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Sexual Assault Case Outcomes: Disentangling the Overlapping Decisions of Police and Prosecutors

Cassia Spohn and Katharine Tellis

The rape reform movement of the 1970s and 1980s was designed to improve the likelihood of prosecution and conviction in sexual assault cases. However, there is evidence that the attrition rate for sexual assaults reported to the police remains high, and that the locus of case attrition is arresting and charging decisions. In this paper, we analyze police and prosecutorial decision-making in sexual assault cases using quantitative data on sexual assaults reported to the Los Angeles Police Department and the Los Angeles County Sheriff's Department in 2008. We argue that decisions made by police and prosecutors should not be examined in isolation from one another and that researchers who analyze arrest decisions by examining only cases that are formally cleared by arrest or who focus only on charging decisions that follow the arrest of a suspect may be ignoring important aspects of police and prosecutorial decision-making. This is confirmed by the results of our study, which reveal that a significant proportion of cases in which the police appear to have probable cause to make an arrest do not result in the arrest of the suspect and that a substantial number of cases are rejected for prosecution by the district attorney *before* an arrest is made. Moreover, the factors that predict arrest and charging vary depending upon the way in which the outcome is operationally defined. These results have a number of important policy implications for police and prosecutors handling sexual assault cases.

Keywords sexual assault case outcomes; police and prosecutor decision making

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More than three decades after the inception of the rape reform movement, which saw significant changes to the definition of rape, elimination of resistance and corroboration requirements, and enactment of rape shield laws (Estrich, 1987; Spohn & Horney, 1992), the response of the criminal justice system to the crime of sexual assault remains highly problematic. Victims are reluctant to report crimes to the police and, when they do, are often met with skepticism and suspicion on the part of police and prosecutors. This results in a substantial number of cases being unfounded, a low arrest rate, and shockingly low rates of prosecution and conviction (Alderden & Ullman, 2012; Spohn & Tellis, 2014).

In this paper, we analyze police and prosecutorial decision-making in sexual assault cases using data on sexual assaults reported to the Los Angeles Police Department and the Los Angeles County Sheriff's Department (LASD) in 2008. Using Black's (1976, 1980, 1989) sociological theory of law and the focal concerns perspective developed to explain judges' sentencing decisions (Steffensmeier, Ulmer, & Kramer, 1998), we examine the effects of victim characteristics, indicators of case seriousness, and measures of evidentiary strength on the decision to arrest and the decision to charge, with both decisions conceptualized in multiple ways. We contend that decisions made by police and prosecutors cannot be examined in isolation from one another and that researchers who analyze arrest decisions by examining only cases that are formally cleared by arrest or who focus only on charging decisions that follow the arrest of a suspect may be ignoring important aspects of police and prosecutorial decision-making. They also may be reaching misleading conclusions about the factors that influence arrest and charging decisions. Our goal in this study is to disentangle these overlapping decisions and, in so doing, to illuminate the ways in which the policies and practices of these law enforcement agencies contribute to high rates of case attrition in sexual assault cases.

Prior Research on Sexual Assault Case Outcomes

There is compelling evidence that sexual assault is a seriously underreported crime. Tjaden and Thoennes (2006, p. 33), who analyzed the results of the National Violence Against Women Survey, found that only 19.1 percent of women who were raped since their 18th birthday reported the crime; a similar survey in Canada found that only 6 percent of sexual assaults were reported to the police (Du Mont, Miller, & Myhr, 2003). There is also evidence that victims of sexual assault who report the crime and are willing to cooperate with police and prosecutors as the case moves forward may confront criminal justice officials who are skeptical of their allegations and who question their credibility (Estrich, 1987). The process begins with the police, who decide whether a crime has occurred, the amount of investigative resources to devote to identifying the suspect, whether to make an arrest of an identified suspect and, if so, the charges to file, and whether to refer the case to the prosecutor. These

"gatekeeping" (Kerstetter, 1990) decisions, which largely determine the fate of the case, do not necessarily produce the outcome—arrest and successful prosecution—that the victim expected. As Taylor (1987, p. 89) explains, "After giving a valid rape report and fully cooperating with the police, a woman may find herself in the unexpected and bewildering predicament of having come to the police for aid … only to have the door slammed firmly in her face."

There is very limited research on police decision-making in sexual assault cases and much of the research that does exist is dated. Researchers have examined the decision to unfound the charges (Alderden & Ullman, 2012; Kerstetter, 1990; LaFree, 1989; Spohn, White, & Tellis, 2014), the decision to make an arrest (Alderden & Ullman, 2012; Bachman, 1998; Bouffard, 2000; Du Mont & Myhr, 2000; Horney & Spohn, 1996; LaFree, 1981), the decision to present the case to the prosecutor for charge evaluation (Alderden & Ullman, 2012; Spohn & Tellis, 2014), as well as the victim's decision to cooperate in the investigation of the crime (Alderden & Long, 2016). These studies reveal that police decision-making is influenced by a combination of legal and extra-legal factors. An early study (LaFree, 1981), for example, found that the decision to arrest was affected by the victim's ability to identify the suspect, the victim's willingness to prosecute, whether the victim engaged in any type of misconduct at the time of the incident, the promptness of the victim's report, whether the victim was assaulted by an acquaintance rather than a stranger, and the suspect's use of a weapon. On the other hand, the arrest decision was not affected by the victim's race, whether the victim resisted, the location of the incident, whether there was a witness who could corroborate the victim's allegations, or whether the victim was injured. These findings led LaFree (1981, p. 592) to conclude that the emphasis on the role played by the victim's background characteristics was "greatly overstated" and that "legally relevant variables were paramount." However, more recent research calls this conclusion into question. Bouffard (2000) found that arrest was more likely if the victim and suspect had a prior relationship, the victim agreed to undergo a sexual assault exam, and the credibility/seriousness score of the crime was higher. Alderden and Ullman (2012) similarly found that police decision-making was determined primarily by extra-legal factors—the victim's preference for how the case should be handled, discrepancies in victim statements, and victim resistance, while Schuller and Stewart (2000) found that police officers' responses to sexual assault vignettes were affected by the intoxication and credibility of the complainant.

The findings regarding prosecutors' charging decisions in sexual assault cases are very similar. This research, which is much more extensive than the research on police decision-making, reveals that although these decisions are strongly influenced by legally relevant factors such as the seriousness of the crime, the offender's prior criminal record, and the strength of the evidence in the case (Alderden & Ullman, 2012; Frazier & Haney, 1996; Kingsnorth, MacIntosh, & Wentworth, 1999; Spohn & Holleran, 2001; Tellis & Spohn, 2008), victim characteristics also play a role. Studies have documented the influence

of the victim's age, occupation, and education (McCahill, Meyer, & Fischman, 1979), "risk-taking" behavior such as hitchhiking, drinking, or using drugs (Alderden & Ullman, 2012; LaFree, 1981; Lord & Rassel, 2000; McCahill et al., 1979; Spohn & Holleran, 2001; Tellis & Spohn, 2008), and the character or reputation of the victim (Alderden & Ullman, 2012; Feldman-Summers & Lindner, 1976; Field & Bienen, 1980; Martin & Powell, 1994; McCahill et al., 1979; Reskin & Visher, 1986; Spohn, Beichner, & Davis-Frenzel, 2001).

Research also has demonstrated that the relationship between the victim and the accused has a significant effect on charging decisions in sexual assault cases. Consistent with Black's (1976) relational distance theory, these studies conclude that reports of sexual assaults by strangers are less likely than reports of sexual assaults by acquaintances or intimate partners to be rejected by the prosecutor (Alderden & Ullman, 2012; Spohn et al., 2001; Tellis & Spohn, 2008); sexual assaults involving strangers also are more likely to result in police and prosecutor agreement on the severity of charges to be filed (Holleran, Beichner, & Spohn, 2010). Other studies find that different predictors affect charging decisions in stranger and acquaintance cases (Kingsnorth et al., 1999; Spohn & Holleran, 2001). Spohn and Holleran (2001), for example, found that characteristics of the victim affected charging decisions only in cases involving non-strangers and that the suspect's use of a gun or knife affected charging only in cases involving strangers.

