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PROSECUTORIAL DECISION-MAKING FOR THE OFFENCE OF FORCIBLE RAPE

by

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This thesis is dedicated to all victims of sexual assault. The hope for the elimination of sexual assault as a social problem lies in the future. To achieve that end, continued efforts in both the social and legal spheres are imperative.

ABSTRACT

While past research has emphasized the processing of sexual assault cases at the police level, the present study has endeavoured to expand the focus and has included other relevant levels of the criminal justice system. Consequently, the police, Crown and court levels were examined. In addition, the role of the prosecutor in the handling of rape reports was studied. There has also been a need for increased investigation of the prosecutor's role; given the considerable involvement of the Crown attorneys in the legal process.

The research focused on rape and attempted rape reports made to the police in Winnipeg for the study period, 1976 and 1977. The reports were then followed through the legal system to the final disposition of the charges. Information on the reports was initially obtained from the police files and was completed by personal interviews with the prosecutors who had handled the reports made during the study period. The prosecutors were also interviewed with respect to their practices in handling rape cases in general.

The data provided the information on the following aspects of rape reports: the filtering of the reports in the criminal justice system; the demographic characteristics of the offence; and prosecutorial practices in the processing of the reports.

The study provided the following results. The filtering of the rape reports were substantial. Over 70 percent of the charges were

filtered out of the legal system at the police, Crown and court levels. The police level contained the greatest termination of charges and resulted in the filtering out of 57.8 percent of the original charges. Conversely, only 28.9 percent of the charges ended with a conviction for the offender.

The demographic characteristics indicated overall congruence with past research and dispelled several of the societal myths surrounding rape. Among these were the findings that rape was not typically a sudden attack by a stranger and also that while most of the offenders were unmarried, there were a considerable number involved in a marital or cohabitating relationship.

Interviews with the prosecutors confirmed their role as one containing considerable involvement in the processing of rape cases. Discretionary powers and problems with the prosecution of rape cases were also revealed.

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CHAPTER I

INTRODUCTION

While rape in the past received little attention in academic literature, the mid 1970's saw a surge in the volume of articles and books addressing the various facets of rape. Williams (1980:37) reported that bibliographies of rape until 1974 yielded only 333 articles and books whereas bibliographies between 1974 and 1976 yielded 364 articles and books. The escalation of academic interest in the subject of rape has been largely attributed to feminist writings (Lafree, 1980: 82) that have systematically exposed the harmful stereotypes of rape and the corresponding effects of the rape victim.

The major departure in feminist literature from prior works was an emphasis on rape as a violent rather than a sexual act and as a social problem that was supported by a sexist society and institutions as opposed to the traditional focal points that ranged from the rapist as a sick psychopath (Hammer, 1957) to female malice (Columbia Law Review, 1967) to victim precipitation (Amir, 1971). The scarcity of comprehensive literature regarding rape and the victim ". . . served both to express and to reinforce a broad range of assumptions about male-female sexuality and roles . . ." (McCahill et al., 1979:3). The emergent feminist movement in the 1970's functioned to reveal rape as a social problem:

> Feminists claimed that the sociosexual attitudes held by many . . . tend to discredit the accounts of rape victims and that

> this same attitude tends to excuse or even champion rape . . . . Charges were levelled against practices in emergency rooms that treated or refused to treat rape victims, against police handling of complaints, against laws that incorporated the logic of blaming rape victims, and against courtroom procedures, characterized as inquisitional, that placed on trial the victim and her sex life rather than the defendant. (McCahill et al., 1979:3).

The present research addresses the stereotypes and misconceptions surrounding rape, evident in the criminal justice system, that have been revealed in feminist literature.

The plight of the rape victim in the criminal justice system has directed the course of the research. These experiences have been described as being at least as traumatic as the rape incident in some instances (Bohmer, 1977:61). In addition, stringent legal guidelines have contributed to the low number of convictions for that crime. The role of the prosecuter in rape cases is emphasized. The practices and perceptions of the prosecutor in the crime of rape are considered to be substantial in attaining the goals of dealing more humanely and justly with the rape victim in the criminal justice system.

Nature and Order of Presentation

The subsequent chapters for the present research describe and analyze the filtering system that functioned for the rape and attempted rape reports made to the police in Winnipeg during the study period of 1976 and 1977. The role of the prosecutor in handling the cases will be emphasized as well.

Chapter II contains a review of the literature pertaining to the offence of rape utilizing the criminal justice system as the focal point. There are four sections discussed: prosecutorial discretion in the

criminal justice system; the legal elements in a rape case; a feminist theory of rape; and the notion of normal crimes in relation to rape. Each of the sections contains a review of the literature and posits the hypotheses for the present research that were developed from the review of the literature regarding rape and the criminal justice system.

The first section, that of prosecutorial discretion in the criminal justice system, focuses on the nature and scope of prosecutorial discretion and examines plea bargaining. The considerable discretion allowed the prosecutor was significant in the examination of the options available for the course that a particular rape or attempted rape charge followed. The second section examines the unique legal elements in a rape case that set it apart from other violent crimes in terms of its prosecution. The legal elements discussed are consent, corroboration and the character of the rape victim. The third section utilizes a feminist theory of rape as the basis for the examination of the prosecution of rape cases. Within this context, rape laws are viewed as discriminatory to the rape victim and as functioning to protect only certain women who are given full redress through the law. The fourth section deals with assumption that the filtering system of rape and attempted rape reports from the police level to the judicial level are closely tied and function in relation to Sudnow's notion of the normal crime (1969: 308-335). A normal rape charge is viewed as one that is similar to other rape charges.

The research methodology for the present research is presented in Chapter III. The methods employed and the instruments utilized for the data collection at both the police and the Crown levels are discussed. The drawbacks in the use of official statistics for the study of sexual

offences are also addressed. In addition, the problem of underreporting by victims is acknowledged.

Chapter IV describes the filtering system of the rape and attempted rape reports at the police, Crown and court levels for the study period. Each of the three levels are discussed in detail with the respective person(s) responsible for the termination, alteration or retention of the reports. The legal process involved at the police, Crown and court levels is also discussed.

In Chapter V, the demographic factors are discussed. The victim, offender and offence characteristics are presented and compared with the findings from other rape studies.

The results of the interviews with the Crown attorneys are contained in Chapter VI. Information pertaining to prosecutorial procedures and practices in the filing and prosecution of rape cases is given. The problematic aspects of rape cases and the potential areas for social and legal reform are also addressed by the prosecutors who were interviewed.

Chapter VII presents the hypotheses derived for the study. Each of the seven hypotheses is presented, described and analyzed in relation to the filtering system of rape and attempted rape reports. The filtering system focuses specifically on the dismissal, alteration and retention of the reports in the criminal justice system.

Chapter VIII, the final chapter, contains a summary of the present research and the major conclusions which were reached. Recommendations for social and legal reform for the offence of rape are discussed. The direction for further research relating to sexual assault is also explored.

The legal definitions pertinent to the research are provided in Appendix A.

CHAPTER II

REVIEW OF THE LITERATURE

Introduction

The present study endeavours to examine the filtering system of rape and attempted rape reports as they proceed through the criminal justice system. Prosecutorial perceptions and practices in the handling of rape and attempted rape reports will be highlighted in the present research insofar as they affect the processing and eventual outcome of these sexual assault charges. To that end, a detailed discussion of prosecutorial discretion and proclivity for the use of plea bargaining will be given.

The unique legal elements in a rape case will be presented along with the manner in which they serve to impede the successful prosecution of rape and attempted rape charges. The issues of consent, corroboration and character of the rape victim will be analyzed in relation to their effect on the disposition of the charges.

Feminist theory predicts that certain rape or attempted rape victims will be more likely to have their cases retained as opposed to being dismissed or plea bargained in the criminal justice system. Victims whose charges are less likely to be retained are those who possess negative moral and social attributes and those who are perceived to have been at least partly responsible for the occurrence of the incident. The preoccupation with victim credibility along with the corresponding

stringent legal guidelines will result in a high number of negotiated pleas and dismissed charges in such cases.

Finally, the notion of rape as a normal crime (Sudnow, 1969) will be examined. The implication is that those rape and attempted rape charges that are deemed to be typical or representative of sexual assaults will be more likely to be altered in the criminal justice system. In particular, the number of offenders involved in the offence will be analyzed with the contention that multiple offender cases are not representative of the usual offence pattern and will be less likely to be dealt with as plea bargained or dismissed charges.

Discretionary Powers of the Prosecutor in the Criminal Justice System

The substantial discretion allowed the prosecutor is significant in the examination of the options available in deciding the course a particular rape or attempted rape charge will take. This discretion results in various decisions including reduction of charges, dismissal of charges, plea bargaining, appeal of a conviction and/or sentence and maintenance of the original charge. The range of prosecutorial discretion will be discussed along with the prosecutorial propensity for the use of plea bargaining.

Prosecutorial Discretion

The considerable discretion allowed the prosecutor has been acknowledged by numerous writers (Grosman, 1970; Blumberg, 1967; Chambliss & Seidman, 1971; LaFave, 1970). The first requirement for examining prosecutorial discretion is to arrive at a working definition of the concept of discretion for the present research. Dean Roscoe Pound (1960:925-26) has suggested that: "(Discretion) is an authority con-

ferred by law to act in certain conditions or situations in accordance with an official's or an official agency's own considered judgement and conscience. It is an idea of morals belonging to the twilight zone between law and morals." A more encompassing notion of discretion, however, would include the following: ". . . a public officer has discretion whenever the effective limits on his power leave him free to make a choice among possible courses of action or inaction" (Davis, 1969:4). Discretion here, according to LaFave may be ". . . exercised by doing nothing and may exist without express recognition in law" (1970:532).

It has been said that prosecutors have the greatest discretionary powers in the criminal justice system (Reiss, 1974:690). The substantial discretion of the prosecutor is realized in a number of ways (Blumberg, 1967; Grosman, 1970; LaFave, 1970; Reiss, 1974). The prosecutor decides when reports of arrest or requests for warrants from the police will be proceeded with. In other words, the prosecutor is given virtually uncontrolled discretion[1] in determining whether to prosecute and on what legal grounds. The next step involves the decision by the prosecutor as to the specific information that will be required should the prosecutor decide to proceed with the police charges. The type of information will serve to accommodate the charging decision. The prosecutor, at this point, may overcharge in anticipation of plea bargaining. The prosecutor

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[1] It is recognized that there are numerous factors in every jurisdiction that may affect the use of prosecutorial discretion. Among these are local practices, personal preferences and specific written guidelines that may have a bearing on its use. However, the discussion endeavours to present the full spectrum of that discretion without implying that all prosecutors enjoy unlimited powers.

may then retain the original charge(s) or negotiate with defense counsel for a reduction of charge(s) or a pre-determined sentence in exchange for a plea of guilty from the defendant in lieu of the case going to trial. LaFave mentions that plea bargaining that occurs after a higher charge has been formally laid is in theory open to judicial supervision:

> In practice, however, judicial control is usually minimal; the judge accepts the lesser plea without question, and the prosecutor's explanation (if required by law or practice) is usually no more explicit than 'in the interests of justice' . . . . Or, the prosecutor may be so bold as to promise a certain sentence upon a guilty plea, a promise he may know he can fulfill because of the trial judge's practise of following the prosecutor's recommendations. (1970:540-41).

The pre-trial disclosure of the information concerning the prosecution's case is also left to the discretion of the prosecutor. Grosman states: "The production of statements of Crown witnesses for inspection by the defense before trial is a matter solely within the discretion of the prosecutor. That discretion is exercised when he decides whether to disclose information to the defense beyond the minimal disclosure required by law" (1969:75). In addition to the pre-trial decisions already mentioned, the prosecutor will also exert considerable influence on the amount of bail, if any, that will be granted, the judge who will hear or try the case and the calendar dates for the case at any stage of the proceedings.

The wide range of prosecutorial discretion has prompted commentary regarding the motivations of prosecutors in exercising that discretion. LaFave suggests that within the realm of prosecutorial discretion are the larger objectives of promoting the ends of justice and instilling a respect for the law while taking into account the degree of criminality,

the weight of the evidence, the credibility of witnesses, precedent, policy, the climate of public opinion, timing, and the relative gravity of the offence (1970:536). Buckle and Buckle include the importance of chances for conviction and the costs of conviction in the determination of whether to prosecute and the subsequent charges that might be laid (1977:30). The authors contend that: ". . . the prosecutor is being asked to make a very complex decision in which the threat to the community is to be weighed against the probability that the case can be inexpensively and successfully prosecuted" (Ibid, 1977:30).

The inherent contradictions between the enunciated ideals of the adversarial system[2] and the actual "bargained justice" system are thus evident. Strict adherence to the adversary process, however, is not advocated. The harshness of the all-or-nothing solution of the adversarial system is recognized (Chambliss & Seidman, 1971:401; Grosman, 1970:506). Individualized treatment of offenders in sentencing, based on the particular circumstances of a case, has long been recognized in the sentencing of offenders. Accordingly, it is argued that individualized treatment in the charging process is desirable (LaFave, 1970: 534). Breital notes that strict accordance with the rules of law would result in ordered but intolerable criminal law (1960:427). Consequently, the issue is not discretion versus no discretion, ". . . but rather how discretion should be confined, structured and checked" (LaFave, 1970: 536).

The preceding discussion of the prosecution's role within the

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[2]See Buckle & Buckle, 1977:14-18; Grosman, 1969:83 for a description of the adversarial model.

criminal justice system has revealed their considerable influence over the determination and eventual outcome of criminal charges. In this study the prosecutor's role in the processing of rape and attempted rape reports is considered. William Heiman, a district attorney from the United States, puts the prosecutor's role into perspective regarding sexual assault cases:

> Without question, the prosecutor, as a public official, can have a direct impact on all of the institutions and agencies handling sexual assault cases and, as such, he should use his office to improve the plight of the rape victim and insure that the victim's rights are respected and implemented. (1983:27).

Consequently, the prosecutor's participation in the prosecution of rape charges will be examined in order to clarify both the actions taken by the prosecution and the corresponding filtering of the charges in the legal system.

Plea Bargaining as a Major Component of Prosecutorial Discretion

Major criticism has arisen from the use of plea bargaining as a necessary component of prosecutorial discretion rather than from the use of discretionary judgements, per se. Buckle and Buckle remark that plea bargaining is most often considered illegitimate in relation to the motivations involved when the prosecutor exercises this form of discretion (1977:30).

