only have an influence in cases with weak evidence.

Only one of these three hypotheses was fully confirmed. We found that victim characteristics had a significant effect on the decision to charge. Charging was affected by the victim's moral character, the victim's behavior at the time of the incident, and the victim's age. Moreover, these victim characteristics influenced charging regardless of the strength of evidence in the case, the seriousness of the offense, or whether the crime was classified as an aggravated or simple

sexual assault. On the other hand, we found that none of the four individual evidence factors had an effect on the prosecutor's decision to charge a person suspected of a crime; the measure incorporating the four evidence factors did, however, have a positive effect on charging decisions.

Overall, the results of this study suggest that Detroit prosecutors regard victim characteristics as relevant to convictability in all types of sexual assault cases. They suggest that prosecutors attempt to avoid uncertainty by screening out sexual assault cases unlikely to result in a conviction because of questions about the victim's character, the victim's behavior at the time of the incident, and the victim's credibility.

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**THE EFFECT OF LEGAL AND EXTRALEGAL FACTORS
ON PROSECUTORS' CHARGING DECISIONS
IN SEXUAL ASSAULT CASES**

INTRODUCTION

The various components of the American legal system have a significant amount of unchecked discretionary power, but the one that seems to stand apart from the rest is the prosecutor. This individual decides who is to be prosecuted, what charge will be filed, who will be offered a plea bargain, and what resources will be devoted to a case. The prosecutor also may recommend the sentence the offender should receive. The authority of the American prosecutor is reflected in a 1940 statement by Supreme Court Justice Jackson, "the prosecutor has more control over life, liberty, and reputation than any other person in America" (Davis, 1969:190). In short, this person has a significant amount of unchecked power over individuals who enter our criminal justice system.

In general, most research on the criminal justice system has focused on four decision points: the decision to arrest, the pretrial release decision, the decision to enter a guilty plea, and the sentencing decision (Albonetti, 1987). However, there has been very little research on the prosecutor's

initial decision to file charges against persons suspected of crimes.

In the present study we examine the variables that affect the prosecutor's decision to file charges in sexual assault cases. Using a sample of all complaints of sexual assaults received by the Detroit Police Department in 1989, we test the hypothesis that prosecutors' charging decisions are related to the strength of evidence in the case. We also hypothesize that victim characteristics influence the prosecutor's decision to charge. Lastly, we test the liberation hypothesis (Kalven and Zeisel, 1966; Reskin and Visher, 1986); we hypothesize that victim characteristics will only have an influence in cases with weak evidence.

THE AMERICAN PROSECUTOR

In this section we present a brief overview of the origins of the American prosecutor and discuss the structure, organization, and responsibilities of the prosecutor's office. We conclude with an examination of prosecutorial discretion and with a description of the intake/screening process and prosecutorial charging policies. This will allow the reader to consider the information presented within the proper context.

Origins

Research on the American prosecutorial system has suggested that it is the product of three European predecessors: the English Attorney General, the Dutch *schout*, and the French *procureur publique* (Albonetti, 1987; Jacoby, 1980; Miller, 1969). Each of these officials were involved with the prosecution of criminal offenses within their criminal justice system (Jacoby, 1980). Moreover, each of these cultures did have a significant influence on the development of the American criminal justice system (Jacoby, 1980).

The American prosecutor is similar, in some respects, to these European officials. Like the English Attorney General, the American prosecutor has the power to discontinue criminal

prosecutions (Albonetti, 1987; Jacoby, 1980). Both the American prosecutor and the French *procureur* have the authority to initiate all public prosecutions (Jacoby, 1980). Lastly, the American prosecutor is a local governmental official like his/her Dutch counterpart (Jacoby, 1980).

The American prosecutor is also different, in many respects, from his/her European antecedents. For example, in the United States the prosecutor is considered the primary law enforcement official in his/her jurisdiction (Nissman and Hagen, 1982). While each of the European officials was involved with the prosecution of crimes, none was considered the primary law enforcement officer in the jurisdiction (Jacoby, 1980). The Europeans were officials of the national government and drew their authority from other officials, whereas the American prosecutor is an official of the local government who is, for the most part, not responsible to other governmental officials (Jacoby, 1980). In general, American prosecutors (the chief prosecutor in each jurisdiction) are elected and responsible to the voters, while the Europeans were appointed and responsible to their appointers (Jacoby, 1980). In the United States, assistant prosecutors are appointed by the chief prosecutor.

Structure and Organization of the Prosecutor's Office

As noted above, in most jurisdictions the chief prosecutor appoints assistant prosecutors who handle the day-to-day processing of felony cases. In smaller jurisdictions there may be only one or two assistants, while in larger jurisdictions there may be one hundred or more. Los Angeles County, for example, has over 500 assistant district attorneys (Neubauer, 1988).

The procedures used to assign cases to attorneys differ from jurisdiction to jurisdiction (Eisenstein and Jacob, 1977). Some offices assign cases to attorneys; the attorney assigned to the case handles the case from arraignment through trial and sentencing. This is referred to as vertical prosecution. Other offices use horizontal prosecution. Under this system, attorneys are assigned to courtrooms and handle all of the cases assigned to that courtroom. Defendants, therefore, will be confronted by different prosecutors at each stage in the criminal justice process.

Responsibilities

We now know that most American prosecutors are elected, represent a particular jurisdiction, and are the primary law enforcement officers of that jurisdiction. But what does being the chief law enforcement official of the jurisdiction entail?

In general, the basic function of the American prosecutor is to represent the state in criminal proceedings. He/she has a responsibility to protect the innocent and to convict the guilty (Nissman and Hagen, 1982). Cole (1993) provides an illustration of the complexities of the prosecutor's role in our criminal justice system:

Of the many positions within the legal process, the position of prosecuting attorney is distinctive because it is concerned with all aspects of the criminal justice system. Not only do prosecutors have the formal power to determine which cases will be prosecuted, what charges will be made, and what bargains there will be with defendants, but what prosecutors do also influences the operations of the police, the coroner, the grand jury, and the judge (p. 143).

As demonstrated in this example, the prosecutor is a very powerful person. In fact, because of his/her immense discretionary powers, many consider the prosecutor one of the most powerful officials in America (Albonetti, 1987; Cole, 1993; Jacoby, 1980).

Discretion

According to Gottfredson and Gottfredson (1988:114) "wide discretion both to abstain from prosecution and to prosecute selectively generally is recognized in case law." Numerous court cases have upheld the discretionary power of the American prosecutor. For example, state courts in New York, New Jersey, and California have found that they cannot force

prosecutors to enforce the law (Jacoby, 1980). Another court found that "the prosecutor has absolute control of criminal prosecution" (Jacoby, 1980:29).

According to Albonetti (1987) and Jacoby (1980), the discretionary power of the American prosecutor is indisputable in three critical areas of decision making. The prosecutor alone decides if criminal charges will be filed; he/she determines the level at which an individual is charged; and he/she decides when and if the prosecution will be terminated (Albonetti, 1987; Jacoby, 1980). Moreover, decisions made at each of these stages are virtually free from judicial review (Albonetti, 1987; Frase, 1980; Gelman, 1982; Jacoby, 1980; Nissman and Hagen, 1982). The judiciary has reviewed these decisions on occasion, but only in very exceptional cases (Nissman and Hagen, 1982).

Some relatively recent cases have reviewed prosecutors' charging decisions (Miller et al., 1986). Two of the cases, *United States v. Goodwin* [457 U.S. 368, 380 (1982)] and *Marshall v. Jerrico, Inc.* [446 U.S. 238, 248 (1980)], examined who will be prosecuted and found that the prosecutor maintains "broad discretion" in this decision.

Another case, *Bordenkircher v. Hayes* [434 U.S. 357, 364 (1978)], examined two prosecutorial decisions, the decision to prosecute a suspect and the decision about what charge to file. The Court ruled that, "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)].

Although a prosecutor's discretion is significant, there have been some limits placed on it. Specifically, the Supreme Court has found that a prosecutor's decision to charge a suspect may not be "deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification" [*Bordenkircher v. Hayes*, 434 U.S. 357, at 364 (1978); *Oyler v. Boles*, 268 U.S. 448, at 456 (1962)]. In general, this finding compels the prosecutor to use only legally relevant information when deciding whether or not to prosecute a suspect.

Intake/Screening Process

The first and most important stage of prosecutorial decision making is intake or initial screening. The prosecutor plays an important gatekeeping function that determines the character of the American criminal justice system (Jacoby, 1980) and "radically changes the status of the alleged offender" from a suspect to a defendant (Gottfredson and Gottfredson, 1988:115).

At this stage, the prosecutor is notified that a crime has been committed and that a suspect has been arrested (Jacoby, 1980). The prosecutor then reviews the facts and/or evidence presented to him/her, evaluates the case, and decides if charges should be filed or rejected (Jacoby, 1980; Spohn et al., 1987). In general, the decision to file a charge should be based on the facts of that case and on the law as it pertains to the case. As noted above, this decision is, ordinarily, beyond judicial review.

The Prosecutor can reject charges at the initial screening for many reasons. For example, the prosecutor may refuse to charge because of a belief that the suspect is innocent. In this situation, in fact, the prosecutor has an ethical obligation to reject the charges. However, what occurs more often is that the prosecutor thinks the suspect is guilty but nonetheless refuses to file charges because he/she believes that a conviction would be unlikely if the case went to trial (Albonetti, 1987; Silberman, 1978; Vera Institute of Justice, 1981).

Charges also may be rejected if the prosecutor believes it would not be in the interest of justice to proceed (Silberman, 1978). For example, the prosecutor may believe that the offense is too insignificant to justify further processing (Frase, 1980) or that the suspect's arrest was sufficient punishment (Miller, 1969). Finally, the suspect

may avoid prosecution by agreeing to testify for the state in another case.

Studies of the initial screening decision have shown that from one-third to one-half of all arrests in felony cases do not result in the filing of felony charges by the prosecutor (Boland, 1983; Brosi, 1979; Greenwood et al., 1973; Silberman, 1978). A study of the disposition of felony arrests in New York City, for example, found that 43% of the arrests were dismissed by the prosecutor (Vera Institute of Justice, 1981). Similar results have been reported in other studies (Bernstein et al., 1977; Forst et al., 1977; Greenwood et al., 1973). In a study of prosecutorial charging in several California jurisdictions, Greenwood and his associates (1973) found that charging varied by offense type. Rejection rates ranged from 87% for assault with a deadly weapon to 63% for rape to 7% for bookmaking.

Intake/Screening: Prosecutorial Policies

As will be discussed below, prosecutors' assessments of convictability are influenced by case characteristics, defendant characteristics, and victim characteristics. However, Jacoby (1977) suggests that most prosecutors perform their duties within some kind of organizational policy.

Jacoby (1977) argues that there are four models or types of policies guiding charging decisions in prosecutors' offices

throughout the United States. These four models, which she labels legal sufficiency, system efficiency, defendant rehabilitation, and trial sufficiency, are not "necessarily exhaustive nor mutually exclusive," but they do capture essential differences in prosecutorial charging strategies (Jacoby, 1980:201).

Legal Sufficiency Policy. Many prosecutors believe that charges should be filed if a case contains all of the elements necessary to meet the requirements of the statute (Jacoby, 1980). Jacoby has referred to this as the legal sufficiency policy.

At the charging stage, this policy only requires the prosecutor to screen the case briefly for any potential legal deficiencies (Jacoby, 1980). If deficiencies are found, further investigation would occur or the case would be refused for prosecution. The legal sufficiency policy is more prevalent in lower, misdemeanor courts where a large number of cases must be processed quickly.

System Efficiency Policy. Another policy that affects how prosecutors assess a case is the system efficiency policy. This policy emphasizes a very thorough initial screening of a case for any constitutional and/or evidentiary problems (Jacoby, 1980). Here, prosecutors will only file charges in

a case if it can be disposed of quickly and efficiently. Difficult or weak cases will result in a rejection of charges.