Two studies used qualitative data to explore in more detail the reasons why prosecutors reject charges in sexual assault cases (Frohmann, 1991; Spohn et al., 2001; see also, Frohmann, 1997). The notion that decisions in rape cases are affected by the "typifications of rape held by processing agents" (LaFree, 1989, p. 241) plays a central role in the research conducted by Frohmann (1991, 1997), who used data gathered during observations of the case screening process and interviews with prosecutors to analyze explanations of and justifications for case rejection. Frohmann (1991) asserted that prosecutors' concerns about convictability led them to question the credibility of the rape victim and the veracity of her story. She found that prosecutors used inconsistencies in the vicitm's story, incongruities between the victim's account and prosecutors' beliefs about "typical" rapes, and assertions about ulterior motives on the part of the victim to justify case rejection. Spohn and her colleagues (Spohn et al., 2001) used data on sexual assaults cleared by arrest in Miami to replicate and extend Frohmann's (1991) research. Their examination of prosecutors' written justifications for rejecting charges in these cases led them to conclude that the prosecutor's assessment of the likelihood of conviction was based on factors other than typifications of rape and rape victims. In a substantial number of their cases, the decision to reject charges could be traced to the victim's failure to appear for a pre-file interview, the victim's refusal to cooperate in the prosecution of the case, or the victim's admission that the charges were fabricated. As they noted, in these types of cases "the odds of conviction were low (or nonexistent), not because the prosecutor believed that the facts in the case contradicted potential jurors'

assumptions about rape and rape victims, but because the unavailability of a victim who was willing to testify made it impossible to proceed with the case" (Spohn et al., 2001, p. 228).

In summary, prior research on police and prosecutorial decisions in sexual assault cases suggests that these decisions are affected by a combination of legal and extra-legal factors. As they evaluate cases and assess the likelihood of prosecution and conviction, police and prosecutors consider, not only the seriousness of the offense and the strength of evidence against the defendant, but also the characteristics, behavior, and reputation of the victim, the relationship between the victim and the suspect, and the willingness of the victim to cooperate in the investigation of the case.

Theoretical Perspectives on Police and Prosecutor Decision Making

Research on police and prosecutor decision-making is somewhat a-theoretical. Black (1976, 1980, 1989) contended that police decision-making "is predictable from the sociological theory of law," which holds that the quantity of law applied in any particular situation depends on factors such as the social status of those involved, the relational distance between the parties, and the degree of informal social control to which the parties are subjected. In discussing the investigation of crimes by detectives, Black (1980) argued that the amount of time and energy that will be devoted to a case will depend, not only on the seriousness of the crime, but on the social status, background, reputation, and credibility of the victim and suspect. Although this perspective has not been applied to decisions made by prosecutors, it clearly is relevant. Prosecutors, like police, will devote more resources to cases that have a strong likelihood of a successful outcome.

Another theoretical perspective applicable to decision-making in sexual assault cases is the focal concerns perspective (Steffensmeier et al., 1998). Although this perspective was developed to explain judges' sentencing decisions, it has been applied to prosecutors' charging decisions (see, for example, Spohn et al., 2001) and, as we explain below, is also relevant to police decision-making. According to this perspective, judges' sentencing decisions are guided by three focal concerns: their assessment of the blameworthiness of the offender; their desire to protect the community by incapacitating dangerous offenders or deterring potential offenders; and their concerns about the practical consequences, or social costs, of sentencing decisions. The first focal concern—offender blameworthiness—reflects judges' assessments of the seriousness of the crime, the offender's prior criminal record, and the offender's motivation and role in the offense. By contrast, the second focal concern—protecting the community—rests on judges' perceptions of the dangerousness and threat posed by the offender and the offender's likelihood of recidivism. Judges' concerns about the practical consequences or social costs of sentencing decisions reflect their perceptions regarding the offender's ability "to do

time" and the costs of incarcerating offenders with medical conditions, mental health problems, or dependent children, as well as their concerns about maintaining relationships with other members of the courtroom workgroup and protecting the reputation of the court.

We suggest that the focal concerns that guide police and prosecutor decision-making in sexual assault cases are similar, but not identical, to those that guide judges' sentencing decisions. Like judges, police officers and prosecuting attorneys consider the seriousness of the crime, the degree of injury to the victim, and the blameworthiness and dangerousness of the offender. They also are concerned about the practical consequences or social costs of their decisions, but their concerns focus more on the likelihood of conviction than the costs of incarceration. Although, technically, police decisions to unfound the report or arrest the suspect do not rest on an assessment of convictability, as a practical matter the police do take this into consideration. They view the decision to arrest as the first step in the process of securing a conviction in the case; as a result, they are reluctant to make arrests that are unlikely to lead to the filing of charges against the suspect.

We suggest that this concern with convictability creates what Frohmann (1997, p. 535) refers to as a "downstream orientation" to decision makers who will handle the case at subsequent stages of the process. Whereas Frohmann (1997), whose work focused on charging decisions in sexual assault cases, argued that prosecutors consider how the judge, jury, and defense attorney will react to the case, we contend that the downstream orientation of detectives investigating sexual assault cases is to the prosecutors who make filing decisions. That is, detectives attempt to predict how prosecutors will assess and respond to the case. Because prosecutors' assessments of cases are based on a standard of convictability that encourages them "to accept only 'strong' or 'winnable' cases for prosecution" (Frohmann, 1991, p. 215), this means that detectives' decisions similarly will reflect their assessment of the likelihood of conviction should an arrest be made. In sexual assault cases, in which the victim's testimony is crucial, these assessments rest squarely on an evaluation of the victim's credibility. As a result, if the victim's allegations are inconsistent or do not comport with detectives' beliefs about the typical sexual assault or if the detective believes that the victim has ulterior motives for reporting the crime or will not cooperate as the case moves forward, the likelihood of arrest will decrease.

Both the sociological theory of law and the focal concerns perspective suggest that the "social structure" (Black, 1989) of the case influences how the case will be handled. As Black (1989, p. 21) put it, "the handling of a case always reflects the social characteristics of those involved in it." Similarly, the focal concerns perspective holds that the limited information available about the case, especially at early stages in the process, means that decision makers will "rely on attributional decision-making processes that invoke societal stereotypes" (Johnson & Betsinger, 2009, p. 1055). In the context of police and prosecutor decision-making generally and decisions to arrest and charge specifically, these perspectives suggest not only that the social status of the

complainant and suspect will be influential, but that stereotypes of "real rapes" (Estrich, 1987) and "genuine victims" (LaFree, 1989) will also play a role. Thus, decisions to arrest and to charge the suspect will be based on a combination of factors related to crime seriousness and victim credibility. These perspectives suggest that arrest and prosecution will be more likely if the crime is serious, the victim and suspect are strangers, the victim was injured, the victim's allegations are consistent with detectives' "typifications of rape scenarios" (Frohmann, 1991, p. 217), and the victim is viewed as credible and without ulterior motives for making allegations against the suspect.

The Current Study

The purpose of this study is to examine the decisions made by police and prosecutors in sexual assault cases and to identify the predictors of those decisions (Spohn & Tellis, 2012). As noted above, the focal concerns perspective suggests that police and prosecutorial decisions in these types of cases will be affected by a combination of legally relevant indicators of crime seriousness and evidentiary strength and legally irrelevant victim characteristics. Our purpose also is to demonstrate the ways in which police and prosecutorial decisions overlap. To illustrate this, we present descriptive data on case outcomes and we analyze arrest and charging decisions using multiple indicators of those outcomes. Our results indicate that the conclusions one would draw regarding the factors that influence outcomes in sexual assault cases vary depending upon the way in which arrest and charging decisions are conceptualized.