The pervasiveness of the bargained guilty plea has emerged from several studies. Blumberg, for instance, states: "The overwhelming majority of convictions in criminal cases (usually over 90 percent) are not the product of combative trial-by-jury process at all, but instead merely involve the sentencing of the individual after a negotiated bargained-for plea of guilty has been entered" (1967:18). Newman's

study confirmed that the 90 percent plus figure is not unique. He found that 93 percent of the felons convicted in the medium-sized American county in the midwest had their charges disposed of by guilty pleas (1956:782). In Canada, estimates of guilty pleas from regional studies range from lows of 43.5 percent (Hann, 1973) to highs of 69 percent (Freidland, 1965). However, Hogarth maintains that a 90 percent figure for guilty pleas is reflective of the Canadian situation (1974).

The reliance of the prosecutor on the negotiated plea is referred to by Blumberg. "The district attorney is the one court figure most aggressively interested in obtaining a negotiated plea rather than a case culminating in a combative trial" (1967:59). Various explanations for the utilization of plea bargaining have been put forward. The most frequent explanation is that of case pressure whereby plea bargaining may serve to reduce a backlog of cases (Grosman, 1969:51; LaFave, 1970: 541-42). Heumann, in his study of plea bargaining, found that prosecutors did not actually experience case pressure to be the major determinant for the existence of plea bargaining. Instead, most prosecutors felt that there was the potential for a backlog of cases if plea bargaining was restricted or eliminated altogether (1978:116-17). The preceding reasoning, however, does not explain why prosecutors engage in plea bargaining. Rather, it is illustrative of prosecutors' predictions of the results of rules decreasing or eliminating the use of the plea bargaining method. It might well be more appropriate to consider a number of factors that, when combined, would suffice as an explanation for prosecutorial plea bargaining, apart from the potential for case backlog.

Prosecutorial discretion, and more specifically plea bargaining,

tends to result from various pressures to which the prosecutor is subject. One of the most significant pressures placed upon the prosecutor is the "winner take all" adversarial system of trial for a defendant. The uncertainty of trial figures strongly in the employment of prosecutorial discretion (Heumann, 1978:110). Several concerns of the prosecutor may stem from the risk involved in a trial. Firstly, the prosecutor displays his/her competence and efficiency by way of conviction rate (Blumberg, 1967:59; Buckle & Buckle, 1977:30; Klein, 1976:60). According to Chambliss and Seidman, a conviction is a conviction, be it one that is based on an original charge or one that is plea bargained in the judicial system (1971:403). The prosecutor's record is commonly based on the gross number of convictions and should he or she lose too many cases, serious questions regarding the prosecutor's competence may arise (Klein, 1976:60). In simple terms: "The more trials there are, the lower will be the conviction rate" (Chambliss & Seidman, 1971:403). According to prosecutors, the unpredictability of juries is a major incentive for a negotiated plea (Heumann, 1978:112). Most prosecutors have had personal experience with the court veterans' adage that "no case is 100 percent sure one way or the other" (1978:112). The implication is not that the prosecutor will invariably negotiate every case, but rather the knowledge and experience of the prosecutor will eventually enable more realistic predictions of the outcomes of trial. In other words, the prosecutor will weigh more carefully the advantages of a negotiated plea as opposed to the trying of a case.

Evidentiary problems in a case may also prompt the prosecutor to accept a guilty plea to a lesser charge. The chances of success usually include the examination of the strength of evidence and the credibility

of witnesses (LaFave, 1970:536). One prosecutor in Grosman's study indicated: ". . . it may just be a matter of logistics and witnesses don't show up and all you can salvage is a plea to something less. It's the best you can do under the circumstances" (Grosman, 1969:34).

In addition, the significance of prosecutorial recommendations may be undermined in the absence of plea bargaining. The judge is more familiar with the facts of a case after trial and will be less inclined to concur with prosecutorial recommendations for a fixed period of time. Heumann remarks: "Thus, to an extent, the uncertainty whether the defendant will 'do time' remains" (1978:113). In contrast, the negotiated sentence for a guilty plea accommodates prosecutorial decisions since the trial judge generally follows the prosecutor's recommendation regarding sentence[3] (LaFave, 1970:40-41). Furthermore, the sentence given by the judge at trial may correspond roughly to one which might have been achieved through plea bargaining so that the necessity of a trial itself becomes questionable to the prosecutor. The time and energies of the prosecutor at trial are then seen as having a marginal effect on the final disposition (Blumberg, 1967:59; Heumann, 1978:113).

The prosecutor must respond to pressures from the various bodies of the criminal justice system: police, defense counsel, judges and social service personnel. Klein cautions against research that is carried out on the policing, prosecuting, defending or judging process in the criminal justice system with the assumption that these processes are de-

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[3]It is important to note, however, that in Canada a trial judge may not play a role in the plea bargaining process, and may not go along with the prosecutor's recommendations.

centralized and independent of each other (1976:126). Prosecutorial negotiations require mutual cooperation between the various agencies in the system. The concept of a "community game" is used by Cole in a study of a Washington prosecutors' office: "The participants in the legal system (game) share a common territorial field and collaborate for different and particular ends. They interact on a continuing basis as their responsibilities demand contact with other participants in the process. Thus, the need for cooperation of other participants can have a bearing on the decision to prosecute" (1976:235). Pressures may also be placed on the prosecutor by other members of the criminal justice system for the use of the bargained plea. The use of plea bargaining will serve to facilitate the administrative and professional demands placed upon the various agencies with whom the prosecutor interacts.[4]

The use of plea bargaining by prosecutors has emerged as a significant component in the exercise of prosecutorial discretion. The presence of the negotiated plea in the rape and attempted rape reports for the study period was expected to be substantial. Apart from the charges that are plea bargained on charge or sentence, there is the situation where the original Crown charges are dismissed in the judicial system[5] and are subsequently reduced and tried. Although the latter

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[4]See Blumberg, 1967:64-68; Cole, 1976:237-43; Chambliss & Seidman, 1971:402-03 for a discussion of pressures by various agencies in the criminal justice system toward the prosecutor for the negotiated plea.

[5]Dismissal of charges in the judicial system where there are subsequent charges relaid usually occur after a judicial dismissal at a preliminary hearing. The prosecutor, although not directly responsible for the dismissal of charges, does play a part as the party who represents the interests of the Crown in the proceedings.

instance involves less direct prosecutorial influence, such cases will also stand as reduced ones in contrast to those charges that are retained and result in a trial situation. The designation given to plea bargained or reduced charges will be altered charges.

Conclusion

The preceding discussion of prosecutorial discretion has enabled a more realistic evaluation of the role of the prosecutor. Professional and administrative demands have emerged as the guiding principles in the discharging of prosecutorial discretion. Prosecutorial discretion and practices will be examined in detail in the interviews with the Crown attorneys contained in Chapter VI. The filtering system in operation for the rape and attempted rape reports that will include prosecutorial plea bargaining will be presented in Chapter IV. There are several hypotheses that emerge from the consideration of prosecutorial discretion. It is hypothesized that the majority of rape and attempted rape reports accepted by the prosecutor's office will be dealt with as altered charges as opposed to being retained on the original charge laid by the prosecution. Altered charges will comprise plea bargained charges and reduced charges at trial. That is, the judge or jury trial will reveal itself as the exception rather than the rule on the original Crown charges. The frequency of the defendant pleading guilty without the presence of plea bargaining will also be examined. The essence of plea bargaining has been described as an exchange process whereby the prosecutor gains the certainty of a conviction and the defense counsel obtains a concession for the accused in terms of charge and/or sentence. Consequently, it is hypothesized that guilty pleas, devoid of concessions to the defendant, will be extremely low.

The Legal Elements of a Rape Case

The unique legal elements of a rape case that set it apart from other violent crimes in terms of its prosecution will now be discussed. At the outset the definition of rape in the Canadian Criminal Code will be outlined.[6]

> RAPE
> 143. A male person commits rape when he has sexual intercourse with a female person who is not his wife,
> a) without her consent, or
> b) with her consent if the consent
> (i) is extorted by threats or fear of bodily harm
> (ii) is obtained by personating her husband, or
> (iii) is obtained by false and fraudulent representations as to the nature and the quality of the act (1980:61).

The Criminal Code terms rape as an indictable offence with a maximum punishment of life imprisonment. Attempted rape is punishable by up to 10 years imprisonment.

Robin summarizes the problematic aspects of a rape charge:

> Among serious offenses, rape is unique in that distinctly human factors have established the legal elements of the crime, which must be proved beyond a reasonable doubt. These human factors discourage victims from reporting the crime to the police and make conviction especially difficult. They include a sexist society, the historical role of women as 'property', obsolete rape laws, stereotyped legal notions of how women should act when they are being attacked, and an unreasonable concern for the rights of the accused. Convicting the rapist requires corroboration and proof of the victim's resistance and good character (1977:138).

There are three legal issues which will dominate a rape trial and the

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[6]The rape and attempted rape reports for the study period were dealt with in the criminal justice system under the Criminal Code laws previous to those introduced in the Criminal Code of 1983. Any reference to rape and attempted rape will apply to the rape laws that existed during the study period (as stated in the Criminal Code 1980) unless otherwise stated.

strength of these issues may very well determine the point at which a particular rape complaint is filtered out of the judicial system. The three issues are consent, corroboration and the character of the rape victim. The inequities inherent in each issue will be dealt with.

Consent

The issue of consent has its legal counterpart in resistance; resistance that is sufficient to prove lack of consent. Gager and Schurr indicate that nonconsent or resistance is mainly a subjective matter resulting in arbitrary decisions being made by members of the criminal justice system that the resistance offered by the rape victim was not sufficient to be labelled as rape (1976:139-40). The authors comment: "How much resistance is 'enough' is moot: every rape is different; every rapist is different; and most important, every victim has unique standards of behavior. This cannot be determined for her by others" (Ibid, 1976:140).

A comparison of victim behavior in other violent crimes indicates the exceptional nature of the consent standard for sexual assault cases. Not only are robbery victims encouraged to comply with their assailants but research indicates that they in fact do not offer any resistance in the majority of cases. A study of robbery victims by Conklin revealed that only one in ten robbery victims offered resistance either by refusal or force (1972:113). Yet, in cases of sexual assault the onus is on the victim to resist to the utmost.

Clark and Lewis are equally critical of the uniqueness of the issue of consent in a rape case. "Only in the case of sexual transactions do we refuse to acknowledge that the relevant issue is the offender's

behavior rather than the victim's state of mind. In rape, as in theft, the use or the threat of physical force ought to negate any presumption of consent on the victim's part" (1977:164). The victim is placed in the precarious position of having to prove that her reaction was sufficient to establish nonconsent. The problematic aspects of consent versus nonconsent are referred to by Robin as ". . . the thin legal line separating rape from seduction" (1977:144). The telltale signs of nonconsent then become the physical injuries sustained by the rape victim as opposed to nonconsent in the presence of threats, either verbal or by the use of a weapon, although no less threatening to the victim.

Corroboration

The corroboration requirement, in general, relates to any testimony or evidence that is provided by anyone other than the victim of a crime. "In a rape case, corroboration may be supplied by the testimony of witnesses or through circumstancial evidence that will sustain the claims of the prosecution" (Gager & Schurr, 1976:142). The general components of corroborative evidence are as follows: the medical evidence and testimony, the victim's injuries, the promptness of complaint to relatives or friends, and most importantly, the police, the emotional condition of the victim, the lack of motive to falsify and the presence of semen or blood on the clothing of the accused and the victim (Ibid, 1976:143). It is noteworthy that more than half of the components mentioned are concerned with the victim's behavior and condition. Although questions may be directed to the victim on the corroborative evidence, the basis of the evidence will be given by others: namely, police officers and medical personnel.

The importance of corroborative evidence was underlined by a requirement prior to 1976 that instructed judges to warn juries of the danger in convicting a defendant without any corroborative evidence apart from the victim's testimony. The warning to the jury existed in no other criminal charges (Kinnon, 1981:43). The requirement was abolished by a 1976 Criminal Code amendment. However, judges are given discretion in presenting the cautionary instruction to the jury which in effect leaves open the option of the instruction in rape cases.

Implicit in corroborative evidence is the unrealistic fear that women will make false rape complaints against innocent men. "The motives seen as prompting false accusations of rape are: shame, protection of an innocent party, blackmail purposes, hatred, revenge and notoriety. The writer points out that to whatever extent these motives exist, they are outweighed by the disincentives to report rape and the ease with which modern criminal investigation and traditional legal rules can uncover them" (LeGrand, 1977:74). LeGrand contends that such ". . . fears have produced and sustained laws and attitudes that seek to protect the innocent from an unjust rape conviction, rather than to protect women from rape" (1977:74). Corroborative evidence will be significant in the successful prosecution of sexual assault cases and will concentrate on evidentiary factors independent of the victim's account of the crime.

Character and Status of the Rape Victim

The character and status of the rape victim is another issue that influences the extent to which the rape is prosecuted. "Because rape is a crime against property, its key legal element is the status and

character of the victim; that is, the judgement of wrongdoing depends upon the nature of the property in question (Clark & Lewis, 1977:117). They continue: "It is hardly surprising, therefore, that virgins and chaste wives are the most highly protected forms of sexual property within the system, and that these are the women which the law perceives as credible rape victims (Ibid, 1977:117). Even with restrictions on the questioning of a rape victim as to her character and past sexual experiences with other men questions may nonetheless be raised. An amendment to the Canadian Criminal Code, effective in 1976, (Section 142) restricts the questioning of the victim's past sexual experiences. The amendment requires advance notice in writing for any questions regarding the past sexual conduct of the victim with someone other than the accused. The judge will then decide during an in-camera hearing if the evidence is "necessary for a just determination of the case". The major drawback, according to Kinnon (1981:142) is that the decision on such questioning is left to the discretion of the presiding judge. Consequently, the reform leaves open the possibility of allowing the questioning of each victim.

The double standard in the law which concentrates solely on the character of the victim, as opposed to the defendant who is being tried, may be further aided by a subconscious adherence of the public at large to a double standard of sexual behavior for men and women. Gager and Schurr elaborate:

> Defense attorneys have routinely benefited from this fact, deliberately introducing questions which they know are not permitted merely to plant suspicion against the victim in the minds of judge and jury. Even if the prosecutor is on his toes and quickly voices objection, sustained by the judge, the damage is done, the victim is made suspect; her 'morality' rather than the accused's behavior becomes a

central issue. (1976:156-57).