The charges filed should encourage the defendant to plead guilty (Jacoby, 1980). This is sometimes accomplished by overcharging the suspect so that he/she will plead guilty to a lesser charge. Undercharging is also used to encourage the suspect to plead guilty. According to Jacoby, use of this policy generally indicates a prosecutor's office with a high caseload and limited resources.

Defendant Rehabilitation Policy. The third policy is concerned with rehabilitating the defendant and avoiding the stigma of a felony conviction (Jacoby, 1980). A prosecutor using the defendant rehabilitation policy believes "that the most effective treatment for the vast majority of defendants who pass through his office is anything but processing them through the criminal justice system" (Jacoby, 1980:203).

Using this policy, the prosecutor's charging decision is primarily based on the suspect's prior criminal record and then on the current offense (Jacoby, 1980). Suspects who have been arrested for a nonviolent offense and have no prior felony convictions are more likely to be diverted from the criminal justice system than are suspects with prior convictions. Thus, the policy relies heavily on pretrial

diversion programs, deferred judgements, and other alternatives to prosecution (Jacoby, 1980).

Trial Sufficiency Policy. A final policy used by prosecutors is the trial sufficiency policy. According to Jacoby (1980), prosecutors using this policy regard the screening and charging decisions as the most critical decisions in the office. Here, the prosecutor will only file charges if he/she believes that the case could be won before a jury. Moreover, the charge filed is the one that will be tried and convicted; no plea bargaining takes place within this policy. The prosecutor will refuse to file charges if he/she feels that the case will not result in a conviction if it were to go to trial.

According to Albonetti (1987:311), prosecutors who do not file because a jury conviction is unlikely are "avoiding uncertainty." If, after the initial screening, a prosecutor is not certain that he/she can obtain a conviction at a jury trial, the case is likely to be rejected for prosecution (Albonetti, 1987).

In summary, the American prosecutor exercises considerable discretion, particularly in deciding whether to file charges against a person suspected of a crime. The decision to charge is virtually immune from review and is determined primarily by the prosecutor's assessment of the

likelihood of conviction. We now turn to an examination of the variables that affect the prosecutor's decision to charge a suspect with a crime.

PRIOR RESEARCH

The focus of this study is prosecutor's charging decisions in sexual assault cases. In this section we review research examining the factors that affect charging decisions. Most of this research focuses on offenses other than sexual assault. We also review studies analyzing the determinants of case processing decisions in sexual assault cases. Finally, we discuss the liberation hypothesis.

Prosecutors' Charging Decisions

Case Characteristics. Myers (1991) contends that three factors determine prosecutors' assessments of convictability and define a "strong" case--the seriousness of the offense, the strength of evidence in the case, and the culpability of the defendant. All of these factors are legally relevant to case processing decisions. In this section, we discuss the seriousness of the offense and the strength of evidence in the case. The culpability of the defendant, as defined by the defendant's prior criminal record and/or use of a weapon, is discussed in the following section.

The seriousness of the offense is probably the most important element of a strong case. In fact, it has been consistently identified by researchers as influencing the

prosecutor's decision to file charges (Albonetti, 1987; Jacoby et al., 1982; Mather, 1979; Miller, 1969; Neubauer, 1974). Albonetti (1987), for example, found a significant increase in the likelihood of prosecution in cases where the offense had a statutory severity of five to thirty-five years in prison.

Another measure of offense seriousness is injury to the victim. Research has suggested that in cases where the victim was injured, the prosecutor was more willing to file charges (Myers, 1982; Rauma, 1984; Schmidt and Steury, 1989). For example, Schmidt and Steury (1989) found that when victims sustained moderate or severe injuries, as a result of domestic violence, the prosecutor was more likely to file charges.

The second major predictor of convictability is the strength of the evidence in the case (Jacoby et al., 1982; Miller, 1969; Nagel and Hagan, 1983). When there is evidence linking the suspect to the crime in question, the prosecutor tends to pursue the case more vigorously (Feeney et al., 1983). However, as Nagel and Hagan (1983) point out, few studies adequately control for the strength of evidence in the case.

An exception is a study of charging decisions by U.S. Attorneys in Washington, D.C. Albonetti (1987) examined the effect of exculpatory evidence, corroborative evidence, and physical evidence on the decision to prosecute in felony cases. She found that all of these evidentiary factors had a

significant effect on prosecution and reduced the "uncertainty" of conviction. Albonetti (1987:311) concluded that "Uncertainty is significantly reduced with the introduction of certain legally relevant evidence."

Whether or not there was a witness to the crime also affects the prosecutor's decision to charge. Albonetti (1987) found that the presence of more than one eyewitness increases the likelihood of the suspect being charged. Corroborative evidence, such as a witness, then, does appear to have an effect on the decision to file charges. In fact, Albonetti (1987) found that cases with corroborative evidence had a ninety-one percent chance of being prosecuted.

Another important variable is the presence of physical evidence. This, along with other types of evidence, is commonly used by prosecutors in their decision to go forward with charges (Albonetti, 1987). The presence of physical evidence helps to convince the prosecutor that a crime did occur and that the suspect is connected to the crime in question (Albonetti, 1987). Albonetti (1987) found that the presence of physical evidence significantly increased the likelihood of prosecution. Moreover, she found that cases with this type of evidence had an eighty percent likelihood of being prosecuted (Albonetti, 1987).

Analysis of the reasons given by prosecutors to explain the decision not to prosecute confirms this. Forst and his

colleagues (1977) examined charging in Washington, D.C. and found that "insufficiency of evidence" was cited most frequently, followed by witness problems. Spohn et al.'s (1987) evaluation of initial charging decisions in Los Angeles County found that prosecutors gave similar reasons for refusing to charge.

In sum, there is substantial empirical evidence that offense seriousness and the evidentiary strength of the case influence prosecutorial decision making. Both of these factors produce a "solid" case that is likely to result in conviction.

Suspect Characteristics. Studies have shown that suspect characteristics also affect the prosecutor's decision to file charges. Some of these--such as prior record and use of a weapon during the commission of the crime--are legally relevant variables. Others--such as race, gender, and employment status--are extralegal factors.

Myers (1991:364) suggests that "the third element of a strong case is a dangerous and culpable defendant." Defendant culpability is defined by the defendant's prior criminal record and/or use of weapon.

The defendant's prior criminal record has been included in a substantial amount of criminal justice research. Overall, research seems to indicate that defendants with prior

criminal records are more likely to have charges filed against them (Albonetti, 1987; Mather, 1979; Miller, 1969; Neubauer, 1974; Schmidt and Steury, 1989; Swiggert and Farrell, 1976). Albonetti (1987), in her examination of prosecutorial discretion, found that defendants with prior felony convictions were significantly more likely to be charged. As a matter of fact, they had a 7 percent higher chance of being charged than did first offenders (Albonetti, 1987).

Prosecutors also are more likely to charge suspects who use a weapon. Albonetti (1987) found that U.S. Attorneys were significantly more likely to file charges against suspects who used a deadly weapon to commit the crime. She concluded that prosecutors viewed suspects who used a weapon as more dangerous. Schmidt and Steury (1989) also found that charging was more likely if the suspect in a domestic violence case used a closed fist or a weapon rather than an open hand.

The two factors discussed above are legally relevant to case processing decisions; they are factors that criminal justice decision makers legitimately take into account. There has been much concern about the possibility that prosecutors may consider attributes about the defendant that are not legally relevant to criminal justice decision making. Defendant race is one such attribute. Research in this area has been concerned with discrimination against blacks and other ethnic minorities.

Spohn, Gruhl, and Welch (1987) examined the impact of the suspect's ethnicity and gender on the prosecutor's decision to reject charges. Overall, their findings suggest that prosecutors do consider the race and gender of the suspect in their decision to charge or not. Specifically, they suggest that whites are more likely than Hispanics and blacks, and that females are significantly more likely than males, to have their charges rejected by the prosecutor. The authors speculated that this pattern was most likely to occur in "marginal" or weak cases; in strong cases neither race nor gender would influence charging.

Nagel and Hagan (1983) also suggest that prosecutors may pursue cases against males more vigorously. In fact, they hypothesize that "females may have a slight advantage in being offered more alternatives to prosecution . . . especially at the early stages of prosecutorial discretion" (1983:124). Thus, it does appear that the suspect's race and gender may have an effect on the prosecutor's decision to charge.

Other researchers suggest that the racial composition of the offender-victim pair, as well as the race of the offender, has an effect on the prosecutor's initial screening decision. LaFree (1980) examined the effect of the racial composition of the victim-defendant dyad on the processing of sexual assaults in a large midwestern city. According to sexual stratification theory, black men who assault white women will

be treated more harshly by the criminal justice system (LaFree, 1980). Overall, LaFree's findings tended to fall in line with sexual stratification theory: black men who assaulted white women were more likely to have their cases filed as felonies, as compared to other suspects.

Several studies have suggested that prosecutors are more likely to seek the death penalty in cases where a black has allegedly murdered a white (Bienen et al., 1988; Keil and Vito, 1989; Paternoster, 1984; Radelet and Pierce, 1985). Keil and Vito (1989) found that blacks who killed whites, in Kentucky, were more likely to be charged with a capital crime than any other offender-victim combination. It appears that Kentucky prosecutors consider the killing of a white by a black to be more serious than a crime involving any other offender-victim combination.

The suspect's employment status also has been included in some research on prosecutorial decision making. Schmidt and Steury (1989) examined prosecutorial discretion in domestic violence cases. In general, they found that employed suspects were more likely to receive leniency from the prosecutor, in the filing of charges, than unemployed suspects (Schmidt and Steury, 1989). Blumstein et al. (1983) also suggest that prosecutors are more likely to pursue a case against a defendant who is unemployed.

Other suspect characteristics also predict charging. For example, Schmidt and Steury (1989), in their examination of domestic violence cases, found that prosecutors were more likely to file charges against suspects who were using drugs or alcohol at the time of the assault. Prosecutors also were more likely to file charges against suspects who failed to appear at the charging conference.

In sum, both legally relevant and legally irrelevant suspect characteristics affect the charging decision. Prosecutors are more likely to file charges against suspects viewed as dangerous and culpable. They also may differentiate among suspects on the basis of race, gender, or employment status. As Schmidt and Steury (1989:508) conclude, "there is much to suggest that the decision to prosecute is largely based on the defendant's past and current actions and choices."

Victim Characteristics. As demonstrated above, prosecutors do take case and suspect characteristics into consideration when deciding to file charges. Victim characteristics also may play a role in charging.

According to many prosecutors, a "stand-up" victim is an essential element of a strong case (Stanko, 1981-1982). Stanko (1981-1982) defines this as a person whom a judge and/or jury would consider credible and undeserving of

victimization. One of the district attorneys interviewed by Stanko, discussing a case involving an elderly female robbery victim, stated, "Any case that has a stand-up complainant should be indicted. You put her on the stand--the judge loves her, the jury loves her--dynamite complainant!" (Stanko, 1981-82:174).

In attempting to assess a victim's credibility, prosecutors tend to rely on stereotypes about the behavior of certain types of people (Myers, 1991). For example, most prosecutors feel that students are law-abiding citizens, and thus will be considered credible by judges and/or jurors (Stanko, 1981-1982). LaFree (1989) asserts that nontraditional women, or women who engage in some type of "risk-taking" behavior are less likely to be viewed as genuine victims who are deserving of protection under the law. Estrich (1987) similarly argues that only certain types of sexual assaults will be regarded as "real rapes" with "genuine victims."

Another aspect of victim credibility is victim provocation. It is assumed that provocation by the victim will significantly reduce the likelihood of charges being filed (Albonetti, 1987). Albonetti (1987) found support for this in her study of prosecutorial discretion; she found that provocation by the victim significantly reduced, by 59%, the

probability of prosecution. Stanko (1981-1982) also found support for this.