In the next section, we discuss the policies and practices that guide the investigation and prosecution of sexual assault cases in Los Angeles County. This information was gleaned from interviews conducted with detectives and assistant district attorneys (ADAs) who handle sexual assault cases in Los Angeles.[1]

Policies and Practices in the Investigation and Prosecution of Sexual Assault Cases

Los Angeles Law Enforcement Agencies

Reports of sexual assault are handled differently by the Los Angeles Police Department (LAPD) and the LASD. Crimes reported to the LAPD are initially

1. To enhance our understanding of policies and practices that guided the handling of sexual assault cases and to enable us to more accurately interpret the quantitative data, we also conducted interviews with LAPD and LASD detectives who had experience investigating sexual assaults, and ADAs from the Victim Impact Program (VIP). During June and July of 2010, we interviewed 52 detectives from the LAPD, 24 detectives from the LASD, and 30 attorneys from the Los Angeles County District Attorney's Office. For a more detailed description of the policies and procedures in Los Angeles, see (Spohn & Tellis, 2014).

handled by a uniformed patrol officer in one of the LAPD's 21 divisions. The responding officer will prepare the initial report of the crime based on the statements of the victim and witnesses (if any); included will be a description of the suspect and, if known, identifying information about the suspect. If the crime was reported promptly, the responding officer also will collect evidence from the scene of the crime and from the victim and, if she agrees, transport the victim to a rape treatment center or other medical facility for a forensic medical exam. The case is then investigated by one of the detectives in that division who handles sex crimes.

The LASD has (or, rather, had at the time of data collection) a bifurcated approach to the investigation of sexual assault based on the age of the victim. Crimes involving victims 18 years old or older are handled in much the same way as are all sexual assaults reported to the LAPD; the initial report is taken by a sheriff's deputy in the jurisdiction where the crime occurred and the case is then assigned to a detective from the station house in that jurisdiction. Crimes involving victims under the age of 18 are referred to the Special Victims Bureau; detectives assigned to this unit take the report from the victim and investigate the crime.

For both the LAPD and the LASD, the follow-up investigation of a sexual assault is handled by the detective assigned to the case, who will pursue leads, interview the victim and any witnesses, and attempt to identify, locate, and interview the suspect. If the detective believes that the complaint is false or baseless, s/he can unfound the report. If there is an identified suspect and probable cause to make an arrest, the detective can clear the case by arrest or, under specified circumstances, by exceptional means. If a suspect has not been identified or there is not probable cause to make an arrest, the case can be kept open or, in the vernacular of the LAPD, "IC'd" (investigation continuing).

Los Angeles District Attorney's Office

Since 2001, the Los Angeles County District Attorney's Office has had a specialized sex crimes unit, the VIP, that vertically prosecutes sexual assault. Each of the 11 branches of the District Attorney's Office utilizes a VIP team approach, with an experienced attorney designated as the VIP Deputy-in-Charge (DIC). The VIP DIC works closely with the ADAs assigned to the VIP team to ensure that sexual assault cases are appropriately prepared and prosecuted. All ADAs assigned to a VIP team receive enhanced, on-going training focusing on legal issues, potential defenses, and trial tactics.

Although all of the prosecutors interviewed for this project affirmed that the VIP is philosophically committed to the notion of vertical prosecution, many noted that the case screening process varied by branch and by the VIP DIC. In some branches case screening and filing decisions are handled by the DIC, in others there is a designated case screener, and in still others all

members of the VIP team participate in case screening and make filing decisions. In branches where "everyone screens cases," if the ADA screening the case decides to file charges, s/he is assigned to prosecute the case. As one respondent noted, "After filing, we own the case so we take the filing decision very seriously." Another respondent expressed a more cynical attitude, noting that "If you file the dog, you walk the dog." In some branches, the VIP DIC screens cases initially and decides whether the case should be rejected; cases that are not rejected outright are assigned to a member of the VIP team, who will conduct the pre-filing interview with the victim and decide whether charges should be filed and, if so, what the charges should be. In other branches, the VIP DIC conducts the interview with the victim and makes the filing decision; cases that are filed are assigned to a member of the VIP team for prosecution.

It is important to point out that the standard used by the Los Angeles County District Attorney's Office in screening cases is a trial sufficiency standard (Jacoby, 1980). That is, the ADA will file charges only if there is sufficient evidence to prove the case beyond a reasonable doubt at a jury trial. Moreover, the policy in sexual assault cases is that charges will not be filed without some type of corroboration of the victim's testimony—DNA evidence that establishes the identity of the perpetrator, injuries to the victim, witnesses who can corroborate the victim's testimony, or physical or medical evidence that is consistent with the victim's account of the incident. Although there are some exceptions, a pre-filing interview designed to assess the victim's credibility and willingness to cooperate in the prosecution of the case also is required.

The Process of Case Clearance

According to the Uniform Crime Reporting Handbook (Federal Bureau of Investigation, 2004), law enforcement agencies can clear offenses either by arrest or by exceptional means. The handbook states that "an offense is cleared by arrest, or solved for crime reporting purposes, when at least one person is (1) arrested, (2) charged with the commission of the offense, and (3) turned over to the court for prosecution (whether following arrest, court summons, or police notice)" (p. 79). Regarding exceptional clearances, the handbook notes that there may be occasions where law enforcement has conducted an investigation, exhausted all leads, and identified a suspect but is nonetheless unable to clear an offense by arrest. In this situation, the agency can clear the offense by exceptional means, provided that each of the following questions can be answered in the affirmative (pp. 80–81):

- Has the investigation definitely established the **identity** of the offender?
- Is the **exact location of the offender known** so that the subject could be taken into custody now?

- Is there **enough information** to support an arrest, charge,[2] and turning over to the court for prosecution?
- Is there some reason **outside law enforcement control** that **precludes arresting**, charging, and prosecuting the offender?

To illustrate the types of cases that might be cleared by exceptional means, the handbook provides a list of examples, many of which involve the death of the offender or an offender who is unable to be arrested because s/he is being prosecuted in another jurisdiction for a different crime or because extradition has been denied. One of the examples provided is when the "victim refuses to cooperate in the prosecution," but there is an added proviso, which states that this alone does not justify an exceptional clearance and that the answer must also be yes to the first three questions outlined above (Federal Bureau of Investigation, 2004, p. 81).

Analysis of case outcomes and interviews with detectives and district attorneys revealed that both the LAPD and the LASD have complicated rules for clearing cases, misinterpret UCR guidelines regarding the two types of case clearances (cleared by arrest and cleared by exceptional means), and overuse (misuse) the exceptional clearance (for a more detailed discussion of this process, see Spohn & Tellis, 2011). If the detective investigating the crime has identified a suspect and has probable cause to arrest the suspect, the detective will either arrest the individual and present the case to an ADA from the VIP of the Los Angeles County District Attorney's Office for a filing decision, or delay making an arrest and present the case to an ADA for a pre-arrest charge evaluation.

The ADA reviewing the case following the arrest of the suspect can either accept the case for prosecution, send the case back to the investigating officer (IO) for further investigation (although this is complicated by the fact that charges must be filed within 48 hours of the suspect's arrest), send the case to the city attorney for prosecution as a misdemeanor, or decline the case for prosecution. Because LAPD policy states that cases can be cleared by arrest only if the district attorney files charges, if charges are declined, the LAPD detective changes the case clearance category from cleared by arrest to cleared by exceptional means. The LASD does not have a similar policy, but, depending on the preferences of the detective's supervisor and/or the detective's own interpretation of UCR policies on exceptional clearances, a LASD detective may also recategorize the case from cleared by arrest to cleared by exceptional means if the district attorney declines to file charges against the suspect. Because the UCR Handbook clearly states that cases can be cleared by exceptional means only if there is something beyond the control of law enforcement that prevents them from making an arrest, this is a misuse of the

2. This refers to a police booking procedure; not a prosecutorial filing decision (FBI Section Chief R. Casey, personal communication, January 14, 2011).

exceptional clearance. Cases in which a suspect is arrested should be cleared by arrest, regardless of whether charges are filed by the district attorney.