The unreasonable relationship is drawn between the victim's prior sexual activities, whether factual or intimated by defense counsel, and the likelihood that she would have consented to the offence in question (Kinnon, 1981:41). Within this context, the perceived character and status of the rape victim are expected to exert the greatest influence on the outcome of the charges. It is anticipated that issues which concentrate for the most part on the victim's testimony will be those given the greatest weight in the prosecution's case.

The legal issues discussed have indicated that the victim, rather than the defendant, may be put on trial. Carrow (1980:175) states further: "In fact, there is evidence to suggest that rather than allowing false complaints to go to trial, this (trial) process tends to discourage many legitimate complaints." The unique cautionary measures that accompany a rape complaint can be traced back to the often-quoted statement of Lord Hale that rape is a charge "easily to be made and hard to be proved, and harder to be defended" (1778:635).

Conclusion

Several hypotheses emerge from the consideration of the unique legal elements in a rape charge. It is expected that the distinct legal considerations in a rape case will result in a low number of retained charges and a high number of negotiated pleas and dismissed charges. It is hypothesized that the character and status of the rape victim will be the major elements in dictating the strength of the prosecution's case. The issues of consent and corroboration, respectively, will follow in terms of importance for the prosecution's case. Finally, it is hypo-

thesized that the greater the amount of corroborative evidence the more likely is the rape or attempted rape charge to be retained as opposed to being dismissed or plea bargained.

A Feminist Theory of Rape: Women as Property

Feminist literature has sought to expose the social, political and legal inequities of rape within a male dominated society.[7] Feminists felt that the gravity of the offence had been ignored for too long. The most disturbing and incapacitating conception was perceived to be the stereotypic notion of rape as an exclusively sexual act. Griffin, in her article 'Rape: The All American Crime' (first published in 1971) was one of the first writers to gain recognition in relating rape to the notions of power and violence as opposed to sexual fulfillment as the major catalyst for the occurrence of rape (1975:36).

The present research will be focusing on the legal aspects of rape and a legal analysis necessitates a theoretical framework that will deal with the realities of rape articulated in the criminal laws. Feminist literature has revealed that rape laws protect only certain victims; those that are felt to be deserving of the protection of the law.

In viewing rape historically, one can see that rape laws are basically property laws. Griffin traces the concept of women as property back to the civilization of man whereby women forfeited their independence and rights for the chivalry that accompanied civilization (1975:27). The price of women's protection by some men against the abuse by other

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[7] See generally, Brownmiller, 1975; Clark & Lewis, 1977; Connel et al., 1974; and Griffin, 1975.

men was high. The price of civilization is carried one step further by Brownmiller: "The historic price of woman's protection by man was the imposition of chastity and monogamy. A crime committed against her body became a crime against the male estate" (1975:7). The value of women was determined by the ownership of fathers or husbands. The legal consequences of historically viewing women as property are not only discriminatory to women as a group, but also serve to differentiate between certain classes of women:

> First, just as with any other property offence, the punishment had to fit the crime. The punishment corresponded to the value of the goods stolen, and to the amount of damage done in the trespass: the more 'valuable' the rape victim, and the more damage done to her property value, the harsher the penalty. And 'value' where a woman was concerned, depended strictly upon her economic status as determined by her father or husband, and her desirability as an object of an exclusive sexual relationship. (Clark & Lewis, 1977:116).

Not surprisingly, severe punishment and frequently death was reserved for the rape of virgins and married women of high status.[8]

The designation of women as property has persisted. The fact that a husband cannot be convicted of raping his wife in Canada supports this notion. The Criminal Code in Canada makes it clear that rape will be defined when a male has forced sexual intercourse with a female who is not his wife (1980:section 134).[9] It is also evident that rape still diminishes a woman's desirability as a potential or actual sexual object

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[8]See Brownmiller, 1975:Chapter 2 for an historical account of the designation of women as property.

[9]Sexual assault legislation, which was instituted in Canada in 1983, abolishes the spousal immunity clause that existed during the study period.

as reflected in rape laws. "Evidence of penetration is required only because penetration is seen as a robbery of the right to sexual access. If a man attacks a woman and forces her to perform any other sexual act, it is not rape" (Medea & Thompson, 1974:121).

The designation of women as property, however, has not been confined to feminist writings. Medea and Thompson refer to an article in the Yale Law Journal (1952-53) that inadvertantly upholds this notion:

> The consent standard in our society does more than protect a significant item of social currency for women; it fosters and is in turn bolstered by a masculine pride in the exclusive possession of a sexual object. The consent of a woman to sexual intercourse awards the man a privilege of bodily access, a personal 'prize' whose value is enhanced by sole ownership. An additional reason for the man's condemnation of rape may be found in the threat of his status from a decrease in the value of his sexual possession which would result from forcible violation. (1974:13).

Clark and Lewis outline the present day notion of women as property as it relates to the charge of rape. They maintain that the woman must establish that she had a prior property value which had been violated and that she actively resisted that violation. On the other hand, if the woman has no property value which had been violated or if she placed herself in a vulnerable situation that resulted in rape, she will be perceived as something less than a genuine rape victim (1977:156).

The perception of the credible or genuine rape victim will be ascertained to the extent that she possesses positive moral and social attributes. The victim characteristics of marital status, criminal record and occupation are indicators of the status and character of the victim. Similarly, credible rape victims will include those who have actively resisted the violation by having not been careless or partly responsible for the occurrence of the violation in question. The cir-

cumstances of initial contact between the victim and the offender and alcohol use by the victim will serve as the indicators of perceived victim responsibility for the offence. Burgess and Holmstrom, in their study of rape that included conversations with police officers, found that: "A case is strong if the victim was not exposing herself to risk . . . . A case is weak if she was taking chances." (1978:42-43).

Medea and Thompson further delineate those circumstances where the victim's behavior has an effect on the degree of responsibility attributed to her. They state;

> If the victim has given the slightest indication of seductiveness, ie., wearing a short skirt, or is found in a compromising situation, ie., being on the streets alone at night, hitchhiking or where she rejects the standards of respectability, ie., drinking or picking up men in a bar, using indecent language, or any subtle or blatant behavior that can be taken by society as confirmation that the victim not only enjoyed the encounter but precipitated it. (1974:43).

The notion of victim responsibility or precipitation as stated by several researchers (Amir, 1971; MacDonald, 1971) has drawn a strong reaction in both feminist and academic literature. The contention is that a woman should have control over her body and has the right to withhold consent regardless of the circumstances involved. "There must be a general recognition that 'No' means No and that the presence of force or coercion negates the possibility of consent" (Kinnon, 1981:40).

The notion of women as property will be used in the present research as a major determinant in the outcome of rape and attempted rape reports. The status and character of the victim and the degree of attributed victim responsibility will serve as the components for the determination of the credible or genuine victim. There are several hypotheses that emerge from the consideration of the genuine and doubted victim. It is

hypothesized that the higher the victim credibility as measured through positive moral and social attributes, the more likely is the rape or attempted rape report to be brought to trial on the original Crown charge. In contrast, the lower the victim credibility, measured through negative moral and social attributes, the more likely is the case to be dismissed or plea bargained. It is also hypothesized that those rape and attempted rape reports where the victim is perceived to have been careless or at least partly responsible for the offence will be less likely to be retained and more likely to be dismissed or plea bargained.

Rape as a Normal Crime

The filtering process in the prosecution of rape cases can be examined with respect to its applicability as a normal crime. David Sudnow defines normal crimes as ". . . the typical manner in which offenses of given classes are committed, the social characteristics of the persons who regularly commit them, the features of the setting in which they occur, the types of victims involved, and the like." (1969: 313-14). The use of plea bargaining is then dependent upon the features of a crime that categorize it as a typical or normal offence type. Sudnow, in his discussion of the public defender and the district attorney, states that after a period of repeated interaction and bargaining, unstated recipes emerge: recipes that are ". . . specifically appropriate for use in instances of normal crimes and in such instances alone" (1969:317).

The normal crime in question must be similar to other crimes of the same offence type, according to the elements contained in the definition of a normal crime. A crime that does not fit the pattern of a normal one

will be less likely to be plea bargained, especially if the crime deviates from the normal offence pattern for a particular offence type. The central feature in the reduction of charges is the precarious balance between a defendant getting his due as opposed to getting something less than he might, as an incentive to plead guilty.

The present research will concentrate on the rape and attempted rape reports from the study period to examine the decision-making process involved. An attempt will be made to determine the point at which a particular rape or attempted rape report will be filtered out of the criminal justice system. It is expected that the cases which culminate in a trial situation will be a select number of atypical sexual assault offences. The term "atypical" represents the reports that do not fit the usual pattern in terms of frequency for the occurrence of the crime. The atypical reports would be less likely to be filtered out of the criminal justice system stopping short of a judge or jury trial.

It is proposed that the reports featuring the characteristic of more than one offender with a victim will not fit the pattern of a normal or typical sexual offence in relation to the number of offenders involved. Among rape and attempted rape reports made to the police the great majority involve a single offender with a single victim. Conversely, the reports made to the police that involve one victim and multiple offenders occur with far less frequency.[10] The multiple offender cases examined will be those occurring during the study period that have been reported to the police. As such, the cases represent only the ones that

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[10]Svalastoga, 1962 and MacDonald, 1971 in their studies of reported rapes found that 16 and 18.5 percent respectively, were multiple offender assaults.

have been reported to the police and should not be taken to guage the occurrence of multiple offender activity for the study period in general.

A comparison will be made between single and multiple offender cases by examining the course that each of the respective cases takes in the criminal justice system. Rape and attempted rape charges that involve one offender are expected to fit more closely the pattern of normal or typical crimes in contrast to multiple offender charges that are expected to fit the pattern of atypical crimes. Consequently, the single offender cases are expected to be more likely to be filtered out of the criminal justice system than the multiple offender cases. It is hypothesized that the rape and attempted rape charges that involve multiple offenders will be more likely to be retained as opposed to being dismissed or plea bargained.

CHAPTER III

RESEARCH METHODOLOGY

Data Collection Phase

Research for the study consisted of the examination of the rape and attempted rape reports made to the police for the years 1976 and 1977 in Winnipeg. The reports were then followed through to the criminal justice system to determine the final outcome of the charges from the study period. Personal interviews with the prosecuting attorneys involved enabled an examination of the course of the charges at the Crown and court levels. The methods employed for the data collection phase will now be presented.

Police Files

The first phase of the data retrieval consisted of the recording of the information from the rape and attempted rape reports made to the City of Winnipeg Police Department for the two-year study period. Information was collected from the police files regarding the characteristics of the victim, the offender, and the actual offence. A standardized data collection instrument was used to record the pertinent information (See Appendix B).

The instrument was divided into five sections: description of the offence, description of the victim, description of the offender, the police process and the medical process. This information, when available, was used to analyze the relationship between the type of rape or attempted

rape reports and the eventual outcome of the charges. Data collection during the initial phase resulted in the recording of 126 rape and 29 attempted rape reports (N=155) from the police files for the years 1976 and 1977.

Interviews with the Prosecutors

The second phase of data retrieval involved following through on the reports made during the study period to the office of the prosecution. Information on the outcome of the charges was received from the Department of the Attorney General of Manitoba for the rape and attempted rape reports that had proceeded past the police level. The prosecutors (N=18) who had handled the applicable cases (N=73) at the Crown level were interviewed regarding the process involved in the eventual outcome of the charges.[1] There were five interview schedules used for the charges: retained[2], dismissed, plea bargained on charge, plea bargained on sentence or disposed of by a guilty plea without any concessions (See Appendix C). The questions contained in each of the interview schedules were aimed at capturing the process involved in the final outcome of the charges. The examination of the Crown attorney's files was originally planned to complement the interview but the legal confidentiality of much of the information (ie. correspondence between attorneys) prevented release for the purposes of the study.

In addition, a general interview schedule was administered to the

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[1]The names of the applicable prosecutors were obtained from the police files or from the circulation of a list of the applicable cases to prosecuting attorneys.

[2]The term retained charges refers to those charges that are kept on the original Crown charge laid until the final disposition.

prosecutors to examine the decision-making process involved in the handling of rape cases. The interview schedule used covered the general legal and individual guidelines used for the prosecution of a rape charge. A number of the questions contained in the schedule were taken from a study by Duncan Chappell et al. (1976). The results from the interviews will be presented in Chapter VI in conjunction with the results obtained from the American study by Chappell. The interview schedule itself is presented in Appendix D. The strength of evidentiary factors and victim characteristics was analyzed to determine the corresponding effect on the options utilized by the prosecutor. Crown attorneys were also questioned with respect to the existing strengths and weaknesses in rape laws and any potential areas for improvement in the rape laws.

Computer Program

The information collected from the police and Crown levels was prepared for entry into a computer. The information, comprising both closed and open-ended categories, was coded and placed on the computer utilizing the computer program "Statistical Package for the Social Sciences" (S.P.S.S.) which is specifically designed for the analysis of social science data. Analysis was then performed on the data to determine the process involved and the final outcome of the rape and attempted rape reports made to the Winnipeg Police for the years 1976 and 1977.

Limitations of the Data

Police Files

The information on rape and attempted rape reports made to the police for the years 1976 and 1977 in Winnipeg were recorded from the files located at the Winnipeg Police Department. Consequently, there

are a number of salient factors that must be acknowledged in using the information as the basis for a study of rape and attempted rape over a two-year period.

The use of the police files as a secondary data source is limited in that the account of the sexual assault is based on the report written by police officers and is not a direct victim account of the incident. It has the potential of being a biased version and is accurate only to the extent that the police officers have recorded the particulars correctly and completely (Katz, 1979:26). The problem of complete information is further constricted by the use of non-standardized file sheets where the information is recorded by the police from the interview(s) with the victim.

Another major problem associated with the use of official statistics from the police department is the substantial amount of under-reporting by victims. Estimates of the unreported rape occurrences to the reported rape occurrences range from conservative ratios of 4:1 (President's Commission, 1967:21) to highs of 20:1 (Gager & Schurr, 1976:91). The real misuse of official statistics is to attempt to guage rape activity or to infer the extent of criminal behavior based on those sources (Connidis, 1979:397).