The suspect-victim relationship also seems to influence prosecutorial decisions. In general, prosecutors and judges tend to view crimes by strangers as more serious than crimes committed by someone the victim knows (Albonetti, 1987). Prosecutors tend to consider crimes committed by strangers as "real crimes" and crimes committed by a person the victim knows as "junk cases" (Silberman, 1978).

There is evidence to support the contention that prosecutors are unlikely to file charges if the victim knew the offender (Miller, 1969; Stanko, 1981-1982; Williams, 1978). It has been suggested that a prior relationship with the offender may cause the prosecutor to question the truthfulness of the victim's story and may lead the victim to refuse to cooperate as the case moves forward (Vera Institute of Justice, 1981). Hepperle (1985) and Williams (1978) also suggest that, in rape cases, a prior relationship with the suspect may reduce the likelihood of the suspect being charged. Albonetti (1987) found that the likelihood of prosecution was increased by 18 percent if the offender was a stranger.

Other research has suggested that victim cooperation has an important effect on the prosecutor's decision to charge (Hepperle, 1985; Myers and Hagan, 1979). Silberman (1978:360)

asserts that in cases involving a victim, "no single factor has so large an impact on what happens to felons after they have been arrested." In general, when a victim is unwilling to cooperate, the prosecutor is less likely to seek criminal charges against the suspect. Kerstetter (1990), in an examination of sexual assault cases, found that in cases where victims were willing to cooperate, the prosecutor was more likely to file felony charges against the suspect.

As a final note on victims, it has been suggested that prosecutors are more concerned with cases in which the victims are older, white, male, and employed (Myers and Hagan, 1979; see Williams (1978) for a discussion of gender). For example, one study suggested that individuals who murdered whites, in Florida, were more likely to be charged with first degree murder (Radelet, 1981).

Factors Affecting Charging: A Summary. From the information presented above one can see that American prosecutors have extraordinary discretionary powers. They alone decide the fate of a suspected criminal. If they charge the suspect, his/her life is changed forever, no matter what the final outcome is. Being charged with a crime, even if the case is dismissed at a later point in the process, will affect the rest of the suspect's life.

In general, prior research indicates that, at the initial screening stage, prosecutors attempt to avoid uncertainty. If a prosecutor believes that he/she will be able to obtain a conviction, he/she is more likely to file charges against the suspect in question. As noted above, the likelihood of filing a charge is determined primarily by offense seriousness, strength of evidence, and defendant culpability. Extralegal factors, however, also play a role. Prosecutors sometimes consider the race and gender of the suspect and/or victim, the relationship between the victim and the suspect, and the credibility of the victim. The limited amount of research on this issue warrants further research on the prosecutor's decision to file charges against persons suspected of crimes.

Legal and Extralegal Factors: Sexual Assault

The focus of this paper is prosecutors' charging decisions in sexual assault cases. Generally, research on charging has examined offenses other than sexual assault; there are few studies of the decision to charge in sexual assault cases. There is, on the other hand, a substantial body of research on sexual assault case processing decisions.

A number of researchers have analyzed the extent to which sexual assault case outcomes are influenced by legally irrelevant assessments of the victim's socioeconomic status, character, and relationship with the defendant. For example,

studies have demonstrated that sexual assault case outcomes are influenced by the victim's age, occupation, and education (McCahill et al., 1979), by "risk-taking" behavior such as hitchhiking, drinking, or using drugs (Bohmer, 1974; Kalven and Zeisel, 1966; LaFree, 1981; McCahill et al., 1979; Nelson and Amir, 1975), and by the reputation of the victim (Feild and Bienen, 1980; Feldman-Summers and Lindner, 1976; Holmstrom and Burgess, 1978; Kalven and Zeisel, 1966; McCahill et al., 1979; Reskin and Visher, 1986).

Research also has demonstrated that the relationship between the victim and the accused has a significant effect on decision making in sexual assault cases. For example, there is evidence that reports of rapes by strangers are investigated more thoroughly than reports of rapes involving someone the victim knows (McCahill et al., 1979). Stranger rape also are less likely to be unfounded by the police (Kerstetter, 1990).

The prosecutor's decision to charge also is influenced by the relationship between the victim and the suspect (Battelle Memorial Institute, 1977; Loh, 1980; Sebba and Cahan, 1973; Weniger, 1978; Williams, 1978). A prior relationship similarly affects the decision to dismiss the charges rather than prosecute fully (Vera Institute of Justice, 1981), the likelihood that the defendant will be convicted (Battelle

Memorial Institute, 1977), and the odds of incarceration (McCahill et al., 1979).

These findings suggest that criminal justice officials do not treat all rapes the same (Bohmer, 1974; Estrich, 1987; Griffin, 1977; Ireland, 1978; Williams, 1984). They suggest that case outcomes are affected by stereotypes about rape and rape victims and that only "real rapes" with "genuine victims" will be taken seriously. Estrich (1987:28), for example, suggests that 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."

Recent Research. Five recent studies have attempted to untangle the effects of legal and extralegal factors in sexual assault cases. Myers and LaFree (1982), analyzed the effect of extralegal factors in sexual assault cases, cases involving other violent crimes, and cases involving property crimes. They found that extralegal characteristics affected dispositions in all three types of cases. Moreover, these characteristics did not have a different or greater effect on the outcome of sexual assault cases.

Another study focused on jury decision making. Reskin and Visher (1986) interviewed the jurors from sexual assault trials in Indianapolis. They asked these jurors if they

believed that the defendant was guilty or innocent. They also asked them if their decisions were affected by the evidence in the case and by their perceptions of the victim's and defendant's personal characteristics. The results of the study indicated that extralegal variables had a significant effect on jurors' verdicts. For example, the jurors' verdicts were affected by their personal evaluation of the victim's moral character and by their beliefs that the victim exercised poor judgement at the time of the assault.

Reskin and Visher (1986) also determined, however, that the influence of these extralegal factors varied by the strength of the evidence in the case. They found that all five of the extralegal variables they examined influenced jurors' verdicts in cases with weak evidence, but only one influenced the verdicts in cases with strong evidence.

They concluded that their results provided support for Kalven and Zeisel's (1966) "liberation hypothesis"--that is, that jury nullification is most likely to occur when evidence is weak.

In a third study, LaFree (1989) examined the effect of legal and extralegal factors on decisions made by police, prosecutors, judges, and jurors. He found that the strongest predictors of these decisions were legal factors such as the ability of the victim to identify the suspect, the offense type, and the use of a weapon. Several extralegal variables,

however, were also important. Evidence of victim misconduct, the victim's age, the promptness of the victim's report, and the racial composition of the offender-victim dyad influenced decision making. He concluded (p. 241) that while decisions in rape cases were affected by the "typifications of rape held by processing agents," they also were "influenced strongly by considerations that most observers would interpret as justified."

Spohn and Horney (1993) examined the effect of victim characteristics on the outcome of sexual assault cases in Detroit before and after rape law reforms were enacted. They found little support for their hypothesis that "the rape reform laws have resulted in less suspicion of the claims of rape victims and that this has been translated into less reliance on legally irrelevant assessments of victim characteristics" (1993:385). Most of the extralegal victim characteristics had little effect on case outcomes in either the pre-reform or the post-reform period. The authors speculated that these results reflected the fact that the attitudes of criminal justice officials in Detroit had begun to change prior to the enactment of law reforms.

A second study by Horney and Spohn (1994) focused on the effect of victim characteristics on case outcomes in aggravated and simple rapes. The authors used data on a sample of sexual assault complaints received by the Detroit

Police Department in 1989 to test their hypothesis that the effect of victim characteristics would be greater in simple than in aggravated rapes. They reasoned that "because the essential features of aggravated rape cases--an attack by a stranger, multiple assailants, the use of a weapon or injury to the victim--meet the requirements of 'real rape,' there is no reason for distrust of the victim . . ." (1994:3).

Horney and Spohn's (1994) hypothesis was not confirmed; victim characteristics did not have a greater impact on case outcomes in simple than in aggravated cases. The only exception was that a prompt report to the police increased the odds of prosecution in simple rape cases but had no effect on prosecution in aggravated cases. The authors concluded that their findings indicate that criminal justice officials had adopted "more enlightened" attitudes toward rape cases than in the past. As they noted, the similarities in case outcomes suggest that criminal justice officials no longer believe that an assault has to be a "'jump from the bushes' type in order to be a 'real rape'" (1994:17).

These findings provide mixed evidence concerning the effect of legal and extralegal characteristics on the processing of sexual assault cases. They indicate that both types of variables influence case outcomes and that the effect of victim characteristics is not as pronounced as previous research has suggested.

The Liberation Hypothesis

As noted above, research on prosecutorial decision making has shown that several extralegal characteristics affect the decision to charge. Many of these variables are victim characteristics. However, research on jury decision making has found that extralegal characteristics only come into play in cases with weak evidence (Kalven and Zeisel, 1966; Reskin and Visser, 1986). Victim characteristics may similarly affect prosecutors' charging decisions.

The liberation hypothesis was first articulated by Kalven and Zeisel (1966) in their landmark study of jury behavior. The authors argued that jurors deviated from their fact-finding mission in cases where the evidence against the defendant was weak or contradictory. Jurors' doubts about the evidence, in other words, liberated them from strict reliance on the law and freed them to consider their own "sentiments" or values.

In examining rape cases, for example, the authors distinguished between aggravated and simple rapes. They defined an aggravated rape as one in which there was evidence of extrinsic violence or multiple assailants or in which the victim and defendant were strangers; a simple rape was one with none of these aggravating conditions. In support of their liberation hypothesis, Kalven and Zeisel found that jurors' beliefs about the victim's behavior at the time of the

incident were much more likely to influence the verdict in simple than in aggravated rape cases.

A number of researchers have attempted to test the liberation hypothesis in other settings and at other decision points. Reskin and Visher (1986) examined the effect of extralegal variables on jurors' verdicts in sexual assault cases. They found that all of the extralegal variables influenced jurors' verdicts in weak cases, but only one influenced the verdict in strong cases. Studies of the capital sentencing process have shown that the race of the defendant and the race of the victim affect the likelihood of a death sentence primarily in the middle range of offense seriousness scales (Barnett, 1985; Baldus et al., 1985).

A study by Spohn and Cederblom (1991) compared the sentences imposed on black and on white male offenders convicted of violent felonies in Detroit. Consistent with the liberation hypothesis, the authors found that offender race had a significant effect on the likelihood of incarceration only when the conviction charge was assault rather than a more serious felony. The effect of race also was confined to cases in which the offender had no prior felony convictions, victimized an acquaintance rather than a stranger, and did not use a gun to commit the crime.

Spohn and Cederblom (1991:323) concluded that judges confronted with offenders convicted of serious crimes or with

prior convictions for serious crimes "have relatively little latitude in deciding whether or not to sentence the defendant to prison." The appropriate sentence for offenders convicted of less serious crimes, on the other hand, is not necessarily obvious. Thus, "judges are liberated from the constraints imposed by the law, by other members of the courtroom work group, and by public opinion, and are free to take into account extralegal considerations such as race."

Limitations of Prior Research

There has been a significant amount of research examining criminal justice decision making. However, most of this research has not focused on the prosecutors' initial decision to file charges against persons suspected of crimes, which is the focus of this study. Additional limitations are discussed below.

Failure to Control for Strength of Evidence. The most serious shortcoming of the research to date is the failure to control for the strength of evidence in the case. With the exception of research on charging at the federal level (Albonetti, 1987), virtually no studies have adequately controlled for strength of evidence. Consequently, these studies have been unable to explain most of the variance in

the charging decision. Myers (1977), for example, was only able to explain 12 percent of the variance.

As Nagel and Hagan (1983:122) point out, strength of evidence "probably accounts for most of the variance between why some cases are prosecuted toward conviction and others are deferred, discharged, or otherwise diverted." Therefore, failure to include this variable suggests that most models of the prosecutors' charging decision are misspecified.

Failure to Examine the Initial Decision to Charge. The majority of previous research operationalized charging as the decision to prosecute fully. This research has failed to differentiate between the initial charging decision and the subsequent decision to dismiss filed charges. These studies seem to be assuming that the variables that affect dismissals also affect rejections. This is problematic, given that one study (Spohn et al., 1987) found otherwise.