Similar procedures are followed if the case is evaluated by the district attorney prior to the arrest of the suspect. If the evidence in the case meets the district attorney's standard for filing, the suspect will be arrested and the case will be cleared by arrest. If the case is sent back for further investigation or if the evidence is deemed insufficient to justify charging, the IO will either continue the investigation and, once additional evidence is obtained, resubmit the case for a second review by the district attorney, or—and this is what more typically happens—end the investigation and clear the case by exceptional means. This, too, may be a misuse of the exceptional clearance. If the detective has probable cause to make an arrest but the victim tells the district attorney that she does not want the suspect arrested or is unwilling to cooperate in the prosecution of the case, the case can be cleared by exceptional means (provided that the identity and location of the suspect are known). Although one might argue that the suspect should be arrested if there is probable cause to make an arrest, the victim's unwillingness to cooperate is something that is beyond the control of law enforcement. On the other hand, the case should not be cleared by exceptional means if the district attorney declines to file charges because the evidence in the cases does not meet the filing standard of proof beyond a reasonable doubt. If there is probable cause to arrest the suspect and the victim is cooperative, the suspect should be arrested and the case cleared by arrest, as there is nothing beyond the control of law enforcement that *prevents* them from making an arrest. Alternatively, the detective could continue the investigation and, once additional evidence is obtained, resubmit the case to the district attorney.

Research Design and Methods

This study entailed the collection of quantitative data on sex crimes reported to the Los Angeles Police Department and the LASD. From each agency, we obtained the complete case files for sexual assaults involving female victims over the age of 12 that were reported in 2008; the LAPD and the LASD redacted all information that could be used to identify the victims, suspects, witnesses, or law enforcement officials assigned to investigate the case and then provided us with a copy of the redacted file. From the LASD we obtained case files for all reports that met our selection criteria ($N = 543$). Due to the large number of cases reported to the LAPD in 2008, we selected a stratified random sample of cases ($N = 401$). Because we wanted to ensure an adequate number of cases from each of the LAPD's 19 divisions,[3] as well as an adequate number of cases from each case clearance category (i.e. cleared by arrest,

3. The LAPD currently has 21 divisions in 4 bureaus, but in 2008 there were only 19.

cleared by exceptional means, investigation continuing, and unfounded), the sample was stratified by LAPD division and, within each division, by the type of case clearance.[4] For this study, we include only cases in which the most serious charge was rape or attempted rape ($N = 650$); cases in which sexual battery (i.e. sexual contact) was the most serious charge were deleted.

Because we were provided with the complete case file for each of the 2008 cases, we were able to extract very detailed quantitative and qualitative information on each case. The case file included the crime report prepared by the patrol officer who responded to the crime and took the initial report from the victim, all follow-up reports prepared by the detective to whom the case was assigned for investigation, and the detective's reasons for unfounding the report or for clearing the case by arrest or by exceptional means. The case files also included either verbatim accounts or summaries of statements made by the victim, witnesses (if any), and the suspect (if the suspect was interviewed); a description of physical evidence recovered from the alleged crime scene; and the results of the forensic medical sexual assault exam of the victim (if she reported the crime within 72 hours of the alleged assault). Members of the research team read through each case file and recorded data in an SPSS data file. Coding protocols were developed by the researchers, who reviewed and double-coded a sample of the files to ensure that there was consistency and intercoder reliability (Alpha = .91)

Data for the Study

Because our focus is on arrest and charging decisions, and because arrest (and charging) is not possible unless there is an identified suspect, for this project we selected all rape and attempted rape cases in which the police knew the identify and location of the suspect. Of the 650 cases in the original sample, 530 (81.5 percent) were cases with an identified suspect. Because there were very few victims who were not white, Black, or Hispanic, we also eliminated cases ($N = 31$) involving victims who were Asian American or other races. This resulted in a data file with 491 cases; 171 were cases reported to the LAPD and 320 were cases reported to the LASD.

4. Our goal was to select 6 cases from each case closure type from each of the 19 divisions that existed in 2008. This would have produced a sample of 456 cases. Because each division did not necessarily have 6 cases from each case closure type in 2008, the final sample included 401 cases. We created a weighted sample that divided the percentage of each stratum (that is, each case closure type for each division) in the population of cases by the percentage of each stratum in the sample (see footnote 1). We use the unweighted data when we are focusing on a particular type of case closure (e.g. unfounded cases or cases that were cleared by exceptional means). We use the weighted data when discussing 2008 case outcomes and when providing descriptive statistics for these cases.

Dependent and Independent Variables

Our dependent variables are measures of decisions made by police and prosecutors in sexual assault cases. Beginning with the decision to arrest, we conceptualize this decision in two ways. The first is a dichotomous measure of whether the case was *cleared by arrest* and the second is a dichotomous indicator of whether the *suspect was arrested*. As explained above, both the LAPD and, to a lesser extent, the LASD change the case clearance category from cleared by arrest to cleared by exceptional means in cases in which they make an arrest but the district attorney does not file felony charges. Focusing only on cases that were cleared by arrest, in other words, means that not all cases that resulted in the arrest of a suspect are "counted" as arrests. Our third dependent variable is a dichotomous indicator of whether the investigating detective presented the case to an ADA for pre-arrest charge evaluation. This variable is coded 1 if the case was presented to the district attorney prior to the arrest of the suspect; it is coded 0 if the case was presented following the arrest of the suspect. We also conceptualize the charging decision in two ways.[5] The first, which is the conceptualization used by prior research, examines charging outcomes only for cases that resulted in the arrest of a suspect ($N = 210$); the second, which we argue more accurately captures the decisions that prosecutors make, examines charging decisions in all cases that were presented to the district attorney for a charge evaluation, regardless of whether the suspect was arrested or not ($N = 357$). For both variables, cases in which charges were filed are coded 1 and cases in which charges were rejected are coded 0. We use binary logistic regression analysis to analyze each of our dichotomous dependent variables.

Our independent variables are drawn from Black's sociological theory of law and from the focal concerns perspective (as applied to police and prosecutor decision-making). They include victim characteristics, indicators of crime seriousness, and measures of the strength of evidence in the case. The victim characteristics include the victim's age, race/ethnicity, relationship with the suspect, whether the victim engaged in what might be perceived as risky behavior at the time of the incident, and whether the case file indicated that the victim had characteristics that would make police and prosecutors question her credibility. The victim's age is a continuous variable that ranges from 12 to 60 (mean = 26.03). The victim's race/ethnicity is coded as white, black, or Hispanic (whites are the reference category) and the relationship between the victim and the suspect is coded as intimate partners, nonstrangers, or strangers (strangers are the reference category). The risk-taking variable, which reflects legally irrelevant stereotypes about real rapes and genuine victims, is coded 1 if the case file indicated that at the time of the incident the victim

5. We were unable to separately analyze cases that were presented to an ADA for a pre-arrest charge evaluation due to the fact that all of 9 of these 147 cases were rejected for prosecution.

either was walking alone late at night, accepted a ride from a stranger, voluntarily went to the suspect's house, invited the suspect to her residence, was in a bar alone, was in an area where illegal drugs were sold, was drinking alcohol, was drunk, was using illegal drugs, or had passed out after drinking alcohol and/or using illegal drugs. We use this composite variable, rather than the individual variables, because of the small number of victims who were engaged in any of these types of behavior at the time of the incident. Of the cases in which the most serious charge was rape or attempted rape, 35.1 percent (*N* = 125) involved some type of risky behavior, typically walking alone late at night or drinking alcohol.