The data utilized for the present study are not representative of rape activity in Winnipeg for the two-year study period. Rather, it is representative of the victims who reported the offence to the police and subsequently had a police file prepared. The use of the official statistics is reliable to the extent that it represents a select group of rape victims who have made the decision to enter into the criminal justice system by making a report to a police agency.

The data do not include those victims who report only to another agency, ie. medical or rape counselling facility, or who choose not to report the offence to any agency at all. McCahill and others (1979:83) hypothesize that victims from lower socioeconomic backgrounds may be forced to use police agencies to make reports whereas more affluent victims may seek help in the form of comfort or support privately without having to use public institutions. They further state, based on their study results: "Of the 634 victims who were asked why they reported the rape, 241 (38%) stated that they reported because of a desire for help or comfort, whether physical, emotional or medical" (Ibid:83). The information from the present study does not allow for a valid evaluation of the proportion of victims from lower socioeconomic backgrounds who report to the police.

Nonetheless, the information from the police files for the present study, in perspective, provides an excellent opportunity to examine the official response of the criminal justice system to those reports that begin at the law enforcement level. However select the reported cases may be, there is a filtering system that operates from the law enforcement level to the judicial level and determines the final outcome of the initial reports that are made. Connidis (1979:397-398) cautions that more research is needed where the entire system of criminal justice is examined (systems perspective) as opposed to the preponderance of research that focused on only one subsystem such as the police.

The present study has attempted to examine rape and attempted rape reports in relation to the entire criminal justice system. The response of the system and the corresponding filtering process of reports will enable a more realistic look at the interrelationship between subsystems

and the degree of correspondence between the legal and actual decisions made by members of the system.

Interviews with the Prosecutors

The information for those cases that proceeded from the police level to the prosecutorial level and finally, the court level (if applicable) was obtained from personal interviews with the prosecutors involved in the cases reported during the study period. The use of the files at the Attorney General's Department containing the case information and correspondence between legal counsel and police could not be secured as much of the information contained is privy to the persons involved. Although the files were considered a valuable source of information regarding formal and informal decision-making, the interviewed prosecutors were, for the most part, able to provide detail on the course of the charges after leaving the police level.

CHAPTER IV

THE FILTERING SYSTEM

Introduction

The purpose of the following chapter is to give an overall view of the filtering system at the police, Crown and court levels. The filtering system refers to the termination and/or reduction of rape and attempted rape reports as they proceed through the criminal justice system. The filtering system of rape and attempted rape reports will be separated into three levels: the police, the Crown and the court. The decisions made at each of these levels will be discussed, along with the resultant filtering down from the total number of initial reports made.

The filtering of charges at the police level will be presented by case; that is, multiple offender cases will be dealt with as simple cases and not in terms of the number of offenders involved.[1] At the Crown and court levels, where multiple offender cases may be separated by differing courses of action, the data will be discussed in terms of the number of offenders. Each of the three levels have termination points in filtering. The police level will be concerned with cases up until the point when they are handed over to the prosecutor's office.

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[1] At the police level, reports are dealt with as simple cases whereas at the Crown level, cases are separated by differing courses of action for individual offenders. The summary table for the police level will list both the number of cases and the number of offenders involved.

The Crown level will follow, up to the point of the preliminary hearing. Finally, the court level will include the offenders from the preliminary hearing to the final disposition of the charges.

The Police Level

The total number of cases that emerged from the study period for the two-year period 1976 and 1977 was 155; of those cases, 126 (81.3 percent) were classified by the police as rape and 29 (18.7 percent) were classified as attempted rape. For each case there was one victim, although the offenders ranged in number from one to five. The victims in all of the cases were female, and in all but one case[2], the offenders were male. The total number of victims was 154. The total number of offenders, with the inclusion of multiple offender cases, was 211.[3]

The filtering system is evident from the time a report is made by the victim to the police. The level of the police is the first official stage where reports may be filtered out or terminated. Reports were classified into those proceeding to the office of the prosecution and those terminated at the police level. A total of 73 reports (53 rape and 20 attempted rape reports) representing 47.4 percent of the total cases were passed on to the level of the Crown for possible prosecution. The police classified 68 of the reports as founded and left 5 reports unclassified; the designation of founded or unfounded for the latter 5 cases was left with the prosecutor's office. The total number of active reports during the initial screening by the police was 73 cases. The alternate

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[2] In one case a female and two males were given a rape-joint charge by the police. The female was charged as being an accomplice (helping subdue the victim) in the commission of the attack.

[3] One offender's charge was excluded as there was no information available on final disposition.

disposition, that of the termination of the report at the level of the police, comprised 52.6 percent (N=81) of the total. Cases were terminated for three major reasons.

a) Unfounded Designation - The rationale for an unfounded designation on the part of the police can be viewed as a subjective or a practical decision. There are some reports made where the police simply do not believe that a rape or attempted rape has occurred. In other cases, the police foresee prosecutorial difficulties in proceeding with the case. The difficulties present, whether victim or evidence-related ones, can affect the chances of proving in court that a rape has occurred regardless of the veracity of the particular charge.

Clark and Lewis (1977:59) contend that the police should not carry the sole burden for an apparent thwarting of justice at this point. The police must be realistic to a certain extent in foreseeing the reactions and prejudices that may emerge from the prosecutors, judges and juries who will ultimately make the decisions regarding the charges. The larger concerns of police efficiency, Crown efficiency and that of the court system must be reconciled by the police in their decision to retain or filter out a charge. "As a result, the police are forced to operate as an elaborate screening device, a highly selective filter, through which only the 'best' of even the founded cases proceed" (Clark & Lewis, 1977: 59). Consequently, one would expect to find the greatest amount of filtering out of reports at the official level of the police. In addition, there are cases where victim denial of the offence and victim apprehension about proceeding with a charge lead to an unfounded designation. There were two additional cases where there was no information on the reason for an unfounded designation. The police classified 27.3 percent (N=42)

of the cases as unfounded. The specific reasons for an unfounded classification will now be discussed.

In 5.2 percent (N=8) of the cases the police referred specifically to evidentiary problems as the basis for an unfounded report. The evidentiary problems concerned lack of evidence, lack of resistance and the drunk or drugged condition of the victim at the time of the offence. Intoxication of the victim, according to the police files, was a factor in six of the reports.

For 10.4 percent (N=16) of the cases, a combination of police and victim apprehension about proceeding with a charge led to an unfounded report. The victim, in most cases, was generally uncooperative and apprehensive about proceeding with a report. In one case the victim was legally separated from the offender and in another two cases the offender was the ex-boyfriend of the victim. Three of the victims in this group were referred to as having serious drinking problems while two were referred to as simple minded and one as severely retarded.

In 5.2 percent (N=8) of the cases the unfounded reports were labelled as false complaints. In five of the reports the victim told the police that the allegation of rape was false. Out of this group, police files contained descriptions of one of the victims as incorrigible, one as a neglected child and one as being involved in a lovers' quarrel. There were three cases where the police classified a false complaint without an actual denial of the offence from the victim. Two of these victims were described as being in need of psychiatric help. An unfounded designation was given by the police on the first contact with the victim in four of the reports, on the second contact for three of the reports and on the third contact for one of the reports.

Finally, in 5.2 percent (N=8) of the cases the victim did not initially contact the police. Instead, a family relative or witness would make the decision to report the offence to the police. The victims in this group, when contacted by the police, denied that a sexual assault had taken place or refused to speak to the police about the incident. In all but one of the cases, the report was terminated after the initial contact between the police and the victim.

b) No Formal Complaint by the Victim/ Victim Drops Charges at the Police Level

The next two situations which resulted in the termination of a report at the level of the police involved victim initiation. In some instances, the victim refused to make a formal complaint after relating the offence to the police. In other cases, the victim decided to drop charges at the police level before it was handed over to the office of the prosecution. A victim might have changed her mind and decided that she did not want to participate in the lengthy process required for a criminal prosecution. The probability of reliving the sexual assault while testifying in the courtroom is an effective deterrent to many victims in the initial stages of police action. Fear of testifying and refusal to participate in the judicial system proceedings caused some victims to refuse to make a formal complaint or to drop a complaint before Crown involvement.[4] In the present study, 6.5 percent (N=10) of the victims refused to make a formal complaint while 4.5 percent (N=7) of the victims dropped the charges at the police level before Crown involvement.

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[4]There are also those victims who decide not to report the offence to the police at all and consequently are not represented in the study.

The reasons given by the victim to the police for the termination of police action are as follows: family pressures (two victims); refusal to testify in court (five victims); victim did not initially make the report (three victims); fear of reprisal from the offender (one victim); victim only wanted stolen items returned (one victim); and victim decided against any further police action (five victims).

c) No Suspect Apprehended - Finally, there are some reports made where the victim wishes to proceed on a sexual assault charge but a failure to apprehend the offender renders further police action impossible. At times, a victim does not get a good enough look at the offender to give the police an adequate description. In other instances, even a thorough description does not suffice; a name or a license number might be needed in order for the police to apprehend the suspect. The absence of witnesses during the offence further complicates the problem of identifying and apprehending the suspect. In the present research, 14.3 percent (N=22) of the cases had no suspect(s) identified. Reports of this nature are generally kept on file should any new information concerning the identity of the suspect become available.

Conclusion

The filtering out of reports at the police level accounted for the termination of 52.6 percent (N=81) of the cases and 57.8 percent (N=122) of the offenders' charges in the criminal justice system. Police and victim apprehension about proceeding with a report, in addition to the failure to identify and locate a suspect, emerged as the salient factors in the termination of rape and attempted rape reports at the police level. A summary of the filtering system at the police level is presented in Table 1.

TABLE 1

Summary of the Filtering System of Rape and Attempted Rape Reports at the Police Level by Case and Number of Offenders for 1976 and 1977

Initial Reports Made to the Police	Number of Cases 154		Number of Offenders 211	
Filtering System at the Police Level	Number	Percent	Number	Percent
Unfounded Designation	42	27.3	61	28.9
No Formal Complaint Made by the Victim	10	6.5	22	10.4
Victim Drops Charges	7	4.5	16	7.6
No Suspect Apprehended	22	14.3	23	10.9
Total Filtering Out of Charges at the Police Level	81	52.6[1]	122	57.8
Number of Charges Remaining	73	47.4	89	42.2

[1]All of the categories may not add up to the total percentage given as a result of the rounding of percentages within categories.

The Crown Level

The next official agency to deal with a report of rape or attempted rape is the prosecution.[5] "After a case has been referred to the Crown counsel, it may be proceeded with, withdrawn or the charge originally laid may be altered . . . . The decisions of prosecutors will reflect the priorities of their office which may not be similar to those of the police" (Griffiths et al., 1980:53).

The handling of the reports by the Crown will now be discussed. As

[5]The prosecutors are located within the Provincial Attorney General's Department of Manitoba.

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mentioned previously, 47.4 percent (N=73) of the cases were passed on to the level of the Crown during 1976 and 1977 involving 42.2 percent (N=89) of the offenders. For five of the reports police were unsure whether they should be classified as founded or unfounded. The reports were given to the Crown's office for their opinion as to the correct classification. In such cases, the decision was made by a senior prosecutor in the Attorney General's Department. The Crown classified three of these reports as founded and two as unfounded. The two unfounded reports resulted in the termination of charges for 2.4 percent (N=5) of the offenders. Preliminary screening by the Crown resulted in 46.4 percent (N=71) of the cases being proceeded with comprising 40.1 percent (N=84) of the offenders.

For 3.3 percent (N=7), however, the victim was instrumental in a total dismissal of charges after the case had reached the prosecutor's office. In these cases, the victim decided that she did not want to proceed any further with the case. In all of the cases, this occurred before the preliminary hearing had begun. If the victim refuses to continue with the case, the prosecutor generally has no recourse but to drop the charges for want of prosecution.[6] It would be difficult to conduct a trial without the victim for she is the key witness for the Crown's case.

The filtering out of charges at the Crown level resulted in 5.7 percent of the charges (N=12) being terminated. The percentage of offenders

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[6]While the prosecutor does have a legal recourse provided for in the Criminal Code (Section 635) to send a victim (in her role as a witness) to jail until she agrees to testify, the use of this method is generally considered to be outweighed by the prospect of an uncooperative victim in the proceedings.

whose charges remained in effect now stands at 36.8 (N=77). Although the actual filtering out of charges at the Crown level was relatively minimal, there were modifications that took place with respect to the remaining charges. Included were reclassification of original police charges, the use of concomitant and directly-related additional charges, and the use of plea bargaining on charge and sentence.

Re-classification of Police Charges

At this point the Crown is in charge of the reports and may classify charges according to his or her discretion. Charges may be re-classified to lesser ones, or to alternate charges that are deemed to be more appropriate for the particular offence involved. Initially, the prosecutor's office did not dismiss any of the charges altogether, but rather decided to file lesser charges from the original police classification for 4.3 percent (N=9) of the offenders. The study found that three charges of indecent assault on a female, three charges of contributing to juvenile delinquency, two charges of sexual intercourse with a female between fourteen and sixteen years and one charge of break and enter with intent to commit rape were laid as alternatives to the original police charges.

Additional Charges

The prosecutor may also decide to include additional charges apart from the major charge. The information that is contained in the Crown report during the filing of charges will serve to accommodate the inclusion of additional charges. The additional charges that are laid can serve two major purposes. A case that contains evidentiary problems, or in which there are foreseeable problems with the victim's testimony can

often be remedied with the possibility of conviction on one of the lesser, additional charges, should the case result in an acquittal for the accused on the major charge at trial. A charge of rape where proof of penetration is problematic could contain a back-up charge of indecent assault on a female so that acquittal of the major charge leaves open the option of guilt on the latter charge. The second purpose for the prosecutor is the use of additional charges as a plea bargaining tool (Buckle and Buckle, 1977). The problematic case may best be served by a negotiated plea or sentence where conviction is almost certain. Plea bargaining will eliminate the need for a trial and the uncertain outcome inherent in court proceedings. There are two types of additional charges that were utilized by the Crown for the study period: concomitant offence charges and directly-related additional charges.

Concomitant Offence Charges

Concomitant offences are those that are committed apart from the sexual assault. Examples of concomitant offences include break and enter, or burglary. The information taken from the police reports indicates that the police listed separate additional offence charges for a number of the offenders apart from the sexual assault charge. A frequency distribution of concomitant offences is presented in Table 2.