Spohn and colleagues (1987) found that defendant race had an effect on the decision to reject charges at the initial screening, but had no effect on the decision to dismiss. They suggested that this reflected the fact that dismissals were more visible and thus were more subject to scrutiny. The authors concluded that "previous studies which found no discrimination at the dismissal stage may have overlooked

discrimination at the earlier screening" (Spohn et al., 1987:187).

Inadequate Statistical Procedures. Much of the early research on the prosecutor's charging function has been descriptive in nature (Cole, 1970; Mather, 1979; Miller, 1969; Neubauer, 1974; Nissman and Hagen, 1982; Vera Institute of Justice, 1981). These studies did not use multivariate statistical techniques to assess the effect of various factors on the prosecutor's initial decision to charge; therefore, their conclusions concerning the predictors of charging are debatable.

This study attempts to improve on past research by addressing the problems cited above. We include several measures of the strength of evidence in the case (in fact, we test a specific hypothesis concerning interaction between case characteristics and strength of evidence), we focus on the initial screening decision rather than the decision to dismiss, and we use sophisticated multivariate techniques.

RESEARCH DESIGN AND METHODS

The purpose of this research is to examine the factors that influence the prosecutor's decision to file charges against individuals arrested for sexual assault in Detroit. We examine the effect of case, suspect, and victim characteristics on the prosecutor's decision to charge. We hypothesize that prosecutors' charging decisions are related to the strength of evidence in the case. We also hypothesize that victim characteristics influence the prosecutor's decision to charge. Lastly, we test the liberation hypothesis (Kalven and Zeisel, 1966; Reskin and Visser, 1986); we hypothesize that victim characteristics will only have an influence in cases with weak evidence.

Hypotheses to be Tested

Hypothesis 1. The prosecutor's decision to charge a person suspected of a crime will be influenced by the strength of evidence in the case. More specifically, prosecutors will be more likely to file charges if there is a witness to the assault, injury to the victim, physical evidence, or if the suspect used a gun or knife.

Hypothesis 2. The prosecutor's decision to charge a person suspected of a crime will be influenced by characteristics of the victim. More specifically, prosecutors will be less likely to file charges if there are questions about the moral character of the victim, allegations of risk-taking behavior by the victim, or the victim is under age 13; prosecutors will be more likely to file charges if the victim did not know the suspect, if the victim screamed, if the victim physically resisted the suspect, or if the victim reported the assault within one hour.

Hypothesis 3. As predicted by the liberation hypothesis, the prosecutor's decision to charge a person suspected of a crime will be influenced by characteristics of the victim only in cases with weak evidence.

Research Site

The data for this study represent a sample of all arrests for sexual offenses made by the sex crimes unit of the Detroit

Police Department. Once a suspect has been arrested, the arresting officer decides whether to refer the case to the warrant section of the Wayne County (Detroit) Prosecutor's Office. One of the prosecutors assigned to the warrant section interviews the victim and decides whether to file charges against the suspect. The prosecutor may issue a felony warrant, misdemeanor warrant, or refuse the case. If the warrant is denied, either the arresting officer or the complainant can appeal the decision, first to the chief warrant attorney and then to the supervisor of the chief warrant attorney.

There are approximately 120 prosecutors assigned to the criminal division of the Wayne County Prosecutor's Office. Three of these attorneys are assigned to the warrant section. Once charges are filed, the case is referred to Detroit Recorder's Court for arraignment (usually within a day or two of filing) and a preliminary hearing (usually within ten days).

Following the arraignment, cases are prosecuted horizontally. Prosecutors in the trial division are assigned to the courtrooms that handle preliminary hearings and trials. The case is assigned to a courtroom and one of the prosecutors assigned to that courtroom is given responsibility for the case.

Michigan Sexual Assault Statutes. Under Michigan law there are four degrees of criminal sexual conduct [Mich. Comp. Laws Ann §750.520(b) to §750.520(e)]. These offenses are gender-neutral and are defined by the seriousness of the offense (sexual penetration versus fondling of breasts and/or genitals), the amount of force or coercion used, the degree of injury to the victim, and the age and incapacitation of the victim. First and third degree criminal sexual conduct require sexual penetration; second and fourth degree criminal sexual conduct only require sexual contact. First degree CSC is a felony punishable by imprisonment for life or any number of years. Second and third degree CSC are felonies punishable by imprisonment for not more than 15 years. Fourth degree CSC is a misdemeanor punishable by imprisonment for not more than two years, or by a fine of not more \$500.00, or both.

Data

The data used for this analysis were collected as part of a larger study examining rape law reforms in Detroit (see Spohn and Horney, 1993).¹ The original data file consisted of a sample of all complaints of sexual offenses received by the Detroit Police Department in 1989. Every second case was selected for the sample. However, minor offenses such as indecent exposure were excluded.

The data collectors read through case files and recorded relevant information about the case, the complainant, the offender, and the incident on an op-scan form. The original data file was composed of 1,046 cases. However, in this study we include only those cases that were presented to the prosecutor for his/her decision to file charges (N= 321). Those cases that were unfounded by the police and those in which an arrest did not occur were excluded.

Variables

The dependent and independent variables are presented in Table I. Because all of the variables are dichotomous, with the exception of suspect age, frequencies and percentages are displayed for these variables.

Dependent Variable

Decision to Charge (WARRANT). At the initial screening, the prosecutor evaluates the case file and decides whether or not to charge the suspect. For this research, a dichotomous dependent variable is used to examine the prosecutor's decision to charge or not (0= no charge filed, 1= charge filed).

Table I. Dependent and Independent Variables: Codes and Frequencies.

Variable	Code	N	%
<u>Dependent Variable</u>			
Decision to Charge (WARRANT)	0= no	109	34.0
	1= yes	212	66.0
<u>Independent Variables</u>			
CASE CHARACTERISTICS			
Most Serious Offense at Arrest*	4 dummy variables; CSC1= omitted		
CSC1		166	51.7
CSC2		69	21.5
CSC3		55	17.1
OTHER		26	8.1
Threats or Force (THREATS)	0= no	165	51.4
	1= yes	156	48.6
<u>Evidence Factors</u>			
Witness (WITNESS)	0= no	283	89.0
	1= yes	35	11.0
Victim Injured (INJURY)	0= no	242	75.4
	1= yes	79	24.6
Physical Evidence (EVIDENCE)	0= no	210	65.4
	1= yes	111	34.6
Suspect Used a Gun or Knife During Assault (WEAPON)	0= no	261	81.3
	1= yes	60	18.7
VICTIM CHARACTERISTICS			
Moral Character of Victim (MORALS)	0= no	300	93.5
	1= yes	21	6.5
Risk-Taking Behavior (RISK)	0= no	235	73.2
	1= yes	86	26.8
Victim Under 13 (CHILD)	0= no	189	58.9
	1= yes	132	41.1
Suspect-Victim Relationship (STRANGER)	0= no	272	85.5
	1= yes	46	14.5
Victim Screamed (SCREAM)	0= no	287	89.4
	1= yes	34	10.6
Victim Physically Resisted (RESIST)	0= no	161	50.2
	1= yes	160	49.8
Reported Within 1 Hour (TIME1)	0= no	250	77.9
	1= yes	71	22.1

Table I. Continued

Variable	Code	N	%
Victim Race (VRACE)	0= white	55	17.5
	1= black	260	82.5
OFFENDER CHARACTERISTICS			
Prior Felony Conviction (FELONCON)	0= no	238	74.1
	1= yes	83	25.9
Suspect Age (SAGE)	Mean	31.6	Std. Dev.
	Range	15-66	11.3
Suspect Race (SRACE)	0= white	45	14.4
	1= black	268	85.6

*CSC1= arrested for 1st degree criminal sexual conduct; CSC2= arrested for 2nd degree criminal sexual conduct; CSC3= arrested for 3rd degree criminal sexual conduct; OTHER= arrested for some other sex offense.

Independent Variables

The independent variables include case characteristics, suspect characteristics, and victim characteristics. As noted above, these have been shown to affect processing of criminal cases.

There are six case characteristics included in the analysis. All of these factors are expected to increase the probability of the prosecutor charging the suspect.

Most Serious Offense at Arrest (CSC1, CSC2, CSC3, OTHER). Seriousness of the offense was measured by coding the most serious charge on the arrest report--first degree criminal sexual conduct, second degree criminal sexual conduct, third degree criminal sexual conduct, and other sexual offenses. Four dummy variables were created to measure offense seriousness; CSC1 is the reference category. The expectation is that prosecutors will be more likely to charge suspects arrested for CSC1, the most serious offense.

Threats or Force (THREATS). This variable measures whether the suspect used threats and/or force to subdue the victim (0= no threats or force used, 1= threats and/or force used).

Witness to the Assault (WITNESS). This variable measures whether or not there was a witness to the assault (0= no witness, 1= witness). Cases in which a witness can

corroborate the victim's allegations should have a positive effect on the prosecutor's decision to charge the suspect.

Victim Injured (INJURY). This variable is coded 1 if the police file contained information regarding injuries, which were identified by the police or medical personnel, sustained by the victim during the assault. Cases without this type of information are coded 0. This type of evidence also will corroborate the victim's assertion that an assault occurred.

Physical Evidence (EVIDENCE). This variable measures whether or not physical evidence such as semen, fingerprints, blood stains, hair, or skin samples was present at the time of screening (0= no physical evidence, 1= physical evidence). Presence of this evidence will significantly increase the prosecutor's belief that an assault occurred and that the suspect can be tied to the incident, thus reducing his/her uncertainty and increasing the likelihood of prosecution.

Suspect Used a Gun or Knife During Assault (WEAPON). This variable is coded 1 if the suspect used a gun or knife during the assault and 0 if the suspect did not.

Eight victim characteristics are included in the analysis. The first three (MORALS, RISK, CHILD) are expected to have a negative effect on charging. The next four

(STRANGER, SCREAM, RESIST, TIME1) are expected to have a positive effect on charging. Victim race is included as a control variable.

Moral Character of Victim (MORALS). This variable is coded 1 if the police file contained information about the victim's prior sexual activity with someone other than the suspect, pattern of alcohol and/or drug abuse, prior criminal record, information about alleged prostitution, or a history of working as a go-go dancer and/or in a massage parlor. It is coded 0 if none of this information was included in the police file.

Risk-Taking Behavior (RISK). A victim's risk-taking behavior at the time of the incident was measured by examining the police file for the following information: if the victim was walking alone late at night, was hitch-hiking, was in a bar alone, was using alcohol or drugs, or invited the suspect to her residence. If there was information in the police file pertaining to the victim's risk-taking behavior, the variable is coded 1. If no such information was present, it is coded 0.

Victim Under 13 (CHILD). This variable is coded 1 if the victim is under the age of 13 and 0 if 13 and over. Although assaults of victims younger than 13 are more serious under Michigan law, prosecutors may be reluctant to file charges in these cases because of concerns about the inability

of young victims to articulate the circumstances surrounding the assault. Furthermore, prosecutors may be reluctant to proceed because of potential emotional damage to the victim (Sagatun, 1990).

Suspect-Victim Relationship (STRANGER). This variable is a measure of the relationship of the suspect to the victim. If the victim did not know the suspect, the variable is coded 1. Otherwise, it is coded 0.

Victim Screamed (SCREAM). This variable is a measure of the victim's verbal response to the assault. This variable is coded 1 if the victim screamed during the incident and 0 if the victim did not.

Victim Physically Resisted (RESIST). This variable is coded 1 if the victim physically resisted the suspect and 0 if the victim did not resist.

Reported within One Hour (Time1). This variable measures the interval between the assault and the victim's report to the police (0= over one hour, 1= one hour or less). A prompt report to the police increases the likelihood that physical evidence will be obtained and increases the credibility of the victim.

Victim Race (VRACE). This variable is coded 1 if the victim is black and 0 if the victim is white.