The character/reputation variable is also a composite of several factors that might lead officials to question the victim's credibility. This variable was coded 1 if there was information in the case file indicating that the victim had a pattern of alcohol or drug abuse, had a disreputable job (e.g. stripper, exotic dancer), or was a prostitute, or had a criminal record. There were 49 cases (13.8 percent) with one or more of these character issues.[6] The final two victim characteristics measure whether there was information in the case file to indicate that the victim had a mental illness or mental health issues (yes = 1; no = 0)[7] or to indicate that the victim had a motive to lie about being sexually assaulted (yes = 1; no = 0).[8]

Consistent with the focal concerns perspective, our model also includes a number of indicators of the seriousness of the sexual assault and the dangerousness of the suspect, including whether the most serious charge was rape (which includes oral copulation, sodomy, and penetration with an object in addition to penile-vaginal penetration) rather than attempted rape, whether the suspect used a weapon during the assault (yes = 1; no = 0), and whether the suspect physically as well as sexually assaulted the victim (yes = 1; no = 0). In addition, our indicators of case seriousness include a variable that measures whether the victim suffered some type of collateral injury (e.g. bruises, cuts,

6. This variable was coded 1 if the case file indicated that the victim was currently or had been in the past a patient at a mental health facility, that the victim was taking medication for a mental health problem, or if a family member or friend told the responding officer or the detective that the victim had a mental illness or mental health issues.

7. Information about whether the victim had a motive to lie was obtained either from the victim's statement, the interview of the victim by the IO, or the statement of witnesses. Examples of the types of statements found in the case file regarding the victim's motive to lie are the following: "all informants interviewed said the victim fabricated the incident because her parents found out she was sexually active," "victim was angry with suspect because he would not give her crack cocaine," "the victim was angry that the suspect returned to his wife," "the victim is involved in a custody dispute with the suspect," "victim was angry with suspect because he broke off the affair with her," "victim did not want her mother to find out what she did," "victim was cheating on her husband with the suspect," "suspect (victim's boyfriend) was flirting with another woman at a party," "suspect has nude photos of victim and victim found out that suspect has another girlfriend," "the girls were afraid that they would get in trouble for coming home late."

8. This information was obtained from the report of the sexual assault examination, from the responding officer's description of the victim's physical condition, and/or from the victim's and/or witnesses' statements in the case file.

choke marks) during the assault (yes = 1; no = 0) (see footnote 8). Finally, we measure whether the victim verbally or physically resisted the suspect using a set of dummy variables that includes no verbal or physical resistance, verbal resistance only, physical resistance only, and both verbal and physical resistance (no verbal or physical resistance is the reference category).[9]

Because of the importance of evidentiary factors in arrest and charging decisions, we control for several variables that measure the strength of evidence in the case. The first is whether the victim made a prompt report (yes = 1; no = 0), which we define as a report within one hour of the incident.[10] Other evidentiary factors include the number of witnesses to the alleged assault and whether the victim was willing to cooperate as the case moved forward (yes = 1; no = 0).[11] Our final evidentiary factor is a composite measure that is coded 1 if any of the following types of evidence were collected from the victim or from the scene of the incident: fingerprints, blood, hair, skin samples, clothing, bedding, or semen. To capture differences between the two law enforcement agencies, we include a variable measuring whether the case was reported to the LAPD (coded 1) or the LASD (coded 0).

Findings

Case Outcomes

The outcomes of the sexual assault cases reported to the LAPD and the LASD are shown in Tables 1 and 2. The data presented in Table 1 indicate that, for both agencies combined, the percentage of rape and attempted rape cases with an identified suspect in which a suspect was arrested was 46.8 percent;

9. The type of resistance was obtained from the victim's statement. We originally coded six types of verbal resistance (cried, screamed, refused/protested/said stop, attempt to dissuade/fool, calls names/denigrates suspect, passive/saying nothing) and five types of physical resistance (fled/attempted to flee, resisted/struggled, fought (hit, scratched, bit), used a weapon to defend, passive/did nothing to resist). Because there could be multiple types of resistance, we coded verbal resistance 1 if the case file indicated that there was any type of verbal resistance; similarly, we coded physical resistance 1 if the file indicated that there was any type of physical resistance.

10. One fourth of the victims in these cases reported the incident within one hour. We operationalized a prompt report in this way based on our interviews with detectives, who emphasized that the failure to report the crime within an hour or two made it more likely that the victim would shower or launder clothing or bedding, which would reduce the likelihood of collecting physical evidence from the victim or the crime scene.

11. Whether the victim was willing to cooperate with the detective assigned to the case was determined from the case file. If the victim was uncooperative, it would be noted in the file by the IO. For example, the IO might have noted that he/she had attempted to contact the victim but the victim refused to talk to him/her (either via telephone or in person), that the victim stated that she did not want anything to happen to the suspect/that she did not want the suspect arrested, that the victim said (for a variety of reasons) that she did not want to take the case to court, that the victim stated that she was no longer interested in pursuing a criminal prosecution, or that the victim refused to participate in a pre-filing interview with the district attorney's office.

Table 1 Indicators of arrest: rape and attempted rape cases with an identified suspect, 2008

	All cases (*N* = 491)		LAPD cases (*N* = 171)		LASD cases (*N* = 320)	
	N	%	*N*	%	*N*	%
Suspect not arrested	261	53.2	102	59.6	159	49.7
Suspect was arrested	230	46.8	69	40.4	161	50.3
Case formally cleared by arrest	*164*	*71.3*	*43*	*62.3*	*121*	*75.2*
Case cleared by exceptional means	*66*	*28.7*	*26*	*37.7*	*40*	*24.8*

Table 2 Outcomes of cases presented to the Los Angeles District Attorney for charge evaluation before and after arrest of suspect, 2008

	Charge evaluation before suspect's arrest (*N* = 147)		Charge evaluation after suspect's arrest (*N* = 210)	
	N	%	*N*	%
District attorney filed charges				
Yes	9	6.1	106	50.5
No	138	93.9	104	49.5
Case clearance—cases rejected by LADA				
Cleared by arrest	0	.0	45	43.3
Cleared by exceptional means	135	97.8	59	56.7
Unfounded	3	2.2	0	.0

the arrest rate was 40.4 percent for the LAPD and 50.3 percent for the LASD. Of the cases that resulted in an arrest, only 71.3 percent were cleared by arrest; the remaining cases (28.7 percent) were cleared by exceptional means when the district attorney refused to file felony charges. The rate at which arrested cases were formally cleared by arrest was higher for the LASD (75.2 percent) than for the LAPD (62.3 percent). Considering both law enforcement agencies, there were 357 cases in which the district attorney made a charging decision. As shown in Table 2, 147 cases (41.2 percent) were presented to an ADA before the suspect was arrested and 210 cases (58.8 percent) were presented after the suspect was arrested. Of the cases presented before arrest, the ADA filed charges in only 9 (6.1 percent) cases. By contrast, charges were filed in 106 (50.5 percent) of the cases presented to the ADA following the arrest of the suspect. The discrepancy in outcomes for cases reviewed by the prosecutor before and after the arrest of the suspect—and especially the fact that cases reviewed prior to the suspect's arrest rarely resulted in the filing of charges—suggests that detectives present weak or problematic cases to the

ADA prior to making an arrest, perhaps with an expectation that charges will be rejected and the case can be closed. Coupled with the fact that more than a fourth of the rape and attempted rape cases in which the police made an arrest were not cleared by arrest but by exceptional means, this suggests that the decision to arrest is not adequately measured by examining only cases that were cleared by arrest and that the charging decision is not effectively measured by examining only cases that were evaluated following the arrest of the suspect.

Predictors of Police Decision Making

The results of our analysis of the two arrest variables (suspect arrested and case cleared by arrest) and of the detective's decision to present the case to the district attorney for charge evaluation prior to the arrest of the suspect are presented in Table 3. The *decision to arrest the suspect* was not affected by any of the victim characteristics; instead, this decision was affected by all of the indictors of crime seriousness except the type of resistance offered by the victim and by all four measures of the strength of evidence in the case. Consistent with our theoretical expectations, arrest was more likely if the crime was more serious, as measured by whether the suspect physically, as well as sexually, assaulted the victim, whether the suspect used a weapon, and whether the victim suffered some type of collateral injury; by contrast, arrest was less likely if the crime involved rape rather than attempted rape. The police were more likely to arrest the suspect if the victim reported the crime within one hour, the victim was willing to cooperate in the investigation, and there was physical evidence from the victim or the crime scene; the likelihood of arrest also increased as the number of witnesses increased.