TABLE 2

Concomitant Offences Contained in the Police Files for the Years 1976 and 1977

Concomitant Offence	Number of Offenders
Robbery or Theft	6
Attempted Murder	1
Assault	1
Theft and Assault Causing Bodily Harm	3

The Crown acted on only one concomitant charge, that being assault (on a relative of the victim by the offender). For the remaining concomitant charges there were two instances where the Crown did not file the robbery or theft charges with the major charges; the rest of the charges were contained in the "no suspect apprehended" and "victim did not make a formal complaint" categories.

Directly-Related Additional Charges

Directly-related additional charges are those involved in the commission of the sexual assault. Offences that are directly-related ones include forcible confinement and gross indecency. The data reveal that of the twenty-six offenders who went to trial on the original charge(s) laid by the Crown, there were twelve offenders who had directly-related additional charges included with the major sexual assault charge. A frequency distribution of directly-related additional charges for those offenders whose original Crown charge was retained, is presented in Table 3.

TABLE 3

Frequency Distribution of Directly-Related Additional Charges Included with Original Crown Charges for the years 1976 and 1977[1]

Directly-Related Additional Charges	Number of Offenders
Assault Causing Bodily Harm	4
Gross Indecency	6
Indecent Assault	4
Possession of a Dangerous Weapon	1
Kidnapping	1
Unlawful Confinement	1
Forcible Confinement	4

[1]For some of the offenders there were several additional charges laid. The number of offenders with at least one additional charge was 12.

Further examination of the data from the study period indicate that there were no instances where the accused was acquitted on the major sexual assault trial charge and found guilty of the directly-related additional charge(s). The disposition outcome of the directly-related additional charges reveals that conviction resulted for six of the applicable twelve offenders on both the major charge and at least one of the additional charges; the remaining six offenders were either found guilty of the major charge only (N=4) or acquitted on the major charge and the directly-related additional charges (N=2).

Plea Bargaining

The use of plea bargaining as a method of disposing of cases can be facilitated by the use of additional charges. The Crown is able to secure a conviction without a trial and the defense is able to achieve

the dismissal of the major and more serious charge and offer their client a lower penalty for a less serious charge. The client may also be offered a pre-determined sentence or sentence range in exchange for a guilty plea to the original charge. In plea bargaining arrangements, the prosecutor and defense counsel confer with each other and they may reach a mutually satisfactory agreement approved by the defendant that will be subject to judicial approval.

i) Plea Bargain in Relation to Charge - In the present study, there were 3.3 percent (N=7) of the offenders who agreed to plea bargain in relation to charge before the commencement of the preliminary hearing.[7] The alternate charges that were accepted in exchange for a guilty plea are presented in Table 4.

TABLE 4

Plea Bargaining in Relation to Charge That Took Place Before the Commencement of the Preliminary Hearing for the Years 1976 and 1977

Plea Bargain Charge	Original Crown Charge	Number of Offenders
Sexual Intercourse with a Female Between 14-16 Years	Rape	1
Contributing to Juvenile Delinquency	Rape	2
Indecent Assault on a Female	Rape	1
Indecent Assault on a Female	Attempted Rape	3
	Total	7 (3.3%)

[7]The information regarding the stage at which plea bargaining took place was obtained from personal interviews with the prosecutors who had handled the charges.

ii) Plea Bargain in Relation to Sentence - The present study contained 1.4 percent (N=3)[8] of the offenders whose charges were plea bargained with respect to sentence prior to the preliminary hearing. The charges that were plea bargained in relation to sentence along with the respective sentences that were submitted by the Crown and defense counsel are presented in Table 5.

TABLE 5

Plea Bargaining in Relation to Sentence That Took Place Before the Commencement of the Preliminary Hearing for the Years 1976 and 1977

Pre-Determined Sentence	Crown Charge	Number of Offenders
5-10 Year Sentence Range for Two Charges of Rape	Rape	2
1 Year Sentence	Attempted Rape	1
	Total	3 (1.4%)

Conclusion

The filtering system in effect at the Crown level resulted in 10.4 percent (N=22) of the offenders' charges being terminated or disposed of in the criminal justice system. Of these offenders, there were 5.7 percent (N=12) whose charges were terminated altogether, while 4.7 percent (N=10) were involved in a final disposition of the charges after plea bargaining with respect to charge or sentence had taken place. The percentage of offenders remaining in the criminal justice system for a dis-

[8] One of the offenders had two separate charges of rape that were plea bargained in relation to sentence. The offender is represented as two offenders, reflecting the two separate reports of rape involved.

position of their charges at the end of the Crown level was 31.8 (N=67). A summary of the termination and disposal of reports at the crown level is presented in Table 6.

TABLE 6

Summary of the Filtering System of Reports at the Crown Level by the Number of Offenders

Filtering System at the Crown Level	Number of Offenders Number	Percent
Charges Terminated		
a) Crown Unfounded	5	2.4
b) Victim Withdraws Participation Before Preliminary Hearing	7	3.3
Charges Plea Bargained		
a) Plea Bargain Charge	7	3.3
b) Plea Bargain Sentence	3	1.4
Total	22	10.4

The Court Level

The next stage, the court, will result in the final disposition of the charges for those offenders still in the criminal justice system. The full spectrum of the court level can involve a preliminary hearing, a trial, sentence and an appeal. Charges at the final level can be disposed of in a number of different ways: charges may be dismissed, plea bargained on charge, plea bargained on sentence, retained, or finally, may involve a guilty plea without concessions. The Crown continues to be very influential at the court level and may attempt to alter the course of the proceedings at any point.

An outline of the stages at the court level will now be presented.

The purpose of the preliminary hearing is to determine whether or not the Crown has sufficient evidence to proceed with the charge(s) laid. The judge who presides over the hearing will be responsible for the determination of sufficient evidence. "At the hearing . . . the judge determines whether a prima facie case exists, and, thus, whether a trial . . . is warranted" (McCahill et al., 1979:160). The Crown prosecutor will be responsible for presenting the evidence against the accused. Defense counsel will generally attempt to undermine the validity of the evidence presented by way of victim cross-examination, on behalf of their client. The preliminary hearing will be the testing ground for the defense, and the Crown to a lesser extent, in terms of attempting to expose any victim or evidentiary weaknesses.

The initial pre-trial hearing has been aptly referred to as a fishing expedition for the defense counsel. Intimidation of the victim through irrelevant and personal questioning is by no means ruled out as it will reflect on victim credibility. "If the defense can show that the victim is not the kind of person who can be believed, then her claim that she did not consent to this particular act of sexual intercourse will be thrown into question" (Clark & Lewis, 1977:47). Defense counsel is working toward a dismissal of the charge(s) at the most, and intimidation of the victim at the least. It is crucial that the Crown counsel intervene and put forth objections to the harassment of the victim by the defense counsel. It is the responsibility of the presiding judge to determine which questions are pertinent so that the degree of intimidation to the victim will ultimately depend on the particular judge, prompted by Crown objections, at the preliminary hearing.

The preliminary hearing emerges as the crucial phase at the court

level since it affects the charges and all that follows. First, the charges may be dismissed by the judge at the conclusion of the hearing if he or she does not think that the evidence warrants a trial. Second, the Crown may assess their chances at trial as poor, based on victim performance and evidence presented, and opt for plea bargaining. Finally, the victim may terminate the charge(s) by withdrawing her participation in the proceedings.

A trial will follow the preliminary hearing if the judge has decided that a case exists based on the original charges, or if the Crown has laid subsequent charges after an initial judicial dismissal of the original Crown charge(s). The mode of trial may be either by a judge sitting alone (bench trial) or by a judge and a jury (jury trial). Evidence and victim testimony will again be presented, and a verdict of guilty or not guilty on the charges will be the responsibility of the judge or jury, respectively, depending upon which type of trial it is. Crown objections to defense questioning of the victim's character and behavior are especially crucial in a jury trial where an unsuspecting jury may be swayed against victim credibility. "If his (defense) questions are allowed at all, the damage is done, even if there is no basis in fact for his insinuations" (Clark & Lewis, 1977:52).

At the conclusion of the trial both counsel will present their summations, either to the judge or to the jury, depending on the type of trial. In the case of the jury trial the judge will review the facts and instruct the jury on the law as it pertains to the particular sexual offence. The use of the cautionary instruction of the judge. The verdict will then be returned by either the judge or the jury. The judge, however, passes sentence in either of the two trial situations. If a verdict

of guilty is returned, the judge will set another date for sentencing. The sentence given can involve incarceration, probation or a fine, or any combination of the above, depending on the sexual offence involved.

After the trial has ended the Crown or defense counsel may appeal the outcome. The Criminal Code (1980: Section 603) outlines that an appeal can be made on behalf of the convicted person against his conviction or the sentence passed, provided that the sentence is not one fixed by law. Sentences for sexual offences are not fixed by law, and can therefore be appealed. The defense counsel, on behalf of their client, may appeal the conviction on a question of fact or law or a combination of the two. The Crown, in turn, can appeal the sentence passed or an acquittal of the accused that involves a question of law alone. The Crown has a narrower scope of appeal rights. An appeal by the defense or the Crown could result in a new trial, thereby extending the final disposition of the case.

The laws pertaining to rape and attempted rape thus have the potential to necessitate the victim's presence (as the main witness) at the preliminary hearing, the trial, and possibly an appeal. The filtering process for the study period at the various stages of the court level will now be discussed.

Dismissal of Charges

The dismissal of Crown charge(s) at the court level can occur at any time after a preliminary hearing date has been set and can result from decisions made by the various persons involved at this level. Data from the study period indicate that the victim, the Crown psychiatrist, the co-accused and the judge at the preliminary hearing were instrumental

in a dismissal of the Crown charges.

The preliminary hearing is a time of much apprehension for many victims. Victim expectations or actual participation in the hearing can lead to victim withdrawal of participation in the process. McCahill and others attribute this phenomenon to a number of factors:

> The lack of preparation or support, the prospect of speaking publicly (often for the first time) about a humiliating experience, and the necessity of confronting the offender may contribute to the high rate of victim absence at the preliminary hearing. (1976:167).

At the court level, there were 1.9 percent (N=4) of the offenders whose charges were terminated as a result of the victim withdrawing her participation in the proceedings. In one instance the victim withdrew her participation once the preliminary hearing was in progress. The remaining offenders (N=3) had their charges terminated after the victim refused to appear at the trial.

The Crown psychiatrist was the major force behind a dismissal of charges for .9 percent (N=2) of the offenders. The psychiatrist would come to the conclusion that the accused was insane and therefore not fit to stand trial. The Crown, in light of the psychiatrist's decision, then elected to forego the trial situation and instead dismissed the charges. The Crown and defense counsel would then agree upon a consent committal and the accused would be kept in custody for mental rehabilitation for an indeterminate period of time. In both cases, the consent committal was agreed upon before the preliminary hearing began and will not be considered as valid dismissals as a period of detention is involved.

In addition, there was one accused (.5 percent) who had his charge dismissed at the request of his co-accused. The Crown accepted the offer

in exchange for a guilty plea from the co-accused, against whom more evidence was held. The dismissal of charge for one of the accused occurred before the two accused men were to go to trial. This case represents the single occasion where a plea bargain was achieved without a concession in terms of charge or sentence.

Finally, the judge was responsible for the termination of charges at the conclusion of the preliminary hearing. The judge at the hearing will determine whether the charge(s) will be brought to trial or whether they will be dismissed. The data indicate that the charge(s) for 3.8 percent (N=8) of the offenders were determined to contain insufficient evidence and were subsequently dismissed by the judge. The total percentage of offenders whose charges were initially dismissed stands at 9.0 percent (N=19).[9]

The Crown, in turn, laid subsequent charges for 6.2 percent (N=13) of the accused males who had their original Crown charges dismissed. The judge at the preliminary hearing was responsible for the initial dismissal of charges for 5 of the accused. In another case, the victim decided to discontinue with the charges before the preliminary hearing began whereupon the Crown laid a charge of assault causing bodily harm on behalf of the victim's sister against the accused. For the remaining 7 offenders, there was no information available as to the initial dismissal of charges. Data were available for the outcome of the subsequent charges: 2.8 percent (N=6) of the accused were found guilty; .9 percent

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[9]Aside from the 13 recorded dismissals, there were 6 accused for whom there was no information available as to when the charges were initially dismissed and whether the victim, the prosecutor or the judge was instrumental in that decision.

(N=2) of the accused were found not guilty; .9 percent (N=2) of the accused had their subsequent charges dismissed as the victim withdrew her support before the trial began; and, 1.4 percent (N=3) of the accused pleaded guilty before the trial. The conviction rate from the initial dismissals reveals that of 9.0 percent (N=19) of the accused who had their original Crown charge(s) dismissed, only 4.3 percent (N=9) of the accused were eventually found guilty by way of a trial or a negotiated plea on the lesser charges. In addition, .9 percent (N=2) of the accused were dealt with by consent committals.

Retained Charges

Charges filed by the prosecutor were retained for 12.3 percent (N=26) of the offenders and were subject to both a preliminary hearing and a trial. Charges of rape were applicable to 9.0 percent (N=19) of the offenders, with attempted rape charges at 1.9 percent (N=4) and contributing to juvenile delinquency at 1.4 percent (N=3). Additional charges at trial were included for 6.6 percent (N=14) of the accused. The results at trial are as follows: 2.8 percent (N=6) of the accused were acquitted on all charge(s); 7.1 percent (N=15) of the accused were found guilty of all the charges; 1.9 percent (N=4) of the accused were found guilty of the major charge only; and .5 percent (N=1) of the accused was found guilty of attempted rape instead of the original trial charge of rape.

The Crown charges that are retained and result in a trial are considered to be a select few. The results from the study confirm that contention. Out of the 211 persons originally accused of rape or

attempted rape, there were only 26 (12.3 percent)[10] whose original Crown charge(s) reached a trial solution. Further, only 9.0 percent (N=19) of the accused were found guilty of at least the major Crown charge at trial.

Plea Bargained Charges

The pervasiveness of the guilty plea has been well-documented.[11] Counsel on both sides must assess the characteristics of the offence, the credibility of the victim and the amount of Crown evidence and develop strategies to further their respective goals. Realistically, however, success for either counsel is never ensured. Plea bargaining provides an outlet for each side whereby each can benefit; the Crown can obtain an admission of guilt from the accused and the defense can obtain the probability of a less harsh outcome for the accused in terms of charge and/or sentence. The time and energies required in a trial situation are spared to everyone involved in the court proceedings[12] by a guilty plea, especially where there is reasonable doubt as to the chances for success for either the Crown or the defense.