There are three suspect characteristics included in the analysis. The expectation is that suspects with prior criminal records will be more likely to be charged. Suspect age and race are included as control variables.

Prior Felony Conviction (FELONCON). Cases in which the suspect has a prior felony conviction are coded 1. Those with no prior felony conviction are coded 0.

Suspect Age (SAGE). This variable represents the suspect's age at the time of the assault.

Suspect Race (SRACE). The variable is taken from the police report. If the suspect is black, it is coded 1 and 0 if the suspect is white.

Analytic Techniques

Logistic regression was employed to analyze the effect of case characteristics, victim characteristics, and suspect characteristics on the prosecutor's decision to charge or not. Logistic regression, rather than ordinary least squares (OLS) regression, was used because the dependent variable is dichotomous and OLS regression is considered inappropriate for the analysis of dichotomous variables.

In testing the first two hypotheses, we estimated a regression equation in which all of the independent variables except the variables being tested were first entered in a block, followed by a block containing the variables being

tested. For example, in testing the first hypothesis all of the variables except for the four evidence factors were entered first; the evidence factors were entered in the second step. The chi-square produced at the second step of the analysis was examined to determine if the addition of the second block produced a significant improvement in the goodness-of-fit of the model ($P \leq .05$).

Similar procedures were used to test the third hypothesis, which predicts that prosecutors' charging decisions will be influenced by victim characteristics only in cases with weak evidence. We created a variable--STRONG--to measure the strength of evidence in the case. This variable is coded 1 if there was witness, if the victim was injured, if there was physical evidence, or if the suspect used a gun or knife during the commission of the assault. It was coded 0 if the case contained none of these evidence factors.

In order to assess whether victim characteristics had differential effects on cases with strong evidence and cases with weak evidence, we created interaction terms by multiplying the dichotomous variable for strong versus weak evidence by each victim characteristic. We estimated a regression equation in which all of the independent variables were entered in a block, followed by a block containing all of the interaction terms. We then examined the chi-square to determine if entering the interaction terms produced a

significant improvement in the goodness-of-fit of the model ($P \leq .05$). If the addition of the interaction terms produced no improvement in the fit of the model, we concluded that the effects of the independent variables did not differ for cases with strong and weak evidence.

FINDINGS

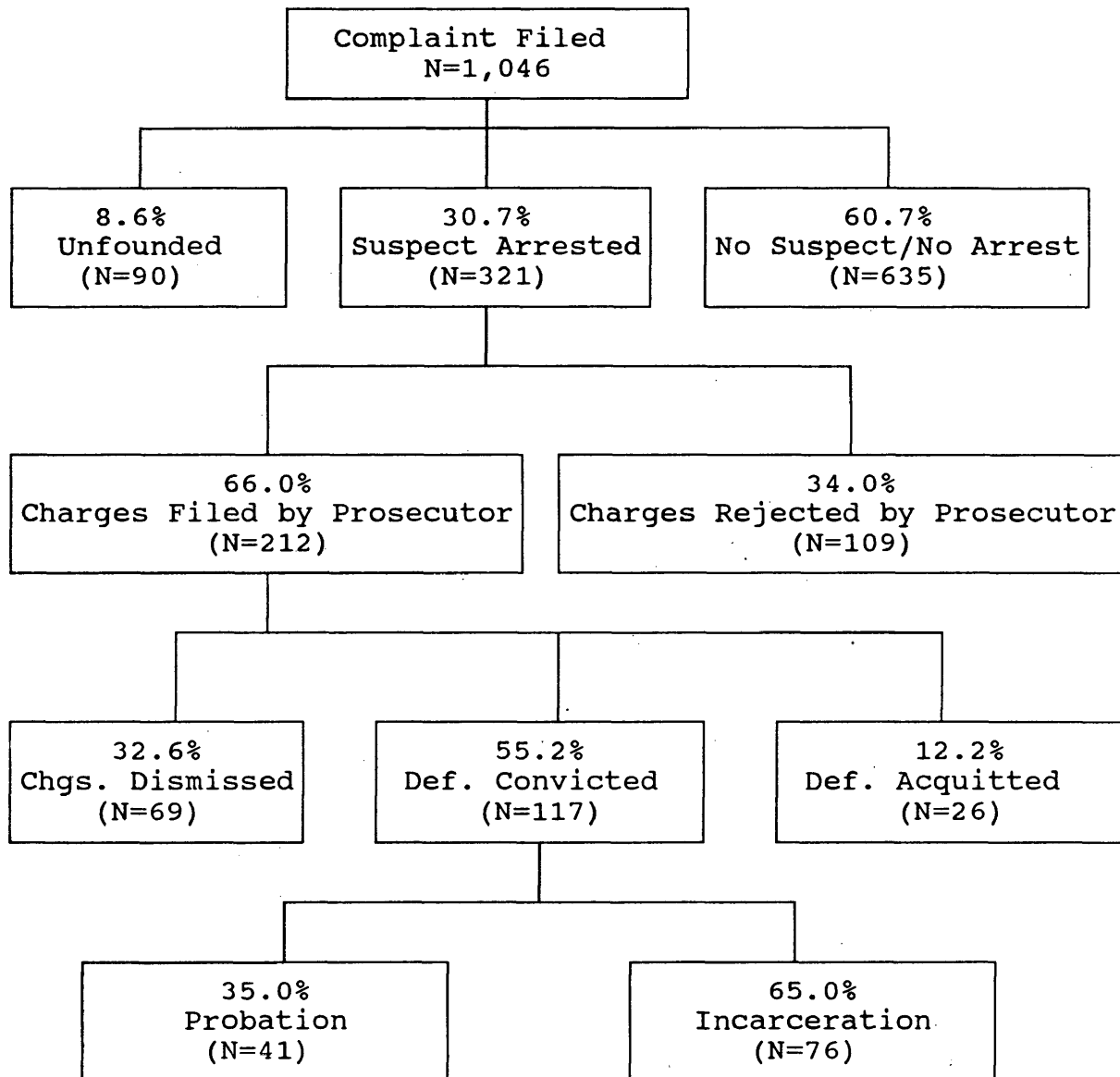
In the present study we examine the variables that affect the prosecutor's decision to file charges in sexual assault cases. Using a sample of all complaints of sexual offenses received by the Detroit Police Department in 1989, we test the hypothesis that prosecutors' charging decisions are related to the strength of evidence in the case. We also hypothesize that victim characteristics influence the prosecutor's decision to charge. Lastly, we test the liberation hypothesis; we hypothesize that victim characteristics will only have an influence in cases with weak evidence.

Case Outcomes

As noted above, the original data file included a sample of complaints of sexual assault received by the Sex Crimes Unit of the Detroit Police Department. This data file consisted of 1,046 reports of sexual assault. Although the focus of this paper is prosecutorial decision making, a summary of case outcomes for the entire sample is presented to illustrate the disposition of all cases in the original data file.

Figure 1 indicates that there was substantial case attrition from the victim filing the complaint to the prosecutor's decision to charge or not. For example, only 321

**Figure 1. Disposition of Sexual Assault Complaints:
Detroit, 1989**



(30.7%) of the original 1,046 complaints filed led to an arrest and presentation by police to the warrant division of the Wayne County Prosecutor's Office. These cases will be the focus of this research.

The majority (60.7%) of the complaints that did not result in an arrest were cases in which the police were either unable to identify or unable to locate a suspect. For example, the victim may have been unable to describe or name the suspect to the police. Alternatively, the victim may have been able to identify the suspect, but the police could not locate the suspect.

The remainder of those complaints (8.6%) which did not result in an arrest were unfounded by the police. Unfounding occurs if the police officer investigating the complaint believes that a crime did not take place. For example, the officer may believe that the complainant fabricated the incident or the complainant was unable to provide adequate information regarding the alleged assault. Although technically unfounding decisions should not rest on the officer's assessment of the likelihood of conviction, this sometimes may occur.

Once an arrest is made, the case is then presented to the warrant section of the Wayne County Prosecutor's Office. The warrant section is responsible for screening each case and for deciding whether or not to file felony charges. Of the 321

cases presented to the warrant section, 212 (66%) resulted in felony charges and 109 (34%) were rejected. This rejection rate is not unlike rates reported in previous studies (Boland, 1983; Vera Institute of Justice, 1981).

Once charges are filed, the case is referred to Detroit Recorder's Court for arraignment and a preliminary hearing. After a case reaches this stage, there are three potential outcomes--dismissal of the charges, conviction by plea or trial, or acquittal at trial. Of the 212 cases that resulted in the filing of charges, 69 (32.6%) resulted in the dismissal of charges, 117 (55.2%) resulted in a conviction, and 26 (12.2%) resulted in an acquittal.

Dismissal of the charges typically occurs when the case "falls apart" after arraignment. The complainant may request that the case be discontinued or may fail to appear at the preliminary hearing; if this occurs, the prosecutor and/or the judge will dismiss the charges. Alternatively, the judge may issue a pretrial evidentiary ruling which weakens the case. Finally, charges may be dismissed if the defendant is being prosecuted for another more serious case or agrees to testify in another case.

If the case proceeds to trial, the defendant either pleads guilty or is tried by a judge or jury. Of the 143 defendants who went to trial, 63 (44.1%) pled guilty, 40 (28%) were convicted by a judge, 14 (9.8%) were convicted by a jury,

17 (11.9%) were acquitted by a judge, and 9 (6.3%) were acquitted by a jury. Of the 117 offenders who were convicted, 41 (35%) were sentenced to probation and 76 (65%) were incarcerated.

Reasons for Charge Rejection. As noted above, 109 (34%) of the cases included in the sample were rejected by the prosecutor at screening. Generally, the prosecutor handling the case will indicate on the case file jacket why the case did not result in the filing of felony charges. The reasons given in these cases are presented in Table II.

The most commonly cited reason for charge rejection is "insufficient evidence." Prosecutors gave this reason in 63 (57.8%) of the cases. This is not surprising; previous research has demonstrated the importance of strong evidence and credible witnesses (Boland, 1983; Brosi, 1979). Albonetti (1987) found that the presence of physical and corroborative evidence significantly increased the odds of charging. Spohn and colleagues (1987) similarly found that the majority of charge rejections in Los Angeles County resulted from evidence problems.

The other three reasons given by attorneys in the Wayne County Prosecutor's Office to explain decisions to reject charges are complainant-related. In 15 (13.8%) of the cases the prosecutor indicated that the complainant was unreliable,

Table II. Reasons Given by Prosecutors to Explain Decisions to Reject Charges

Reasons	N	%
Insufficient Evidence	63	57.8
Complainant Unreliable	15	13.8
Complainant Refused to Prosecute	10	9.2
Complainant Uncooperative	8	7.3
Other Reasons	13	11.9
Total	109	100.0

in 10 (9.2%) of the cases the prosecutor stated that the complainant refused to prosecute, and in 8 (7.3%) of the cases the prosecutor noted that the complainant was uncooperative.

This indicates that charge rejections in sexual assault cases often occur as a result of the prosecutor's judgement that the victim is not credible or would not be a "stand up" (Stanko, 1981-1982) witness. It indicates that prosecutors may be skeptical of "simple rapes" (Estrich, 1987) and may question the allegations of nontraditional women or women who engage in some type of "risk-taking" behavior (LaFree, 1989).

One of the categories of reasons cited by the prosecutor is "complainant refused to prosecute." Technically, of course, the decision to charge is made by the prosecutor and not by the victim. However, the prosecutor may be unwilling to charge if the victim requests that the case go no further. For example, the following excerpt was taken from a case file that was marked, by the prosecutor, "complainant refused to prosecute":

Complainant stated that her husband, from whom she is separated, came over unannounced to see his children. After the children went to bed, he asked to use the bathroom. He came out naked and jumped on the complainant and stated, "you've been giving it to everyone else, now I'm going to get some." He ripped off her pajamas and sexually assaulted her. She initially said that she wanted to prosecute him. The police called the complainant four times over the next 30 days and finally went to her home, but still were unable to contact her. Two weeks later the prosecutor was called by the

complainant, who stated that she no longer wanted to prosecute the suspect.