In contrast to these results, which suggest that arrest decisions are based on legally relevant factors, the results of the analysis of cases that were *officially cleared by arrest* indicate that this outcome was affected by a combination of indicators of crime seriousness and evidentiary strength and victim characteristics. The case was less likely to be cleared by arrest if the case file contained information that raised questions about the victim's reputation or character, the victim had a motive to lie, or the case involved rape rather than attempted rape. Consistent with the results for the arrest decision, the case was more likely to be cleared by arrest if the suspect used a weapon, the victim suffered collateral injuries, the victim reported the crime within one hour, and the victim was willing to cooperate in the investigation of the crime. Neither outcome, on the other hand, was affected by the victim's age, race/ethnicity, or relationship with the suspect; by whether the victim engaged in behavior that could be perceived as risky at the time of the incident or had a mental illness or mental health issues, or by the type of resistance offered by the victim.

Table 3 Results of the logistic regression analyses of three indicators of arrest outcomes

	Suspect arrested			Case cleared by arrest			Case presented to the DA For charge evaluation prior to suspect's arrest		
	B	SE	Exp (*B*)	*B*	SE	Exp (*B*)	*B*	SE	Exp (*B*)
Victim characteristics									
Victim is Less Than 18	.16	.27	1.17	.43	.29	1.54	.01	.01	1.01
Race/Ethnicity									
Black	−.14	.34	.87	.36	.37	1.43	−.22	.40	.80
Hispanic	−.07	.28	.93	.38	.30	1.47	−.21	.32	.81
Relationship with Suspect									
Non-stranger	.39	.32	1.48	.53	.35	1.71	.10	.42	1.11
Intimate partner	.66	.36	1.93	.49	.40	1.63	.19	.45	1.21
Risky Behavior	−.21	.26	.81	−.03	.28	.97	**.63***	**.32**	**1.88**
Questions about character/reputation	−.11	.33	.89	**−1.00***	**.43**	**.37**	.24	.40	1.28
Mental illness or mental health issues	−.35	.40	.71	−.80	.49	.45	.72	.45	2.05
Has a motive to lie	−.32	.33	.73	**−1.16***	**.41**	**.31**	−.14	.41	.87
Indicators of crime seriousness									
Most serious charge is rape	**−1.43***	**.40**	**.24**	**−1.09***	**.38**	**.34**	**1.83***	**.57**	**6.27**
Suspect physically assaulted victim	**.61***	**.24**	**1.84**	.21	.26	1.23	−.52	.30	.60
Suspect used a weapon	**.92***	**.36**	**2.50**	**1.06***	**.37**	**2.88**	**−1.27***	**.50**	**.28**
Victim suffered collateral injury	**.46***	**.22**	**1.58**	**.72***	**.26**	**2.06**	−.31	.29	.73
Type of resistance									
Verbal resistance only	−.46	.37	.64	−.59	.41	.56	.60	.42	1.82
Physical resistance only	.05	.49	1.05	−.05	.53	.95	−.28	.64	.76
Both verbal and physical resistance	.24	.30	1.26	.40	.32	1.49	−.30	.36	.74
Strength of evidence									
Victim reported crime within one hour	**.96***	**.29**	**2.61**	**.55***	**.26**	**1.73**	**−1.54***	**.41**	**.21**
Number of witnesses	**.36***	**.08**	**1.30**	**.24***	**.08**	**1.27**	**−.33***	**.10**	**.72**

(*Continued*)

Table 3 (*Continued*)

	Suspect arrested			Case cleared by arrest			Case presented to the DA For charge evaluation prior to suspect's arrest		
	B	SE	Exp (*B*)	*B*	SE	Exp (*B*)	*B*	SE	Exp (*B*)
Victim is willing to cooperate	**1.80***	**.28**	**6.03**	**2.28***	**.36**	**9.77**	**−1.74***	**.35**	**.18**
Physical evidence	**.58***	**.25**	**1.78**	.26	.27	1.30	**−.91***	**.31**	**.40**
Agency is LAPD	−.15	.25	.86	−.17	.27	.84	−.12	.30	.89
Constant	−1.79*	.63	.17	3.30*	.72	.14	.50	.92	1.65
Nagelkerke R^2		.38			.41			.40	

Note. Significant coefficients are in bold.
*$P \leq .05$.

We also analyzed whether the detective investigating the crime presented the case/case file to the district attorney for a pre-arrest charge evaluation. The frequency with which sexual assault cases are presented to the district attorney for charge evaluation prior to the suspect's arrest, coupled with the fact that the outcomes of cases evaluated prior to and following the arrest of the suspect differ significantly, suggests that it is important to identify the factors that predict whether cases will be presented to the ADA and evaluated before or after arrest. As shown in the third column of Table 3, only one victim characteristic—whether the victim engaged in any risky behavior at the time of the alleged assault—influenced whether the case would be presented to the district attorney for a pre-arrest charge evaluation. Cases involving victims who engaged in what could be perceived as risky behavior were 1.9 times more likely to be presented to the district attorney prior to the arrest of the suspect. Surprisingly, given the comments of detectives, many of whom stated that cases involving non-strangers were much more likely to be subjected to pre-arrest charge evaluation, the relationship between the suspect and the victim did not affect the likelihood that the case would be presented to the district attorney prior to the arrest of the suspect.

The odds of a pre-arrest charge evaluation also were affected by two indicators of crime seriousness and all four measures of evidentiary strength. Compared to cases in which the most serious charge was attempted rape, cases in which rape was the most serious charge were over six times more likely to be presented to the district attorney before the suspect could be arrested. The likelihood of a pre-arrest charge evaluation was significantly lower for cases in which the suspect used some type of weapon, the victim reported the crime within one hour, the victim was willing to cooperate in the investigation, there was some type of physical evidence, and there were one or more witnesses.

These results, then, suggest that detectives bring cases in which the evidence is weaker or there are questions about the victim's behavior at the time of the incident to district attorneys for a pre-arrest charge evaluation.

Predictors of Prosecutors' Charging Decisions

As noted above, the outcomes of cases presented to the district attorney for a charging decision before and after the arrest of the suspect were very different: only 9 of the 147 cases evaluated before the suspect was arrested were accepted for prosecution; by contrast, 106 of the 210 cases evaluated after the suspect was arrested were accepted for prosecution. We therefore analyze two indicators of charging—whether the district attorney accepted the case for prosecution following the arrest of the suspect and whether the district attorney accepted the case for prosecution either before or after the arrest of the suspect—and we argue that the latter is a more accurate and valid measure of prosecutors' charging decisions.

The results of our analysis of these variables, which are shown in Table 4, reveal that different factors affect the two outcomes. Beginning with the more traditional conceptualization of charging—charging decisions that follow the arrest of the suspect—only three variables affect this outcome: the victim's age (charging is four and a half times more likely if the victim is under the age of 18); whether the victim had a motive to lie; and whether the victim was willing to cooperate in the investigation and prosecution of the case. In fact, prosecutors were nearly 19 times more likely to file charges if the victim was cooperative and they were about 6 times more likely to accept the case for prosecution if the victim did not have a motive to lie. Although our broader indicator of charging, which includes charging decisions made before or after the arrest of the suspect, is affected in the same way by these three variables, it also is affected by victim behavior that can be perceived as risky, whether the most serious charge was rape rather than attempted rape, whether the suspect used a weapon, and whether the victim reported the crime within one hour. Consistent with the results of the arrest decisions, charging was not affected by the victim's race/ethnicity or relationship with the suspect, whether the victim had a mental illness or mental health issues, or the type of resistance offered by the victim.