The benefits of a negotiated guilty plea in a rape or attempted rape case are obvious, except to the victim, who might feel that the legal process is working to the offender's advantage. Firstly, a plea of guilty to a reduced charge lowers the maximum allowable sentence range as the

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[10]Three of the accused went to trial on a reduced Crown charge of contributing to juvenile delinquency. The remainder of the charges were either rape or attempted rape.

[11]See Chapter II for a discussion of plea bargaining.

[12]The investigating officer would also be required to testify at the trial.

reduced charge will be of a less serious nature in legal terms. Secondly, the pre-determined sentence will specify a sentence or sentence range that will place length of sentence below the maximum penalty allowable to the offender. The plea bargain emerges as a viable alternative to the accused who may not be willing to face the uncertainty of the trial situation.

Plea Bargained Charges

A reduction of charge in exchange for a guilty plea resulted for 5.7 percent (N=12) of the offenders at the court level. A reduced charge was accepted for 1.4 percent (N=3) of the offenders during the preliminary hearing and for 4.3 percent (N=9) of the offenders before the court trial. A frequency distribution of the reduced charges accepted by counsel at the court level is presented in Table 7.

TABLE 7

Plea Bargaining in Relation to Charge That Took Place From the Time of the Preliminary Hearing to the Trial for the Years 1976 and 1977

Plea Bargained Charge	Original Crown Charge	When Plea Bargained	Number of Offenders
Gross Indecency	Rape	During Preliminary Hearing	3
Indecent Assault	Rape	Before Trial	3
Contributing to Juvenile Delinquency	Rape	" "	1
Gross Indecency	Rape	" "	3
Common Assault	Attempted Rape	" "	1
Indecent Assault	Attempted Rape	" "	1
		Total	12 (5.7%)

In addition, there were 1.9 percent (N=4) of the offenders whose charges were plea bargained but there was no information available as to when the negotiated plea was obtained.[13] Incorporating the above cases into the group of plea bargained ones at the court level results in 7.6 percent (N=16) of the offenders involved in a guilty plea in relation to charge.

Plea Bargained Sentence

A total of 1.4 percent (N=3) of the offenders were involved in a plea bargain in relation to sentence. A pre-determined sentence or sentence range was agreed upon by the Crown and defense counsel from the time of the preliminary hearing to the court trial. The sentences agreed upon at the court level are presented in Table 8.

TABLE 8

Plea Bargaining in Relation to Sentence That Took Place From the Time of the Preliminary Hearing to the Trial for the Years 1976 and 1977

Sentence Range	Crown Charge	When Plea Bargained	Number of Offenders
9-18 months	Break and Enter w/Intent to Commit Rape	During Preliminary Hearing	1
3-5 years	Rape	Before Trial	1
10-12 years	Rape	" "	1
		Total	3 (1.4%)

[13] No information was available on the prosecutors who had handled the cases.

Offender Pled Guilty - No Concessions

The final route that Crown charges may take at the court level is a plea of guilty by the offender devoid of any concessions in the form of plea bargaining. There were .9 percent (N=2) of the offenders from the study period. Both of the offenders agreed to a guilty plea to the rape charge after a preliminary hearing had taken place.

Conclusion

The filtering system at the court level resulted in 7.6 percent (N=16) of the accused whose charges were terminated either by a dismissal (3.8 percent, N=8) or by an acquittal (3.8 percent, N=8). There were a total of 24.2 percent (N=51) of the offenders at the court level whose charges resulted in an eventual finding of guilt. Of those persons found guilty, the results are as follows: 10.0 percent (N=21) were found guilty of reduced charges or sentences through plea bargaining; 2.8 percent (N=6) were found guilty of subsequent charges after an initial dismissal of the original Crown charges; .9 percent (N=2) were involved in a guilty plea to the original Crown charges devoid of any plea bargaining concessions; .9 percent (N=2) were involved in a consent committal; and .5 percent (N=1) was found guilty of attempted rape instead of the trial charge of rape. Finally, 9.0 percent (N=19) of the accused were found guilty of at least the major Crown charge at trial. The filtering out of and eventual outcome of the charges at the court level is presented in Table 9.

TABLE 9

The Disposition of the Charges at the Court Level by the Number of Offenders for the Years 1976 and 1977

Disposition of Charges	Number of Offenders Number	Percent
Termination of Charges	8	3.8
Subsequent Charges Laid by the Crown		
a) Plea Bargain Charge	3	1.4
b) Offender found guilty	6	2.8
c) Offender found not guilty	2	.9
Original Crown Charges Plea Bargained		
a) Plea Bargained Charge	16	7.6
b) Plea Bargained Sentence	2	.9
Original Crown Charges Retained		
a) Offender Pled Guilty - No Concessions	2	.9
b) Consent Committal	2	.9
c) Offender Found Guilty - All Trial Charges	15	7.1
d) Offender Found Guilty - Major Charge Only	4	1.9
e) Offender Found Guilty of Attempted Rape Instead of the Trial Charge of Rape	1	.5
f) Offender Acquitted of All Charges	6	2.8
Total	67	31.8

Summary of the Filtering System

The filtering system at the police, Crown and court levels resulted in 71.1 percent (N=150) of the original 211 accused persons whose charges were filtered out or terminated at different points in the criminal justice system. The level of the police contained the greatest filtering out of charges at 57.8 percent (N=122) with the Crown and court levels following at 5.7 percent (N=12) and 7.6 percent (N=16), respectively. The total percentage of conviction for the two-year period of reports was 28.9 (N=61) and comprised findings of guilt on the original Crown charges, reduced charges and plea bargained charges.

A summary regarding the filtering out of charges at the police, Crown and court levels is presented in Table 10.

TABLE 10

The Total Filtering Out of Offenders' Charges at the Police, Crown and Court Levels

Filtering Out of Charges	Percentage of Offenders Remaining in the Criminal Justice System
Police Level	100.0
No Suspect Apprehended (10.9%)	89.1
Victim Initiated Termination (18.0%)	71.1
Unfounded (28.9%)	42.2
Crown Level	42.2
Victim Initiated Termination (3.3%)	38.9
Unfounded (2.4%)	36.5
Court Level	36.5
Dismissals (3.8%)	32.7
Acquittal at Trial (3.8%)	28.9
Total Offenders Convicted	28.9
Total Filtering Out of Charges at the Police Crown and Court Levels	71.1

CHAPTER V

CHARACTERISTICS OF THE RAPE REPORTS

Introduction

Chapter V contains the characteristics surrounding the rape reports made to the police for the study period. Four main areas were explored: victim characteristics, offender characteristics, the relationship between the victim and the offender and the situational characteristics of the offence itself. The victim and offender characteristics include age, marital status, race, criminal record, occupation, and the relationship, if any, that existed between the victim and the offender prior to the offence (month, day of the week and time of the day), district in Winnipeg where the offence took place, the circumstances of initial contact between the victim and the offender, where the offence itself occurred and, finally, the person who initially reported the offence to the police.

These characteristics were examined for several reasons. Knowledge of the victim, offender and offence characteristic enables an insight into the persons and the circumstances involved regarding the rape offences that were reported to the police during the study period. In addition, a comparison of the present study with other rape research allows for an examination of the characteristics found in different studies involving different time periods and locations.

It should be noted that the characteristics discussed have missing

information that is most prevalent for the victim and the offender characteristics. Aside from missing information that resulted from the suspect not being apprehended, the characteristics were not recorded consistently in any standardized format by the police. Whenever present, the information was recorded and reported for the present research.

The Victim

Age

There were 155 victims who reported rapes or attempted rapes to the police for the study period. The ages of the victims ranged from 6 years to 59 years. The largest category, representing 37.7 percent of the victims, was the 15-19 year category. Previous research has confirmed the late adolescent category as the one in which the greatest number of reported rapes are contained. Clark and Lewis found that 35 percent of the reported rapes were contained in the 14-19 age category in Toronto (1977:80) while Amir found that 24.9 percent of the reported rapes were from victims in the 15-19 age category in Philadelphia (1971:52).

In this research it was found that the 20-24 year and 25-29 year categories followed in terms of frequency with percentages of 22.7 and 15.6, respectively. Similarly, Clark and Lewis reported the same order in age categories with 23 percent in the 20-24 age group and 13 percent in the 25-29 age categories. A substantial difference between the present study and the Clark and Lewis study emerged with respect to the 30 year and over age categories. The Winnipeg study contained 14.1 percent of the victims in the 30 and over age group whereas the Toronto study contained 30 percent of the victims in the 30 and over age category (1977:80).

The great majority of the victims in the present study were young in

age with 78 percent represented in the 10–24 age groups. An earlier study of rape in Denmark substantiated this finding with 77 percent of the victims in the 10–24 age groups (Svalastoga, 1962:50). A frequency distribution of the victim age categories is presented in Table 11.

TABLE 11

Frequency Distribution of the Victim Age Categories for the Years 1976 and 1977

Age of the Victim	Frequency	Adjusted Frequency Percentage
1–9	2	1.3
10–14	14	9.1
15–19	58	37.7
20–24	35	22.7
25–29	24	15.6
30–34	8	5.2
35–39	7	4.5
40–44	1	0.6
45–49	2	1.3
50–54	2	1.3
55–59	1	0.6
Total	154[1]	100.0

[1]The age of one victim was not recorded.

Marital Status

The great majority of the reports were made by single victims. The single victim category accounted for 61.9 percent of the reports made to the police. The high percentage of single victims is to be expected given the relative youth of most of the victims. The next highest category was that of cohabitation without any formal marriage at 13.5 percent. The

remainder of the marital status categories were married, divorced and separated; each of these categories represented less than 12 percent of the victims.

Other research on reported rapes supports the over-representation of the single victim. For instance, Clark and Lewis found that 53.1 percent of their study victims were single (1977:82) while Amir found that 66.1 percent of his study victims were single (1971:65). McCaldon's study of convicted rapists showed that 78 percent of the victims were classified as single (1967:42). McCaldon's findings should be examined with caution as the data on the victims are representative insofar as they represent a select number of victims whose rapists are convicted and not the total number of victims who initially reported a rape. A frequency distribution of victim marital status is presented in Table 12.

TABLE 12

Frequency Distribution of the Marital Status of the Victim for the Years 1976 and 1977

Marital Status of the Victim	Frequency	Adjusted Frequency Percentage
Married	10	7.9
Single	78	61.9
Divorced	6	4.8
Separated	15	11.9
Cohabitation	17	13.5
Total	126[1]	100.0

[1]The marital status of the victim was not available for 29 cases.

Race

An examination of the race of the victim for the present study

provides at best a sketchy view of victimization for different racial groups. The race of the victim was not available from the police files for the majority of the victims (See Table 13).

Where information was available, there were four racial groups represented: Caucasian, Native Indian, Metis and Oriental. The Caucasion group emerged as the predominant one with 54.5 percent of the victims falling into that category. Native Indian victims followed in terms of frequency with a percentage of 39.4. The percentage of Native Indian victims was potentially an over-estimate of that group's presence as victims since it was more likely that race would be reported for minority groups. Information regarding the race of the victim is presented in Table 13.

TABLE 13

Frequency Distribution of the Race of the Victim for the Years 1976 and 1977

Race of the Victim	Frequency	Adjusted Frequency Percentage
Caucasian	36	54.5
Native Indian	26	39.4
Metis	3	4.5
Oriental	1	1.5
Total	66[1]	100.0[2]

[1]There were 89 victims for whom information on race was not available.

[2]The total percentage of the categories may not add up to 100 percent as a result of the rounding of percentage within categories.

Occupation

The occupational status of the victims in the study ranged from those in unskilled occupations to those with professional occupations. Once again, a substantial amount of missing information on the victim occupation prevented a complete description of that category for the study period. The police reports did not contain any standardized recording of victim occupation, so that occupation, even when referred to, at times fell short of providing an adequate description. For instance, the records might indicate the organization where a victim was employed for investigative purposes without reference to the victim's particular occupation within that organization.

Where information was available, there were four groups formed for comparative purposes. The first group was students. There were a sizeable number of the victims who were students at the time of the offence (23.2 percent) which again is reflective of the large number of young victims. The second group contained victims who were employed in work that required no special extended training beyond basic schooling. The majority of employed victims fell into this category that ranged from clerks to factory workers (20.6 percent). The third category included those occupations where extended training beyond basic schooling was required. Occupations such as nursing and secretarial work were represented here (8.7 percent). The final category, termed the 'other' category, consisted of those victims who were unemployed, on welfare, or in marginally respectable lines of work (eg. dancer or masseuse). This category accounted for 21.9 percent of the victims.

TABLE 14

Frequency and Distribution of the Victim's Occupation for the Years 1976 and 1977

Victim Occupation	Frequency	Adjusted Frequency Percentage
Student	36	49.3
Clerk	4	5.5
Homemaker	1	1.4
Waitress	3	4.1
Unskilled Labor (factory, kitchen work)	5	6.8
Caretaker	1	1.4
Babysitter	1	1.4
Nurse or Nurse's Aid	3	4.1
Secretary	1	1.4
Lab Technician	1	1.4
Nutritionist	1	1.4
Unemployed	3	4.1
Welfare	11	15.1
Dancer or Masseuse	2	2.7
	Total 73[1]	100.0[2]

[1]There were 82 instances where occupation of the victim was not available.

[2]The total percentage of the categories may not add up to 100 percent as a result of the rounding of percentages within categories.

Criminal Record

The victims in the present study, for whom information was available, did not emerge as a particularly criminal group. Out of the victims for whom presence or absence of a criminal record could be ascertained, only 5.6 percent had a previous record. Of the victims with criminal records,

there were 1.9 percent where there was no information available as to the nature of the record. There were 58.7 percent of the victims where mention was made of the fact that the victim had no previous criminal record.

Previous research on the victim's criminal record, although scarce, indicated a higher percentage of criminal behavior on the part of the victim. For example, Amir's study revealed that 19.2 percent of the victims had a previous criminal record (1971:117).

There is one significant departure from the present study and Amir's study; specifically Amir's inclusion of an unofficial record for victims. Amir, in his Philadelphia study, added a record of bad reputation and classified 20 percent of the victims in that category. Amir concludes:

> Hence, if a victim's arrest record may have any bearing on her chances of being victimized, even more so may be the case when she has a reputation of being promiscuous, sexually experienced in spite of her age (under eighteen years), having sexual relations with her future offender, or known to have been raped previously but reluctant to bring her assailant(s) to court. (1971:117 & 119).