In sum, over two thirds (69.3%) of sexual assault complaints filed with the Detroit Police Department did not result in an arrest. Those that did not lead to an arrest were complaints that were either unfounded by the police or the police were unable to identify and/or locate the suspect. Approximately one third (30.7%) of sexual assault complaints filed with the Detroit Police Department led to the arrest of a suspect.

Of the complaints that led to an arrest, 34% were rejected by prosecutors and 66% were accepted. Although two thirds of arrests were accepted by the prosecutor, nearly one third (32.6%) were dismissed prior to trial. Another 12.2% of the defendants went to trial, but were subsequently acquitted. The remainder (55.2%) pled guilty or were convicted. Of those convicted, about one third (35%) were sentenced to probation and 65% were incarcerated.

Clearly, these findings reveal a significant amount of attrition for sexual assault complaints filed with the Detroit Police Department. In fact, only 117 (11.2%) of the 1,046 complaints ultimately resulted in a conviction and only 76 (7.3%) of the complaints resulted in incarceration of the defendant.

Bivariate Analysis

We begin by examining the bivariate correlations between the dependent and independent variables. These correlations will be used to identify significant predictors of the prosecutor's initial decision to file charges against persons arrested for sexual assault and to test for the presence of multicollinearity between the independent variables.

The zero-order correlations are presented in Table III. The correlation coefficients indicate that several variables are related to the prosecutor's initial decision to file charges against persons arrested for sexual assault.

Several of the case characteristics are significantly related to the charging decision. Those suspects who were arrested for criminal sexual conduct in the second degree were less likely to have charges filed against them than those arrested for other sexual offenses. Suspects who have been arrested for sexual offenses other than criminal sexual conduct in the first, second, or third degree were more likely to have a charge filed. Charging was also more likely if, during the assault, the suspect threatened and/or used force to subdue the victim.

Three of the evidence factors also are significantly related to the dependent variable. The prosecutor was more likely to charge if the suspect injured the victim. In those cases with physical evidence (information concerning semen,

Table III. Matrix of Intercorrelations

Dependent Variable	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
1. WARRANT																						
Case Characteristics																						
2. CSC1																						
3. CSC2																						
4. CSC3																						
5. OTHER																						
6. THREATS																						
7. WITNESS																						
8. INJURY																						
9. EVIDENCE																						
10. WEAPON																						
Victim Characteristics																						
11. MORALS																						
12. RISK																						
13. CHILD																						
14. STRANGER																						
15. SCREAM																						
16. RESIST																						
17. TIME1																						
18. VRACE																						
Suspect Characteristics																						
19. FELONCON																						
20. SAGE																						
21. SRACE																						

* P ≤ .05

fingerprints, blood stains, hair, or skin samples was present at the time of the initial screening), the prosecutor was more likely to file charges against the suspect than in cases where this type of evidence was not present. Lastly, prosecutors were more likely to charge a suspect who used a gun or knife during the assault.

Four of the victim characteristics were significantly related to the prosecutor's decision to charge or not. Individuals who were suspected of sexually assaulting a child under the age of 13 were less likely to be charged than were suspects who were arrested for assaulting victims 13 and over. In cases where the offender was a stranger, the prosecutor was more likely to file charges than in cases where the offender was known to the victim. Charging was more likely if the victim screamed during the assault or reported the crime to the police within one hour.

Only one of the suspect characteristics, suspect race, was significantly related to the prosecutor's decision to charge. In cases where the suspect was black, the prosecutor was more likely to charge the suspect with a sexual offense than in cases where the suspect was white.

We also examined the matrix of intercorrelations to test for the presence of multicollinearity between the independent variables. Logistic regression and other multivariate techniques assume that the independent variables in the model

are not highly correlated. Two of the independent variables in Table III, victim race and suspect race, are highly correlated. This is a reflection of the fact that nearly all of the cases involved black suspects and black victims. Because of this we were unable to create victim race/suspect race interactions.

Multivariate Analyses

While zero-order correlations are a useful way to identify possible relationships between the dependent and independent variables, they are unable to control for the effects of other variables. Thus, multivariate analysis is a more reliable way to assess the impact of an independent variable on a dependent variable while simultaneously controlling for the effects of other variables. Because a dichotomous dependent variable is used, logistic regression is employed to analyze the effect of case characteristics, victim characteristics, and suspect characteristics on the prosecutor's decision to charge a suspect with a crime.

Effect of Evidence Factors. The first hypothesis tested in this study focuses on the effect of evidence factors. More specifically, the hypothesis predicts that prosecutors will be more likely to file charges if there is a witness to the

assault, injury to the victim, physical evidence, or if the suspect used a gun or knife.

As shown in Table IV, this hypothesis was not confirmed. Adding the four evidence factors did not lead to significant improvement in the goodness-of-fit of the model ($P = .1558$). In fact, none of the four evidence factors affected the prosecutor's initial decision to charge a suspect. However, one evidence factor, physical evidence, did approach statistical significance ($P = .06$). Prosecutors were more likely to file charges in cases with physical evidence, such as semen or fingerprints, to connect the suspect to the crime.

Although none of the individual evidence factors had an effect on the prosecutor's decision to charge, it is possible that a measure incorporating the four variables would significantly effect the dependent variable. Three of the evidence factors (witness, injury, and weapon) had limited variation; therefore, they have limited potential to explain variation in the dependent variable.

To test for this, we created a variable-- STRONG --to measure the strength of evidence in the case. This variable is coded 1 if there was witness, if the victim was injured, if there was physical evidence, or if the suspect used a gun or knife during the commission of the assault. It was coded 0 if the case contained none of these evidence factors. Over one

Table IV. The Effect of Evidence Factors and Other Independent Variables on the Prosecutor's Decision to Charge: Results of Multivariate Analysis

	B	SE
EVIDENCE FACTORS^a		
Witness	.11	.49
Victim Injured	.52	.38
Physical Evidence	.66	.36
Suspect Used a Gun or Knife During Assault	-.21	.47
CASE CHARACTERISTICS		
Most Serious Offense at Arrest		
CSC2	-.13	.36
CSC3	-.06	.46
OTHER	1.16	.69
Threats or Force	.30	.39
VICTIM CHARACTERISTICS		
Moral Character of Victim	-1.57	.58*
Risk-Taking Behavior	-.82	.39*
Victim Under 13	-1.20	.37*
Suspect-Victim Relationship	.33	.51
Victim Screamed	.80	.65
Victim Physically Resisted	-.29	.30
Reported Within 1 Hour	.56	.43
Victim Race (1=black)	.89	.65
OFFENDER CHARACTERISTICS		
Prior Felony Conviction	.40	.32
Suspect Age	-.005	.01
Suspect Race (1=Black)	-.37	.67
N of Cases	306	
-2 Log Likelihood	$\chi^2=329.68$	df=284 P=.0321
Goodness of Fit	$\chi^2=291.31$	df=284 P=.3787

^aAdding the four evidence factors did not lead to significant improvement in the goodness-of-fit of the model (P=.1558).

* $P \leq .05$

half (56.7%) of the cases included at least one of the four evidence factors.

This measure of the strength of evidence in the case was substituted for the four individual evidence factors in the logistic regression analysis. As Table V indicates, adding the variable STRONG did lead to significant improvement in the goodness-of-fit of the model ($P = .05$). Thus, prosecutors were more likely to file charges in cases that had at least one of the four types of evidence present.

Strength of Evidence: Victims 13 and Over. The results presented in Tables IV and V examined cases with victims who were under 13 as well as those who were 13 and older. The assumption is that the independent variables will have similar effects on cases with these two groups of victims.

This may not be the case; prosecutors may use different criteria when deciding whether or not to charge a suspect accused of sexually assaulting a child. Prosecutors may be reluctant to file charges in these cases, not because of concerns about evidence, but because of concerns about the inability of young victims to articulate the circumstances surrounding the assault. Furthermore, prosecutors may be reluctant to proceed because of potential emotional damage to the victim.

Table V. The Effect of Strength of Evidence^a and Other Independent Variables on the Prosecutor's Decision to Charge: Results of Multivariate Analysis

	B	SE
STRENGTH OF EVIDENCE^b		
STRONG	.61	.31*
CASE CHARACTERISTICS		
Most Serious Offense at Arrest		
CSC2	-.28	.36
CSC3	-.05	.44
OTHER	1.06	.67
Threats or Force	.25	.37
VICTIM CHARACTERISTICS		
Moral Character of Victim	-1.42	.57*
Risk-Taking Behavior	-.82	.39*
Victim Under 13	-1.19	.36*
Suspect-Victim Relationship	.20	.50
Victim Screamed	.83	.63
Victim Physically Resisted	-.26	.30
Reported Within 1 Hour	.62	.41
Victim Race (1=black)	.62	.62
OFFENDER CHARACTERISTICS		
Prior Felony Conviction	.42	.32
Suspect Age	-.006	.01
Suspect Race (1=Black)	-.19	.65
N of Cases	289	
-2 Log Likelihood	$\chi^2=332.74$	df=288 P=.0357
Goodness of Fit	$\chi^2=290.05$	df=288 P=.4550

^aStrength of Evidence (STRONG) is coded 1 if there was a witness to the incident, if there was physical evidence, if the victim was injured, or if the suspect used a gun or knife. It was coded 0 if none of these four evidence factors was present.

^bAdding STRONG did lead to significant improvement in the goodness-of-fit of the model (P=.05).

* $P \leq .05$

To test this we re-ran the analyses summarized in Tables IV and V without the cases that had victims under 13. The results were the same. Adding the four evidence factors did not improve the overall fit of the model ($P = .1129$). Although adding STRONG did not improve the goodness-of-fit of the model at the .05 level of significance, the model's chi-square approached statistical significance ($P = .059$).

Effect of Victim Characteristics. The second hypothesis addresses the effect of victim characteristics. This hypothesis predicts that the prosecutor's decision to charge a person suspected of a crime will be influenced by characteristics of the victim. More specifically, prosecutors will be *less* likely to file charges if there are questions about the moral character of the victim, allegations of risk-taking behavior by the victim, or the victim is under age 13; prosecutors will be *more* likely to file charges if the victim did not know the suspect, if the victim screamed, if the victim physically resisted the suspect, or if the victim reported the assault within one hour.

The results of the logistic regression, presented in Table VI, provide partial support for this hypothesis. Adding the seven victim characteristics did lead to significant improvement in the overall fit of the model ($P = .0004$). As predicted, prosecutors were less likely to file charges if

Table VI. The Effect of Victim Characteristics and Other Independent Variables on the Prosecutor's Decision to Charge: Results of Multivariate Analysis

	B	SE
VICTIM CHARACTERISTICS^a		
Moral Character of Victim	-1.57	.58*
Risk-Taking Behavior	-.82	.39*
Victim Under 13	-1.20	.37*
Suspect-Victim Relationship	.33	.51
Victim Screamed	.80	.65
Victim Physically Resisted	-.29	.30
Reported Within 1 Hour	.56	.43
Victim Race (1=black)	.89	.65
CASE CHARACTERISTICS		
Most Serious Offense at Arrest		
CSC2	-.13	.36
CSC3	-.06	.46
OTHER	1.16	.69
Threats or Force	.30	.39
OFFENDER CHARACTERISTICS		
Prior Felony Conviction	.40	.32
Suspect Age	-.005	.01
Suspect Race (1=Black)	-.37	.67
N of Cases	304	
-2 Log Likelihood	$\chi^2=329.68$	df=284 P=.0321
Goodness of Fit	$\chi^2=291.31$	df=284 P=.3699

^aAdding the seven victim characteristics, excluding victim race, which is a control variable, did lead to significant improvement in the goodness-of-fit of the model (P=.0004).