Discussion

The results of our analysis reveal that arresting and charging decisions in sexual assault cases are affected by legally relevant indicators of case seriousness and evidentiary strength and, depending upon the way in which the outcome is operationally defined, by legally irrelevant indicators of the victim's behavior at the time of the incident and her character, reputation, and motivation in

Table 4 Results of the logistic regression analyses of charging decisions

	Case presented to DA after suspect's arrest and DA filed charges (N = 210)			Case presented to DA before or after suspect's arrest and DA filed charges (N = 357)		
	B	SE	Exp (*B*)	*B*	SE	Exp(*B*)
Victim characteristics						
Victim is Less Than 18	**1.53***	**.45**	**4.60**	**1.58***	**.36**	**4.81**
Race/Ethnicity						
Black	.78	.54	2.19	.57	.45	1.77
Hispanic	.78	.43	2.19	.54	.36	1.72
Relationship with suspect						
Non-stranger	−.29	.54	.75	−.29	.44	.75
Intimate partner	−.20	.58	.82	−.13	.46	.88
Risky behavior	−.56	.40	.57	**−.60***	**.24**	**.45**
Questions about character/reputation	−.17	.58	.84	−.63	.52	.53
Mental illness or mental health issues	−1.38	.85	.25	−.95	.60	.39
Has a motive to lie	**−1.81***	**.65**	**.16**	**−1.52***	**.58**	**.22**
Indicators of crime seriousness						
Most serious charge is rape	−.48	.50	.62	**−1.00***	**.45**	**.037**
Suspect physically assaulted victim	−.61	.39	.54	−.34	.32	.71
Suspect used a weapon	.86	.50	2.37	**1.16***	**.44**	**3.20**
Victim suffered collateral injury	.30	.38	1.34	.40	.31	1.49
Type of resistance						
Verbal resistance only	.28	.62	1.32	.25	.47	1.29
Physical resistance only	.13	.75	1.14	.68	.65	1.97
Both verbal and physical resistance	.80	.49	2.23	.96*	.40	2.60
Strength of evidence						
Victim reported crime within one hour	.42	.42	1.52	**.80***	**.36**	**2.23**
Number of witnesses	−.03	.10	.97	.06	.10	1.07
Victim is willing to cooperate	**2.94***	**.72**	**18.84**	**2.70***	**.54**	**14.80**
Physical evidence	−.03	.39	.97	.21	.32	1.23
Agency is LAPD	.69	.40	1.99	.38	.33	1.46
Constant	−3.35*	1.18	.04	−3.72*	.92	.02
Nagelkerke R^2		.40			.43	

Note. Significant coefficients are in bold.
*$P \leq .05$.

reporting the crime to the police. These findings are consistent with the focal concerns perspective and, to a lesser extent, with Black's sociological theory of law. They suggest that the decisions of police and prosecutors, like those of judges, are affected by their perceptions of crime seriousness and offender

dangerousness and by their assessments of the likelihood of conviction, which are themselves influenced not only by the strength of evidence in the case but by stereotypes (Johnson & Betsinger, 2009) or typifications (Frohmann, 1991, 1997) of rape and rape victims. Our results thus provide further evidence of the utility of the focal concerns perspective and of its applicability to decisions other than sentencing.

Our findings are not consistent with Black's (1989, p. 21) assertions that the "handling of a case always reflects the social characteristics of those involved in it." The race/ethnicity of the victim did not affect any of the case outcomes and the age of the victim affected charging, but not arrest, decisions. In contrast to prior research (Frazier & Haney, 1996; Holleran et al., 2010; Tellis & Spohn, 2008), which found that sexual assaults involving strangers were treated more harshly than those involving acquaintances or intimate partners, we also found that the victim/suspect relationship did not affect any of the outcomes we examined. This is surprising, given Black's (1976) contention that case outcomes are affected by the "relational distance" between the victim and the suspect and given that all of the cases included in our study were cases with an identified suspect. We expected that in cases with an identified suspect, the police would be more likely to arrest and the prosecutor would be more likely to file charges if the victim and the suspect were strangers. The fact that the relationship between the victim and suspect did not affect case outcomes once other victim characteristics, indicators of case seriousness, and measures of evidentiary strength were taken into consideration suggests that it is not the victim/suspect relationship per se that influences arresting and charging decisions; rather, the characteristics of cases and the strength of the evidence vary depending on the type of relationship.

The findings of our study also make a number of important methodological contributions.

Prior research on police and prosecutorial decision-making has been criticized for failure to control adequately for crime seriousness and strength of evidence in the case, with critics arguing that models that lack these measures are misspecified. Because we had access to the case files, we were able to collect detailed data on physical evidence, witnesses, whether the victim was willing to cooperate at various stages in the process, and whether the victim reported the crime promptly. We also were able to collect several indicators of crime seriousness—whether the suspect used a weapon or physically assaulted the victim and whether the victim suffered some type of collateral injury. The fact that we were able to control for these legally relevant factors may explain why some of the factors identified by prior research did not affect the arrest and charging decisions we examined.

We also demonstrate the importance of the ways in which arrest and charging decisions are conceptualized and operationalized. The concept of "cleared by arrest" plays a key role in research on police and prosecutorial decision-making. Policing researchers often operationalize the decision to arrest based on whether the crime was cleared by the arrest of a suspect and researchers

examining prosecutorial charging decisions typically examine data on cases that resulted in an arrest and were presented by law enforcement for a formal charging decision. These operational definitions are based on assumptions that *all cases* that result in the arrest of a suspect are cases that are cleared by arrest and that the *only cases* on which prosecutors make charging decisions are cases in which a suspect was arrested. As we have shown, these assumptions are not necessarily valid. At least in this jurisdiction (Los Angeles) and for this type of crime (sexual assault), a substantial proportion of cases in which a suspect was arrested were not cleared by arrest; this occurred when the district attorney reviewing the case following the arrest of the suspect rejected the case for prosecution and the detective investigating the crime changed the case clearance from cleared by arrest to cleared by exceptional means. Moreover, a significant number of cases were evaluated—and rejected for prosecution—by the district attorney prior to the arrest of the suspect. Defining the decision to arrest as cases that were formally cleared by arrest and operationalizing the charging decision as cases that were evaluated following arrest is misleading, as doing so undercounts both types of decisions.

Further evidence of this surfaced in our multivariate analyses of arresting and charging decisions. *We found that the predictors of these outcomes varied depending on the way in which the outcome was defined*. For example, none of the victim characteristics affected whether the suspect was arrested by the police, but whether there were questions about the victim's character or reputation and whether the victim had a motive to lie about the incident predicted the likelihood that the crime would be cleared by arrest. These differences reflect the fact that many of the cases that resulted in the arrest of the suspect, but did not result in the filing of charges by the prosecutor, are not defined as cases that are cleared by arrest (due to the fact that the detective changed the case clearance from cleared by arrest to cleared by exceptional means). The cleared by arrest variable, in other words, conflates decisions made by police and prosecutors. The fact that these victim characteristics affected whether the case was cleared by arrest but not whether the police made an arrest suggests that the police are willing to make arrests in potentially problematic cases but that prosecutors are not willing to file charges in these cases. Alternatively, it may be that questions about the victim's character, reputation, or motivation for filing the complaint do not surface—or do not raise red flags if they do—until the victim is interviewed by the district attorney.

We also found that different variables affected our two indicators of charging. When we used the traditional operational definition—the suspect was arrested and the district attorney evaluated the case for prosecution—we found that only three variables (the victim's age, whether the victim was willing to cooperate, and whether the victim had a motive to lie) affected the likelihood of charging. Our analysis of the charging variable that combined cases screened before and after the arrest of the suspect revealed that four additional variables—whether the victim engaged in risky behavior, whether

the most serious charge was rape, whether the suspect used a weapon, and whether the victim reported the crime within one hour—had an effect. These results suggest that detectives present problematic cases in which there is an identified suspect and in which there may be probable cause to make an arrest to the district attorney for a charge evaluation before arresting the suspect and that these cases are rejected for prosecution. That this is, in fact, what is occurring was confirmed by our analysis of the detective's decision to present the case to the district attorney for a pre-arrest charge evaluation. Detectives were significantly more likely to bring the case to the district attorney before arresting the suspect if the victim engaged in risky behavior, did not report the crime promptly, and was unwilling to cooperate as the case moved forward; if the suspect did not use a weapon; if there was no physical evidence, and if there were no or few witnesses. In fact, we found that the various measures of the strength of evidence in the case had a positive effect on whether the suspect would be arrested and whether the case would be cleared by arrest, but a negative effect on whether the case would be presented to the district attorney for charge evaluation prior to the arrest of the suspect. Coupled with the fact that all but 9 of the 147 cases evaluated by the district attorney prior to the arrest of the suspect were rejected for prosecution, this suggests that pre-arrest charge evaluation is an important component of both police and prosecutorial decision-making.