Amir then attempted to establish a correlation between a bad reputation, criminality and the potential for victimization in rape offences. The author feels compelled to draw the parallel between Amir's observations and the detrimental stereotype of the deserving victim of rape. In the present research, there has been no comparison made between a victim's reputation and the potential for becoming a sexual assault victim; any such comparison is considered to be questionable and also discriminatory to the victim of the assault.

The results regarding the criminal record of the victim are presented in Table 15.

TABLE 15

Frequency Distribution of the Criminal Record of the Victim for the Years 1976 and 1977

Victim's Previous Criminal Record	Frequency	Relative Frequency Percentage[1]
Break, enter & theft	1	0.6
Sexual immorality	1	0.6
Breach of the liquor act	2	1.3
Juvenile repeater	1	0.6
Manslaughter	1	0.6
No information on Nature of Record	3	1.9
No record mentioned	91	58.7
No information[2]	55	35.5
	Total 155	100.0[3]

[1]Missing values are included in the percentage and frequency.

[2]The cases in this category were ones where there was no mention of the presence or absence of a criminal record. The missing values have been included for this table in order to allow for a comparison with the offender's criminal record which has a substantial number of no information cases.

[3]The total percentage of the categories may not add up to 100 percent as a result of the rounding of percentages within categories.

The Offender

Age

There were a total of 212 offenders for the study period. The ages of the offenders ranged from 13 years to 60 years. There was no age

recorded for the majority of the offenders[1] (see Table 16). Among the offenders for whom age information was available, the 20-24 age group emerged as the most frequent one with a percentage of 36.3. Similarly, McCaldon cited the 20-24 age group as the most frequent one representing 36 percent of his study group (1967:43), while Amir found the 15-19 age group to be the largest one with a percentage of 37.5 (1971:52). Medea and Thompson's results, however, paralleled the present study with the 20-24 age group as the predominant one with a percentage of 37.7 (1977: 141).

Results from the Winnipeg data revealed that the second and third highest ranking age groups were the 25-29 and the 15-19 age groups. The two age groups are similar in terms of frequency with the 25-29 group at 24.5 percent and the 15-19 group at 23.5 percent. Comparison of the present study with previous research did show divergence. Clark and Lewis found the second highest group to be the 20-24 age group at 15.6 percent (1977:98). McCaldon reported that the 31-40 age category (33 percent) was second in frequency and the 26-30 age category (14 percent) was third in frequency (1967:43). Amir's second and third most common age groups were the 20-24 and the 25-29 age group with percentages of 25.6 and 16, respectively (1971:52).

The young offender emerged as the predominant group representing 61.8 percent of the offenders under the age of 25 years. A comparison of the offender and victim ages revealed that more of the victims (78 per-

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[1]The missing information for the offender characteristics tended to be high as there are some suspects who are not apprehended or who are not apprehended as the victim drops the charges.

cent) were under 25 years of age as compared to less of the offenders (61.8 percent) in that age range. The thirty year and over group of offenders accounted for only 13.7 percent of the total age groups. Amir's study showed similar results with 14.1 percent of the offenders in the 30 and over age categories (1971:52).

A frequency distribution of the age of the offender is presented in Table 16.

TABLE 16

Frequency Distribution of the Offender Age Categories for the Years 1976 and 1977

Age of the Offender	Frequency	Adjusted Frequency Percentage
14 and under	2	2.0
15-19	24	23.5
20-24	37	36.3
25-29	25	24.5
30-34	8	7.8
35-39	3	2.9
40-44	1	1.0
45-49	1	1.0
60	1	1.0
	Total 102[1]	100.0

[1]There were 110 offenders whose age was not available.

Marital Status

The single offender emerged as the majority group for the present study as was the case with the victims from the study. There were 58.2 percent of the offenders who were classified as single. Past research

has confirmed this finding. Macdonald (1975:55) and McCaldon (1967:45) also found, although to a lesser extent, that the majority of the offenders were single and accounted for 43 and 36 percent of the offenders, respectively. Amir found that 82.7 of the offenders in his study were single (1971:65). Svalastoga's results are akin to Amir's results in terms of a very high percentage of single offenders at 80 percent (1962:50).

Macdonald states: "A young man charged with rape claimed that the charge was absurd as he was a married man and had ample opportunity for sexual gratification" (1975:54). However, many rapists are married and in the present study married offenders constituted the second largest group (21.4 percent). Moreover, Macdonald's findings confirm that only slightly less of the offenders were married than were single (40 versus 43 percent, respectively) (1975:55). Co-habitation, without formal marriage followed and accounted for 11.2 percent of the offenders in the Winnipeg study. The remaining categories, those of separation or divorce, when combined represent less than ten percent of the study offenders.

The marital status of the offenders is presented in Table 17.

TABLE 17

Frequency Distribution of the Marital Status of the Offender for the Years 1976 and 1977

Marital Status of the Offender	Frequency	Adjusted Frequency Percentage
Married	21	21.4
Single	57	58.2
Divorced	2	2.0
Separated	7	7.1
Co-habitation	11	11.2
Total	98[1]	100.0

[1]There were 114 offenders whose marital status was not available.

Race

The race of the offender in the present study, like that of the victim, provided an incomplete picture of racial composition. The percentage of missing data for offender race is slightly less than the information on victim race; the main factor being victim descriptions of offenders which sometimes included race. Once again, it should be noted that an over-representation of Native Indian males is possibly a factor owing to the tendency to comment or report on the race of a minority, non-white person. The results obtained for offender race for the present study are given in Table 18.

TABLE 18

Frequency Distribution of the Race of the Offender for the Years 1976 and 1977

Race of the Offender	Frequency	Adjusted Frequency Percentage
Caucasion	85	77.3
Native Indian	15	13.6
Metis	6	5.5
East Indian	4	3.6
	Total 110[1]	100.0

[1]Information on race was not available for 102 of the offenders.

Occupation

There was a wide variety of offender occupations represented in the study period. Occupations for the offenders ranged from students to truck drivers to managers.

In the offender occupation category there was the need for an additional category to that used for the victim occupation categories. The additional category is that of skilled labor, which was found for the offenders in the present study. Offender occupations were then divided into five categories for the data. The first group was students and was significantly smaller than the students represented in the victim occupations (2.2 versus 23.2 percent, respectively). The second group contained offenders whose occupation did not require any special extended training beyond basic schooling. Occupations in this category included truck drivers and sales persons (46.8 percent). The third group encompassed 21.7 percent of the offenders in skilled labor occupations. The fourth

group included occupations where special extended training beyond basic schooling was required. Accounting and managerial jobs, for example, were found in the professional category (6.5 percent). Finally, the last category, termed the 'other' category included those unemployed, on parole/probation or in an unclear occupation (22.9 percent).

A frequency distribution for the occupation of the offender is presented in Table 19.

TABLE 19

Frequency Distribution of the Occupation of the Offender for the Years 1976 and 1977

Offender Occupation	Frequency	Adjusted Frequency Percentage
Student	2	2.2
Laborer	29	31.5
Bus driver/delivery person	3	3.3
Truck Driver	5	5.4
Salesperson	3	3.3
Soldier	2	2.2
Security Guard	1	1.1
Skilled labour	20	21.7
Manager	4	4.3
Accountant	1	1.1
Grain Inspector	1	1.1
Unemployed	19	20.7
On parole/probation	1	1.1
Artist	1	1.1
Total	92[1]	100.0[2]

[1]There were 120 offenders whose occupation was not available.

[2]The total percentage of the categories may not add up to 100 percent as a result of the rounding of percentages within categories.

Criminal Record

The criminal record of the offender was of particular interest as it was the rapist who perpetrated the crime as opposed to the victim who was unwillingly involved. A high percentage of missing information on the presence or absence of a criminal record was involved (See Table 20). Specific mention was made of a criminal record for a number of the offenders and constituted 23.5 percent of the offenders. Conversely, for 16.0 percent of the offenders there was specific mention of no past criminal record for the offender.

Past research has indicated a high percentage of past criminal convictions for offenders. Amir (1971:112) and Svalastoga (Macdonald, 1975:56), for instance, cite 49.3 and 77 percent, respectively, with regard to a previous criminal record. Studies of convicted rapists exhibited an even higher percentage of past criminal records for offenders. McCaldon reported that 95 percent of his study group of convicted rapists in Kingston, Ontario had a previous record (1967:46). Macdonald's study of convicted rapists in Denver, Colorado showed a similar high percentage of 85 (1975:56).

The past criminal record specific to sexual offences was found for 6.1 percent of the offenders for the present research. Amir reported that 12.6 percent of the offenders in the Philadelphia study had a previous criminal sexual offence record (1971:114). Among convicted rapists, McCaldon (1967:46 and Macdonald[2] (1975:56) determined that 19 percent and 18 percent, respectively, had previous sex-related records.

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[2]Macdonald's 18 percent figure is applicable only to rape convictions.

The following table provides a summary of the offender's criminal record for the present study.

TABLE 20

Frequency Distribution of the Criminal Record of the Offender for the Years 1976 and 1977

Offender's Previous Criminal Record (Most Serious Offence)	Number of Offenders	Relative Frequency Percentage[1]
Rape / Attempted Rape	6	2.8
Other sexual offences	7	3.3
Robbery (armed or with violence)	4	1.9
Assault (assault, A.C.B.H.)	2	.9
Theft (theft, break & enter, stolen goods, auto theft)	15	7.1
Minor Offences (Highway Traffic Act, liquor, drugs or wilfull damage)	2	.9
No Information on Nature of Record	14	6.6
No Record	34	16.0
No Information	128	60.4
Total	212	100.0

[1]The missing values are included in the table.

The Victim-Offender Relationship

The largest number of reported offences contained no prior relationship between the victim and the offender. Such cases were classified as 'strangers' and represented 55.8 percent of the reported cases. The above category was the only one where there was no prior knowledge or acquaintance between the offender and the victim.

The next category, termed 'stranger but with general knowledge', contained 18.2 percent of the cases. Cases where a brief introduction

or knowledge through a third party was present were included. The third category was that of an acquaintance where there was no direct friendship but knowledge and familiarity existed. The acquaintance category accounted for 10.4 percent of the data. The category of relative followed, whether from a legal marriage or a cohabitation situation. The relationship of the victim to the offender ranged from a legal relative through marriage to a separated husband and wife. The relative category represented 5.2 percent of the data. The fifth category of neighbour followed and included offenders who lived near to the victim (eg. in the immediate neighbourhood or in the same house or apartment building) (3.2 percent). The sixth category involved those cases where the offender was a family friend of one or more members of the victim's family and accounted for 2.6 percent of the cases. The seventh category was one where the offender was an employer or a supervisor of the victim. The employer category ranges from formal employment to a babysitting arrangement to a sports coach situation representing 2.5 percent of the data. The eighth and final category contained offenders who were close friends of the victim. The relationship of boyfriend and ex-boyfriend were listed in this category and total 1.9 percent of the cases.

The categories of the victim and the offender relationship in the present study as compared to those utilized in other studies available did require the collapsing of several categories. The categories of "stranger but with general knowledge" and "acquaintance" from the Winnipeg data were difficult to compare individually with past research as the distinction made was not always clearly referred to or was slightly different in terms of classification. Consequently, the two categories were combined under the general heading of acquaintance and indicate an

indirect or brief acquaintance between the victim and the offender.

A comparison of four major relationship categories from several studies was contrasted with the Winnipeg data. Svalastoga (1962:52) found that 54 percent of his sample were complete strangers, 21 percent were relatives. Medea and Thompson (1974:143) reported that 33 percent were complete strangers, 47 percent were acquaintances, 3 percent were friends and 2 percent were relatives. Amir's data (1971:234) indicated that 42.3 percent were complete strangers, 24 percent were acquaintances, 6 percent and 2.5 percent were relatives. The Winnipeg data, re-stated, showed that 55.8 percent were complete strangers, 28.6 percent were acquaintances, 2.6 percent were friends and 5.2 percent were relatives.

All of the above studies, except for the study by Medea and Thompson, were in support of the largest category as being complete strangers. Perhaps it was this type of attack that was frequently reported to the police. Medea and Thompson's rape survey, for example, indicated the lowest percentage of stranger attacks in comparison with the other studies mentioned; all of the other studies mentioned used official statistics for their data collection. The largest category in the survey by Medea and Thompson (1974:143) was the acquaintance one (47 percent) which suggested that an acquaintance attack was a frequent one; although it was one that was not as likely to become an official statistics by way of a formal report made to the police.

Table 21 lists the victim and offender relationship for the present study.

TABLE 21

Frequency Distribution of the Victim and the Offender Relationship for the Years 1976 and 1977

Victim and Offender Relationship	Frequency	Adjusted Frequency Percentage
Complete strangers	86	55.8
Strangers, but with general knowledge	28	18.2
Acquaintance	16	10.4
Neighbour	5	3.2
Employer/supervisor	4	2.6
Family Friend	4	2.6
Friend/boyfriend	3	2.0
Relative	8	5.2
Total	154[1]	100.0

[1]No information was available on the relationship between the victim and the offender for one case.

Characteristics of the Offence

Month

The month of the year when the reported rape and attempted rapes occurred were not clustered within any particular season. A thermic law of crime that grew from Adolphe Quetelet's thermic law of delinquency (1969:90) was not confirmed in the present study. The thermic law generally adheres to the notion that ". . . crimes against persons are more frequent in warm climates and seasons, whereas crimes against property are more prevalent in cold climates and in colder weather" (Amir, 1971:28). According to the thermic notion, rape should peak during the summer months. However, the Winnipeg data has March as

its peak month and July as its lowest month in terms of reported sexual offences. In fact, the only summer month included in the top four is August which is ranked fourth (in addition to the month of November). The overall difference in reporting between the twelve months did not exhibit wide differences in terms of reported sexual offences. March emerged as the peak month with 13.5 percent of the cases while July, the lowest month, had 5.2 percent of the cases.

Past research has tended to confirm a hot season peak, although not to a significant degree. Clark and Lewis (1977:208) found July (11.5 percent), August (12.5 percent) and September (13.5 percent) as the peak months while Amir (1971:75) found June (9.8 percent), July (12.2 percent) and August (10.8 percent) as the peak months.