* $P \leq .05$

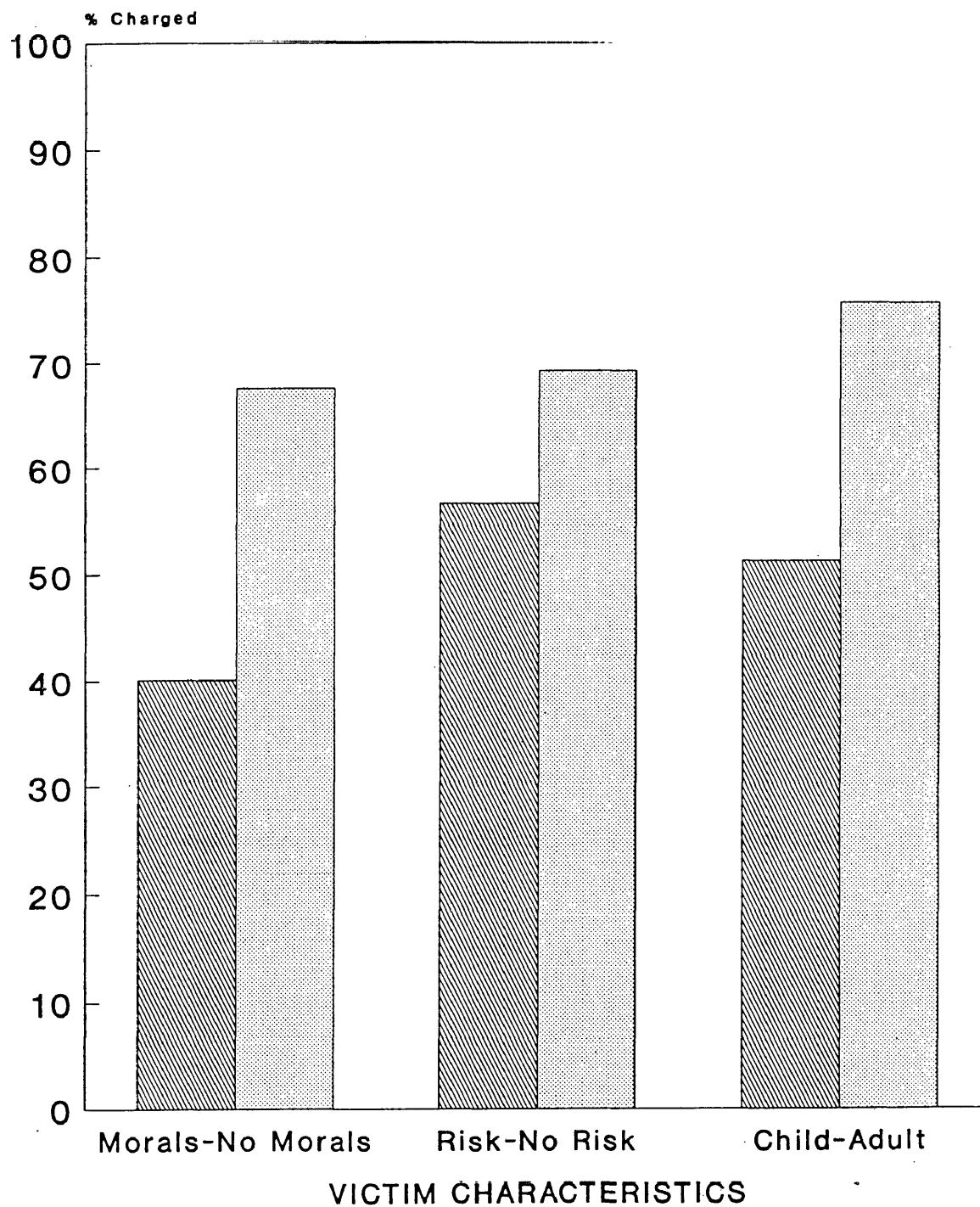
there were questions about the victim's moral character (MORALS) or behavior at the time of the incident (RISK) or if the victim was under age 13 (CHILD). The other four victim characteristics did not have the predicted effects.

One problem with using logistic regression is that the parameters are not as interpretable as the unstandardized regression coefficients produced by OLS regression. We know from Table VI that there are statistically significant differences in the likelihood of charging for cases involving victims under age 13 and cases involving victims 13 and over, but we do not know if the difference is 10 percentage points or 25 percentage points.

To obtain these figures we re-ran the analyses using OLS regression. The results were identical, in the sense that all of the independent variables that were significant predictors of charging using logistic regression were also significant using OLS regression. We used the OLS regression results² to calculate adjusted charging rates for cases involving the three victim characteristics that were significantly related to prosecutors' charging decisions.³ These adjusted figures are presented in Figure 2.

There are substantial differences in the charging rates for the two categories of each victim characteristic presented in Figure 2. For example, if there were no questions raised

Figure 2. Adjusted Charging Rates



The rates have been adjusted for the effect of the independent variables listed in Table VI.

about the victim's moral character the adjusted charging rate was 67.6%, compared to only 40.1% for cases where there were questions about the moral character of the victim. Similarly, the charging rate for cases in which the victim did not engage in risk-taking behavior (69.3%) was substantially higher than the rate for those cases that did have information regarding the victim's behavior (56.7%). Finally, charging was more likely when the victim was an adult (75.7%) than when the victim was a child (51.3%).

Thus, these results clearly indicate that prosecutors take victim characteristics into consideration when deciding to charge a suspect with sexual assault. Although the age of the victim is a legal characteristic in the sense that Michigan law explicitly distinguishes between sexual assaults involving child and adult victims, the other two variables, MORALS and RISK, are irrelevant extralegal factors.

Victim Characteristics: Victims 13 and Over. The results presented in Table VI and Figure 2 examined cases with victims who were under 13 as well as those 13 and over. As explained above, the independent variables, and particularly the victim characteristics, may have differential effects on these types of cases. We would not expect prosecutors to have questions about the victim's moral character or behavior at the time of the incident in cases involving assaults on children.

We re-ran the analysis excluding victims under the age of 13. As before, MORALS ($B = -1.62$; $SE = .621$; $P = .009$) and RISK ($B = -.896$; $SE = .456$; $P = .05$) had a negative effect on the prosecutor's decision to charge the suspect. Moreover, a prompt report to the police, which was not significant when children were included in the analysis, did affect the prosecutor's charging decision ($B = 1.18$; $SE = .610$; $P = .05$). Prosecutors were more likely to file charges if victims, 13 and over, reported the sexual assault within one hour. This is not surprising, since children often do not report their victimization immediately. For example, only 10.6% (14 out of 132) of the children in this study reported their assault within one hour.

Victim Characteristics: Victims Under 13. Further evidence of the differential effect of victim characteristics was indicated when we re-ran the analysis with victims who were under 13. In contrast to the above results with adults only, adding the block of victim characteristics did not improve the fit of the model ($\chi^2 = 8.453$; $P = .1330$) and none of the individual victim characteristics had a significant effect on the prosecutor's decision to charge a person suspected of sexually assaulting a child. Although the suspects prior felony record (FELONCON) is not a victim characteristics, it did have a significant positive effect

($B = 1.07$; $SE = .50$; $P = .03$) on the prosecutor's decision to charge in cases with these types of victims.

Test of the Liberation Hypothesis. The third hypothesis tests Kalven and Zeisel's (1966) liberation hypothesis. Consistent with their hypothesis, we predicted that the prosecutor's decision to charge a person suspected of a crime would be influenced by victim characteristics only in cases with weak evidence. We used an interactive model to assess whether victim characteristics had differential effects on cases with strong and weak evidence.

As explained above, we created interaction terms by multiplying the variable for strong versus weak evidence by each victim characteristic. We then estimated a regression equation in which all of the independent variables were entered in a block, followed by a block containing all of the interaction terms. We then examined the chi-square to determine if entering the interaction terms produced a significant improvement in the goodness-of-fit of the model ($P \leq .05$). If the addition of the interaction terms produced no improvement in the fit of the model, we concluded that the effects of the independent variables did not differ for cases with strong and weak evidence.

The results of these analyses, presented in Table VII, do not provide support for the liberation hypothesis. Adding the

Table VII. Test for Interaction Between Victim Characteristics and Three Measures of Case Seriousness: Strong, Serious, and Aggravated Rape

VICTIM CHARACTERISTICS x STRONG^a

N of Cases		304	
-2 Log Likelihood	$\chi^2=327.03$	df=278	P=.0230
Improvement	$\chi^2= 2.65$	df= 6	P=.8514
Goodness of Fit	$\chi^2=287.62$	df=278	P=.3330

VICTIM CHARACTERISTICS x SERIOUS^b

N of Cases		304	
-2 Log Likelihood	$\chi^2=325.17$	df=278	P=.0271
Improvement	$\chi^2= 4.52$	df= 6	P=.6074
Goodness of Fit	$\chi^2=288.40$	df=278	P=.3214

VICTIM CHARACTERISTICS x AGGRAVATED RAPE^c

N of Cases		304	
-2 Log Likelihood	$\chi^2=326.53$	df=278	P=.0240
Improvement	$\chi^2= 3.16$	df= 6	P=.7892
Goodness of Fit	$\chi^2=284.68$	df=278	P=.3786

^aThese are cases with either a witness to the incident, an injured victim, physical evidence, or where the suspect used a gun or knife.

^bThese are cases in which the suspect used a gun or knife, suspect and victim were strangers, or the suspect had a prior felony conviction.

^cThese are cases in which the suspect used a gun or knife, the suspect injured the victim, the suspect and victim were strangers, or the victim was sexually assaulted by more than one person.

* $P \leq .05$

variables measuring interaction between the seven victim characteristics and strength of evidence did not significantly improve the fit of the model. Thus, victim characteristics did not have a differential effect on the prosecutor's charging decision in cases with strong and weak evidence.

Although many tests of the liberation hypothesis have focused on the strength of evidence in a case (Reskin and Visher, 1986), others (Barnett, 1985; Baldus et al., 1985; Spohn and Cederblom, 1991) used the seriousness of the offense. Accordingly, we created a variable (SERIOUS) to measure the seriousness of the case. This variable is coded 1 if the suspect used a gun or knife, if the suspect and victim were strangers, or if the suspect had a prior felony conviction. We then created interaction terms by multiplying the variable, SERIOUS, by each victim characteristic.

Adding these interaction terms did not significantly improve the fit of the model (see Table VII). Thus, victim characteristics did not have a differential effect on the prosecutor's charging decision in serious and less serious cases.

A final test for the effect of victim characteristics distinguished between simple and aggravated sexual assault cases. Estrich (1987) argues that victim characteristics will only affect case processing decisions in cases classified as simple sexual assaults. She asserts:

. . . all women and all rapes are not treated equally. As the doctrines of rape law were developed in the older cases, distinctions were drawn, explicitly and implicitly, between the aggravated, jump-from-the-bushes stranger rapes and the simple cases of unarmed rape by friends, neighbors, and acquaintances. It was primarily in the latter cases that distrust of women victims was actually incorporated into the definition of the crime and the rules of proof (p. 29).

This suggests that victim characteristics may interact with the type of case.

To test this, we created a variable (AGGRAVATED RAPE) to differentiate between simple and aggravated sexual assaults. This variable was coded 1 if the suspect used a weapon, the suspect injured the victim, the suspect and victim were strangers, or the victim was assaulted by more than one person. We then created interaction terms by multiplying the seven victim characteristics by this variable. We used the techniques described above to determine if victim characteristics affected simple and aggravated sexual assault differently.

As shown in Table VII, adding the seven victim characteristics did not significantly improve the fit of the model. Thus, the type of case did not determine the influence of victim characteristics on the prosecutor's decision to charge.

The results of the analyses discussed above, then, do not support the liberation hypothesis. None of the three measures

of case strength/case seriousness determined the influence of victim characteristics on charging decisions.

SUMMARY AND DISCUSSION

The overall objective of this study was to add to the relatively small body of knowledge regarding prosecutorial decision making within the American criminal justice system. More specifically, the objective was to identify the legal and extralegal predictors of prosecutors' charging decisions in sexual assault cases. Using a sample of all complaints of sexual assaults received by the Detroit Police Department in 1989, we examined case outcomes and tested three hypotheses.