The detectives and district attorneys we interviewed acknowledged that pre-arrest charge evaluation either was unique to sexual assault or occurred with much greater frequency in sexual assault cases than in other types of cases. They attributed this to the fact that many sexual assaults involve victims and suspects who are acquainted in some way and that a good portion of these involve a consent defense, delayed reporting, and/or alcohol or drug use by the victim. Although a number of respondents—especially district attorneys—justified pre-arrest charge evaluation as a means of ensuring that the evidence in the case was solid before the suspect was arrested, many detectives acknowledged that they presented cases to the district attorney before arresting the suspect with the expectation that the case would be rejected for prosecution. This suggests that pre-arrest charge evaluation is being used, not to ensure that "all of the i's are dotted and the t's crossed," but to dispose of weak or problematic cases. This is confirmed by the fact that all but three of the 138 cases rejected for prosecution prior to the arrest of the suspect were cleared by exceptional means. Rather than arresting the suspect, detectives present cases that they believe will be rejected for prosecution to the district attorney and, when that happens, they clear, or solve, these cases exceptionally.

One other finding merits comment. We found that only one variable—whether the victim was willing to cooperate in the investigation and prosecution of the case—affected all five of the outcomes we examined. In fact, victim cooperation had a substantial effect on each outcome. The police were six times more likely to arrest the suspect and were nearly 10 times more likely

to clear the case by arrest if the victim was cooperative; they were significantly less likely to present the case to the district attorney for a pre-arrest charge evaluation if the victim was willing to cooperate. The effect of victim cooperation on charging decisions was even more pronounced; cases with a cooperative victim were almost 15 times more likely to result in the filing of charges before or after the suspect's arrest and were almost 19 times more likely to result in the filing of charges following the arrest of the suspect. These findings, although not surprising, point to the importance of the individual-level dynamic between victims and detectives and between victims and prosecutors. They also suggest that a fruitful avenue for future research would be to determine why victims withdraw their cooperation after making a sexual assault report.

Our results have important policy implications. We found that law enforcement officials in Los Angeles overuse (in fact, misuse) the exceptional clearance in two important situations: when an arrest does not lead to the filing of felony charges and when cases are rejected for prosecution during the pre-arrest charge evaluation. Regarding the first situation, cases that result in the arrest of a suspect should be cleared by arrest, as these cases do not meet the fourth requirement for clearing cases by exceptional means. Given that the suspect was arrested, there is by definition nothing beyond the control of law enforcement that prevents an arrest. Thus, cases in which a suspect is arrested should be cleared by arrest. The second situation in which cases may be cleared incorrectly by exceptional means is where probable cause to arrest the suspect exists but the detective chooses instead to present the case to the district attorney's office, where charges are rejected based on insufficient evidence. Like the first scenario, this situation is problematic in that it does not involve something beyond the control of the law enforcement that prevents the arrest of the suspect. There is probable cause to make an arrest but the case is cleared exceptionally because a prosecutor determined that the evidence is insufficient to prove the case beyond a reasonable doubt to a jury.

Whether a suspect is arrested should not be contingent on whether the prosecuting attorney believes that the evidence meets the standard of proof beyond a reasonable doubt and that the case therefore would result in a jury conviction. Doing so subjects the decision to arrest to a higher standard of proof than is required by law and effectively gives the prosecutor control over the decision to arrest. It also means that individuals who may have committed a serious crime are not held accountable for their behavior and denies justice to victims who made a difficult decision to report the crime and are willing to cooperate with the police and prosecutor as the case moves forward. Failure to make an arrest in spite of probable cause to do so is reminiscent of police inaction in response to domestic violence prior to the implementation of mandatory arrest policies. Although we are not suggesting that police departments should adopt mandatory arrest policies for sexual assault cases, they should make an arrest when there is sufficient evidence that a crime occurred and that the suspect is the person who committed the crime.

Clearly, there are cases where the police cannot—indeed should not—make an arrest. If probable cause to arrest does not exist or if the prosecutor rejects the case for further investigation as a result of a pre-arrest screening process, the case should be left open and investigated further. These cases *should not* be cleared by exceptional means, as they do not meet the UCR criterion that there must be "enough information to support an arrest, charge, and turning over to the court for prosecution." The case cannot be solved—that is, cleared—if probable cause to make an arrest does not exist. Cases in which the police know who and where the suspect is and in which probable cause exists to make an arrest, but the victim refuses to cooperate with the police can legitimately be cleared by exceptional means if the victim's lack of cooperation means that the police cannot make an arrest.

We believe that our study, which was conducted in one of the largest and most diverse cities in the United States, makes important theoretical and methodological contributions to our understanding of police and prosecutorial decision-making. However, our approach is not without limitations, the most important of which stems from our reliance on the information contained in official case files. Although we were provided with redacted copies of all documents in the case files, the material contained in the files ultimately reflects the perceptions and biases of individual law enforcement officers, who describe the incident, recount the victim's allegations, and document the results of interviews with victims, witnesses, and suspects. Although we have no reason to believe that their accounts were slanted or written in such a way as to make the department "look good," there is obviously a possibility of "biased reporting," which we cannot measure or take into consideration.

Conclusion

Like prior researchers, we began our project on police and prosecutorial decision-making in sexual assault cases with an assumption that law enforcement's decision to arrest and the district attorney's decision to file charges were separate decisions that reflected different standards of proof and different decision rules. We recognized that prosecutors' filing decisions would be based in part on the adequacy of the investigation conducted by law enforcement and on the willingness of the victim to cooperate, which, in turn, would be affected by the handling of the case by the IO. We also recognized that the IO's decision to arrest or not might reflect to some extent his/her beliefs about the likelihood of successful prosecution. However, we did not expect to find that the decision to arrest the suspect or not would in many cases be *determined by* the prosecutor's evaluation of the case or that a substantial proportion of cases would be rejected for prosecution prior to the arrest of the suspect.

The findings of our study illuminate the ways in which the decisions of police and prosecutors overlap and influence one another. Our findings also illustrate

that, at least in the context of sexual assault, it is misleading to assume that data on cases cleared by arrest accurately reflect police arrest decisions and that data on cases that were evaluated for charging following the arrest of the suspect accurately capture prosecutors' charging decisions. More importantly, our findings illustrate that the conclusions we draw about the factors that influence sexual assault case outcomes depend to some extent on the conceptualization and operationalization of decisions to arrest and charge. Our research has attempted to disentangle these complicated relationships in one jurisdiction and with respect to one type of crime. Future research should focus on determining whether these overlapping decision rules are found in other jurisdictions and for other types of crimes.

It is also important to point out that the findings of our study confirm what research conducted 30 or 40 years ago revealed about the response of the criminal justice system to the crime of sexual assault. Although legally relevant indicators of crime seriousness and evidentiary strength predicted whether the suspect would be arrested and charged, legally irrelevant victim characteristics also played a role. The rape reform movement and more recent attention to the problematic nature of attrition in sexual assault cases notwithstanding, police and prosecutors continue to make decisions based at least in part on their assessments of the victim's character, reputation, behavior at the time of the incident, and motivation for reporting. This suggests that stereotypes about real rapes and genuine victims have endured and that they continue to negatively affect the likelihood of arrest and successful prosecution of those who commit this violent crime.

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