Summary of Findings

This study began with an examination of the disposition of complaints of sexual assault received by the Detroit Police Department in 1989. We found substantial case attrition. Less than a third of the 1,046 complaints resulted in an arrest and prosecutors rejected charges against a third of the suspects who were arrested. Of those charged, only about half were convicted. Of those convicted, two thirds were incarcerated.

The first hypothesis examined the relationship between prosecutors' charging decisions and the strength of evidence in the case. We found only partial support for this hypothesis. None of the four evidence factors had an effect

on the prosecutor's decision to charge, either in the analysis using all of the cases or in the analysis using only adults.

On the other hand, the variable STRONG, which incorporated the four evidence factors, was related to charging. Therefore, in Detroit, prosecutors were more likely to charge a suspect with sexual assault if there was information concerning at least one of the four evidence factors--WITNESS, INJURY, EVIDENCE, WEAPON--in the case file at the time of the initial screening.

We also hypothesized that victim characteristics would influence the prosecutor's decision to charge. This hypothesis was confirmed. Adding the seven victim characteristics significantly improved the fit of the model. While adding all seven variables did improve the fit of the model, only three of the individual characteristics were significant. Charging was less likely if the prosecutor had questions regarding the victim's moral character or behavior at the time of the incident, or if the victim was under the age of 13. Further analysis revealed that the victim's moral character and risk-taking behavior only had an effect if the victim was 13 and over. Thus, it appears that Detroit prosecutors do take the victim's characteristics into consideration when deciding to charge the sexual assault suspect.

Lastly, we hypothesized that victim characteristics would only have an influence in cases with weak evidence. We found no support for Kalven and Zeisel's (1966) liberation hypothesis. We also found no support for the assertion that victim characteristics would influence charging only in more serious cases or for Estrich's (1987) prediction that the effect of these characteristics would be confined to cases of simple sexual assault.

Discussion of Findings

Several of these findings merit elaboration. First, our finding that the four individual evidence factors did not influence charging is surprising. A number of scholars (Albonetti, 1987; Jacoby et al., 1982; Miller, 1969; Nagel and Hagan, 1983) have suggested that strength of evidence is one of the major predictors of convictability, and thus of prosecutorial decision making. Albonetti (1987:311), for example, argues that prosecutors attempt to avoid uncertainty and that "uncertainty is significantly reduced with the introduction of certain legally relevant evidence." Nagel and Hagan (1983) similarly assert that strength of evidence probably accounts for most of the variance in charging decisions.

The results of this study provide only limited support for these assertions. The measure incorporating the four

evidence factors did influence the charging decision. This suggests that prosecutors are more willing to file charges in cases with at least one of the four types of corroborative evidence.

On the other hand, our results suggest that characteristics of the victim consistently affect Detroit prosecutors' charging decisions in sexual assault cases. In deciding whether to proceed in these cases, prosecutors consider the victim's moral character, the victim's behavior at the time of the incident, and the victim's age.

This suggests that prosecutors attempt to avoid uncertainty by screening out sexual assault cases unlikely to result in a conviction because of questions about the victim's character, the victim's behavior, and the victim's credibility. Prosecutors may assume that jurors will not regard a victim who abuses drugs, who has numerous sexual partners, or who goes to bars by herself as a credible or genuine victim. This may not be an unreasonable or unwarranted assumption. As Reskin and Visher's (1986) study demonstrated, jurors' verdicts in sexual assault cases are affected by their evaluations of the victim's moral character and by their beliefs that the victim exercised poor judgement.

The fact that prosecutors' assessments of convictability accurately reflect jurors' perceptions and beliefs does not, of course, justify consideration of extralegal victim

characteristics at screening. Prosecutors have an ethical obligation to file charges if they believe that the suspect committed the crime in question. The fact that the victim of a sexual assault is promiscuous, works in a massage parlor, or goes to bars by herself should be irrelevant. Our finding that they are not irrelevant, but play an important role in the decision to charge or not, suggests that Estrich (1986) was correct when she asserted that only "real rapes" with "genuine victims" will be taken seriously by criminal justice officials.

Our finding that a prompt report by the victim was related to charging (at least in cases with adolescent or adult victims) is interesting. In the past, many sexual assault statutes stated either that a prompt report by the victim was a *requirement* in sexual assault cases or that a prompt report could corroborate the victim's testimony. In Texas, for example, the law prior to 1983 stated that a defendant could be convicted on the uncorroborated testimony of the victim only if the victim made a prompt report; the law passed in 1983 states that corroboration is not required if the victim informed anyone of the assault within six months (Spohn and Horney, 1992). In Michigan, an appellate court ruled that failure to report the crime promptly could be used to impeach the credibility of the complainant [*Turner v. People*, 33 Mich. 363 (1876)]. Most of these provisions and

appellate court decision have been repealed or overruled.

The results of this study suggest that Detroit prosecutors believe that a prompt report is, the law notwithstanding, an important element of a sexual assault case. It suggests that prosecutors attempt to avoid uncertainty by screening out cases where the victim's allegations will be questioned because she waited a week, a month, or longer to report the crime to the police. Again, this may not be unreasonable. If the case goes to trial, the defense attorney will use the lack of a prompt report to impeach the victim's credibility and to raise doubts in the minds of the jurors.

Our finding that the age of the victim influenced the decision to charge or not also deserves comment. It is not surprising that prosecutors were more reluctant to file charges when the victim was younger than 13. Previous research (Chapman, 1987; MacMurray, 1989; Williams and Farrell, 1990) has demonstrated that sexual assaults involving children are difficult to prosecute. As noted above, this reflects the fact that children may be unable to articulate what happened to them. It also reflects the fact that children who allege that they have been sexually assaulted are regarded as more impressionable and thus as less credible than older victims. These factors, coupled with concerns about the psychological impact of testifying at trial, apparently affect

prosecutors' assessments of convictability and produce a higher rejection rate for cases with child victims.

Taken together, these findings imply that the warrant section of the Wayne County Prosecutor's Office utilizes the trial sufficiency policy mentioned earlier (Jacoby, 1980) in screening sexual assault cases. Charging decisions appear to be motivated by the prosecutor's assessment of convictability at trial.

This may be due, in part, to the fact that the Wayne County Prosecutor's Office has an explicit policy concerning plea bargaining in sexual assault cases (Spohn and Horney, 1992). Plea bargains must be approved by the complainant. Moreover, first degree criminal sexual conduct can only be reduced to third degree criminal sexual conduct, and third degree cannot be reduced to a less serious charge. This policy clearly limits prosecutors' options and forces them to consider the likelihood of conviction at trial.

A final comment concerns the failure of our study to provide support for the liberation hypothesis. Building on previous research demonstrating that extralegal characteristics only influence convicting and sentencing decisions in weak or less serious cases (Baldus et al., 1985; Reskin and Visser, 1986; Spohn and Cederblom, 1991), we hypothesized that victim characteristics would only affect prosecutors' charging decisions in these types of cases.

The fact that this hypothesis was not confirmed suggests that Detroit prosecutors regard the victim's moral character and behavior at the time of the incident as relevant to convictability in all types of cases. At least in Detroit, prosecutors take these factors into account even when the evidence is strong, the crime is serious, and the crime is classified as an aggravated sexual assault.

Strengths and Limitations

There are few empirical studies of the prosecutor's initial decision to file charges against persons suspected of crimes. This study adds to the limited amount of research in this area. Moreover, it adds an important dimension to the literature concerning sexual assault case processing.

Most of the extant research in this area did not examine the prosecutor's initial screening decision, but focused on post-arraignment decisions to dismiss or on the decision to prosecute fully. These studies ignored the importance of this particular stage in the criminal justice process. This study focused explicitly on this critical "gatekeeping" stage in the criminal justice process.

This study also addressed the importance of considering the strength of evidence in a case. As pointed out earlier, few researchers, with the exception of Albonetti (1987), have adequately controlled for this variable. We included several

individual measures of the strength of evidence, as well as a variable incorporating all of these measures. Inclusion of these evidence factors enhances the validity of the study's conclusions.

Unlike much of the prior research on prosecutorial decision making, this study utilized multivariate analyses to assess the effect of legal and extralegal factors on the prosecutor's initial screening decision. Moreover, we tested both additive and interactive models. Use of these sophisticated techniques also enhances the validity of this study.

This study does warrant some caveats. One obvious limitation is the small sample size; there were 321 cases that could be used to examine the initial screening decision. A second limitation is the fact that this study examined the charging decision in a single jurisdiction. Moreover, in this particular jurisdiction most of the sexual assaults involved black suspects and black victims. Lastly, this study was confined to examining the screening decision in sexual assault cases. The second and third caveats limit the generalizability of the study's findings.

Directions for Future Research

While this study adds to and improves upon research on prosecutorial decision making, there is an obvious need for

additional research emphasizing the prosecutor's initial screening decision. For instance, there is a need for multi-jurisdictional studies using larger samples and a variety of offenses. In addition, given the importance of the strength of evidence in a case, researchers should continue to develop and refine measures of evidentiary strength.

Future research also should use qualitative techniques, in addition to the quantitative techniques currently being used. Combining the two techniques will provide additional insight into the prosecutor's reasons for rejecting charges, criteria for assessing convictability, and strategies for avoiding uncertainty. Moreover, use of qualitative research could shed some light on this relatively invisible and highly discretionary stage in the criminal justice process.

CONCLUSION

The findings of this study add to a growing body of literature suggesting that prosecutors' charging decisions are motivated by attempts to avoid uncertainty and by predictions of convictability. These findings also confirm Albonetti's (1987:311) conclusion that there are "extralegal sources of uncertainty."

This study found that prosecutors, in Detroit, consider extralegal victim characteristics in making their initial screening decisions. At least in sexual assault cases, victim

characteristics are an important source of uncertainty. Prosecutorial decision making in these types of cases is influenced by stereotypes of rape and rape victims--only real rapes with genuine victims will be taken seriously. This is a cause for concern. As LaFree (1989:239) noted, "if women who violate traditional gender roles and are raped are unable to obtain justice through the legal system, then the law is serving as an institutional arrangement that reinforces women's gender-role conformity."

NOTES

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2. The results of the OLS regression analysis are as follows:

	B	SE	Beta	T
MORALS	-.275	.111	-.14	2.47*
RISK	-.126	.069	-.14	1.93*
CHILD	-.244	.071	-.25	3.44*

$$R^2 = .18$$

3. The adjusted charging rates for the three victim characteristics that were significantly related to prosecutors' charging decisions were calculated as follows. We ran regressions on the decision to charge (WARRANT), controlling for the victim characteristics (MORALS, RISK, and CHILD) and for the other independent variables listed in Table VI. The difference between the two categories of victim characteristics (e.g., victim engaged in risk-taking behavior versus victim did not engage in risk-taking behavior) is equal to the unstandardized regression coefficient for the dichotomous variable measuring the victim characteristic. For example, the difference of $-.126$ between charging rates for victims who did and did not engage in risk-taking behavior relates to a $-.126$ unstandardized regression coefficient for risk-taking behavior when no risk-taking behavior is the omitted category.

The adjusted figures were calculated using the following formulas:

$$b_1 = -1 [(b_2) (prop_2)]$$

$$adjmean_1 = M + b_1$$

$$adjmean_2 = adjmean_1 + b_2$$

Where:

b_1 is the adjusted unstandardized regression coefficient (b weight) for the omitted category (the category coded 0);

b_2 is the b weight for the included category (the category coded 1);

$prop_2$ is the mean of the dichotomous variable measuring the victim characteristic (or the proportion of the sample coded 1 for that variable);

M is the mean of the dependent variable (WARRANT);

$adjmean_1$ and $adjmean_2$ are the adjusted charging rates for the two categories of victims.

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STATUTE CITED

- Mich. Comp. Laws Ann §750.520(b) to §750.520(e)