Amir divided the year into three main seasons and found: cold months (November through February) at 20 percent; intermediate months (March, April, September & October) at 32 percent; and hot months (May through August) at 41 percent (Ibid:75). Alternately, the Winnipeg data listed the cold months at 27.8 percent, the intermediate months at 40.6 percent and the hot months at 31.6 percent. Hot weather was not a particularly significant factor in Winnipeg, according to the data obtained from the police files for the study period.

A frequency distribution of the month of the offence is given in Table 22.

TABLE 22

Frequency Distribution of the Month of the Reported Offence for the Years 1976 and 1977

Month of the Year	Rank	Frequency	Adjusted Frequency Distribution
January	7	10	6.5
February	6	11	7.1
March[1]	1	21	13.5
April	3	15	9.7
May	2	16	10.3
June	5	12	7.7
July[2]	9	8	5.2
August	4	13	8.4
September	2	16	10.3
October	6	11	7.1
November	4	13	8.4
December	8	9	5.8
		Total 155	100.0

[1]March - highest month of reported occurrences.

[2]July - lowest month of reported occurrences.

Day

The day of occurrence of the reported offences showed the greatest frequency from Friday to Sunday in the present study. The actual day of the week was determined by the time when the attack occurred: for example, an attack which occurred at 12:30 a.m. would be recorded as a Sunday, rather than as a Saturday night. Tuesdays and Thursdays also had substantial frequencies, 14.8 and 11.6 percent, respectively. The days with the least number of reported sexual attacks were Mondays and

Wednesdays. Saturdays emerged as the highest night, in terms of reported attacks, at 21.3 percent as opposed to Monday as the lowest night at 7.7 percent.

Past research has also confirmed a weekend trend for reported attacks. Macdonald found that 44 percent of the Denver attacks occurred between 10 p.m. Friday night and 4 a.m. Sunday morning (1975:31). Amir's Philadelphia study revealed that 54.4 percent of the rapes occurred between Friday and Sunday, inclusive. Comparison of the Winnipeg data show similarity with Amir's results with 56.1 percent of the attacks occurring between Friday and Sunday, inclusive. The following table summarizes the findings for the day of the week of the reported offences.

TABLE 23

Frequency Distribution of the Day of the Week of the Reported Offences for the Years 1976 and 1977

Day of the Week	Frequency	Adjusted Frequency Percentage
Monday	12	7.7
Tuesday	23	14.8
Wednesday	15	9.7
Thursday	18	11.6
Friday	25	16.1
Saturday	33	21.3
Sunday	29	18.7
	Total 155	100.0

Time of the Day

The time of the day when the reported rapes and attempted rapes occurred is significant in that the results indicated a definite night-time trend. With the missing data excluded, the time period from 8:00 p.m. to 1:59 a.m. contained the highest frequency of reports at 56.9 percent. The continuation of the night-time trend into the early morning (2:00 a.m. - 7:59 a.m.) followed with a percentage of 37.4. There were no rapes or attempted rapes reported during the 8:00 a.m. to 1:59 p.m. time period. The time period from 2:00 p.m. to 7:59 p.m. had a modest frequency of 5.7 percent.

Prior research has also revealed a nocturnal trend. Svalastoga found that two-thirds of the reported rapes occurred between 10:00 p.m. and 2:00 a.m. (1962:49). Medea and Thompson obtained similar results, although to a lesser degree, with 46 percent of the attacks occurring between 9:00 p.m. and 2:59 a.m. (1974:142). Amir's data revealed the highest percentage of reported rapes fell into the 8:00 p.m. to 1:59 a.m. period with a percentage of 46.8 (1971:84).

TABLE 24

Frequency Distribution of the Time of the Day of the Reported Offences for the Years 1976 and 1977

Time of the Day	Frequency	Adjusted Frequency Percentage
8:00 a.m. - 1:59 p.m.	—	—
2:00 p.m. - 7:59 p.m.	7	5.7
8:00 p.m. - 1:59 a.m.	70	56.9
2:00 a.m. - 7:59 a.m.	46	37.4
Total	123[1]	100.0

[1]There were 32 cases where the time of day was not available.

District of the Offence

The great majority of the offences took place in the Winnipeg district named the Inner City. Contained in the Inner City area is the downtown section with a high concentration of hotels, businesses, manufacturing plants and older housing on the outer edges. The percentage of Inner City offences stood at 51.6 percent.

The remainder of the areas in the city where the offences took place were classified as: adjacent to Inner City (St. Boniface/St. Vital); suburban (St. James Assiniboia, West Kildonan, East Kildonan/Transcona, Fort Garry/Fort Richmond); and 'Winnipeg at large' (when the offence took place on the outskirts of the city and/or involved extensive movement through the city by car). There were no appreciable differences between the three areas just mentioned and all accounted for less than twelve percent each in the total frequency distribution.

TABLE 25

Frequency Distribution of the District of the Offence for the Years 1976 and 1977

District of the Offence	Frequency	Adjusted Frequency Percentage
Inner City	66	51.6
St. Boniface/St. Vital	12	9.4
St. James Assiniboia	10	7.8
West Kildonan	9	7.0
East Kildonan/Transcona	15	11.7
Fort Garry/Fort Richmond	6	4.7
Winnipeg at large	10	6.5
	Total 128[1]	100.0

[1]There were 27 cases where there was no information available.

Place of the Offence

The actual place of the offence for the current study revealed a distribution of various places with no one place emerging as a distinct one from the reports received by the police. A vehicle was shown to be the most frequent place for the offence at 28.5 percent. The next location of the offence in terms of frequency was indoors in a building other than the victim or offender's residence with a percentage of 22.5. The next three places of the offence are similar in frequency with less than a four percent difference between them. These were the victim's residence (16.6 percent), the offender's residence (13.9 percent) and an outdoor place (15.9 percent). A small number of offences took place at the residence where the victim and the offender both resided (2.6 percent).

Past research has shown a marked divergence regarding the place of the offence depending upon whether the data were collected from a North American or a European city. Svalastoga's Denmark data, for example, indicated a low incidence of vehicle offences (4 percent) and a very high incidence of outdoor offences (72 percent) (1962:49). North American studies, on the other hand, show more equivalent occurrences among vehicle and outdoor offences. Amir's Philadelphia data (1971:148) revealed that 14.9 percent of the offences occurred in vehicles while 17.8 percent of the offences occurred outdoors. Macdonald's data, taken from Denver, showed vehicle offences at 26 percent and outdoor offences at 16 percent (1975:36). Macdonald suggested that the low incidence of vehicle offences in Denmark as opposed to North American cities can be attributed to: ". . . the greater number of cars per unit of population" (1975:35) in North American cities. The Winnipeg data indicated that

there were similarities with the North American studies mentioned in terms of outdoor offences (15.5 percent) and vehicle offences (28.5 percent). Clark and Lewis found that 23.5 percent of the offences took place in vehicles in their Toronto study (1977:63).

Rape as an outdoor "dark alley" phenomenon was not upheld in any of the North American studies. Sexual assaults at either the victim or the offender's residence, however, emerged as significant locations for the commission of the offence. Clark and Lewis (1977:62) and Neufeld and Vit den Bogaard (1977:63), which are both Canadian studies, indicated that 45 percent and 47 percent, respectively, of the rapes occurred in either the victim or the offender's residence. Two American studies by Amir (1971:148) and Medea and Thompson (1974:142) revealed that 55.7 percent and 47 percent, respectively, of the offences occurred at either the victim or the offender's residence. Slightly less of the reported sexual assaults in Winnipeg (33.1 percent) took place at the victim or the offender's residence.

A frequency distribution of the place of the offence is presented in Table 26.

TABLE 26

Frequency Distribution of the Place of the Offence for the Years 1976 and 1977

Place of the Offence	Frequency	Adjusted Frequency Percentage
Vehicle	43	28.5
Outdoor	24	15.9
Indoor	34	22.5
Victim's residence	25	16.6
Offender's residence	21	13.9
Residence where both the victim and offender reside	4	2.6
Total	151[1]	100.0

[1]There were 4 cases where there was no information available.

Initial Contact Between the Offender and the Victim

The initial meeting place of the victim and the offender encompassed a wide variety of locations. The largest number of cases (16 percent) were those where the victim and the offender initially saw each other at a party, a dance or while visiting another person. The category that followed in terms of frequency was the situation where the victim and the offender met in a public drinking establishment (bar) at 14.6 percent.

Outdoor contact, where the offender abducted the victim from the street or attacked the victim on the street, constituted the third largest category (13.9 percent). Consequently, the stereotype of the rapist lurking in the bushes did not predominate or characterize the Winnipeg data to any great extent. The next category included those

cases where the victim accepted a ride from the offender after the offender had initiated the interaction. A victim walking down the street or waiting for public transportation fit into this category and represented 11.8 percent of the cases. The final category that constituted at least ten percent of the cases was the one where the victim was hitchhiking and the offender stopped to offer her a ride in his car (10.4 percent). The remaining places of initial contact each represented less than ten percent of the data and included the residence where both the victim and the offender lived, the place where the victim worked and outside where the victim and the offender had met.

Amir's results (1971:139) regarding the place of initial contact indicated that 46 percent of the meeting places could be classified as outdoor locations. The outdoor locations from the Winnipeg study amounted to slightly less than the Philadelphia study at 41 percent. The present study contained more cases where the victim and the offender met at a drinking establishment (14.6 percent) than did the Philadelphia data (7.8 percent) (Ibid:139). Data from the present study revealed that the meeting place was the victim's residence in 9 percent of the cases and the offender's residence in 6.3 percent of the cases whereas Amir (Ibid: 139) found 26.4 percent victim residence and 6.7 offender residence meeting places. Amir's category of party or picnic (2.6 percent) was in contrast with the Winnipeg category of party, visiting or dance (16 percent) (Ibid:139).

Amir's largest category was labelled "on the street walking" and was significant with a percentage of 41.8 percent (Ibid:139) while the largest category for the Winnipeg data was party, visiting or dance and was less definitive with a percentage of 16. Neufeld and Vit den Bogaards

Vancouver study (1977:63) showed that 10 percent of the victims were hitchhiking and are comparable with the present study's results of 10.4 percent hitchhiking incidents.

A table summarizing the initial contact between the victim and the offender is presented in Table 27.

TABLE 27

Frequency Distribution of the Initial Contact Between the Victim and the Offender for the Years 1976 and 1977

Initial Contact Between the Victim and Offender	Frequency	Adjusted Frequency Percentage
Abducted from street	16	11.1
Attacked on street	4	2.8
Victim and offender met outdoors	7	4.9
Victim accepts a ride	17	11.8
Victim hitchhiking	15	10.4
Party, visiting, dance	23	16.0
Offender at victim's residence	13	9.0
Victim at offender's residence	9	6.3
Forcible entry (into victim's room or residence)	7	4.9
Live in same residence	5	3.5
Public drinking establishment	21	14.6
At place of work	4	2.8
Victim and offender met on train	1	0.7
Victim attacked in her car	2	1.4
	Total 144[1]	100.0

[1]There were 11 cases where there was no information on the meeting place.

Person Who Initially Reported the Offence to the Police

The final characteristic to be examined for the offence was the person who was responsible for making the first report of the assault to the police. A report made by someone other than the victim could be responsible for the termination of some complaints as evidenced by the filtering system at the police level. Several cases of this kind resulted in everything from hostile to embarrassed victims who did not want to become involved in the criminal justice system after the attack. Still other cases were pursued by the victim who simply was not in a proper state of mind to contact the police herself. In fact, the report was made by someone other than the victim in 58.2 percent of the cases compared with 41.8 percent of the cases where the victim herself initially contacted the police (either by telephone or in person).

When classified into categories, a report made by the victim herself to the police constituted the largest category (41.8 percent). The category which followed was that of a stranger or a passerby who first contacted the police (17 percent). Included in the stranger category were instances where a stranger was informed of the offence by the victim or where a passerby observed the offence in progress and reported it to the police. Reports made by a parent or guardian in those cases of a young victim or one who lived with her parents represented 13.7 percent of the data. A report made to the police by a friend or boyfriend of the victim accounted for 9.2 percent of the assaults. The next category comprised reports made by relatives of the victim including parents or guardians. Relatives in this category included a spouse, sibling, aunt or child (7.3 percent). Reports made by official agencies were equivalent to the previous category in terms of frequency (7.3 percent) and were

represented by social service agencies and hospitals whom the victim had initially contacted for help. The remainder of the categories accounted for less than four percent of the data and included a teacher, social worker, offender and neighbour.

TABLE 28

Frequency Distribution of the Person Responsible for Making the Initial Report of the Offence to the Police for the Years 1976 and 1977

Who Reported the Offence to the Police	Frequency	Adjusted Frequency Percentage
Victim	64	41.8
Stranger, passerby	26	17.0
Parents, guardian	21	13.7
Friend	13	8.5
Boyfriend	1	0.7
Spouse	5	3.3
Sibling	3	2.0
Child	1	0.7
Other relative	2	1.3
Medical personnel	6	3.9
Rape Crisis Center	3	2.0
Mt. Karmel Clinic	1	0.7
Pregnancy Distress Service	1	0.7
Teacher	2	1.3
Social Worker	1	0.7
Offender	1	0.7
Neighbour	2	1.3
Total	153[1]	100.0

[1]There were 2 cases where there was no information available.

Summary

The characteristics outlined in the chapter provided an insight into the reports made to the police for the rape and attempted rape during the study period. While the limitations of official statistics for sexual assaults have been acknowledged (See Chapter III), there emerged several trends or characteristics attributable to the reported assaults.

The young victim and offender constituted the majority of the reports with the victim's largest age group (15-19 years representing 37.7 percent of the victims) being slightly lower in age than that of the offender (20-24 years representing 36.3 percent of the offenders). At the other end of the age spectrum, the thirty year and over age categories were approximately the same for both the victim and the offender (14.1 and 13.7 percent, respectively). Marital status, while containing mostly single victims and offenders (61.9 and 58.2 percent, respectively), did contain a sizeable number of co-habitating and married victims and offenders (24.1 and 32.6 percent, respectively), especially in the case of the offender. Information on the race of the victim and the offender indicated that Caucasian was the largest group; however, the proportion of Native Indians and Metis for both the victim and the offender are viewed as potentially over-representative of that race. Occupational status revealed that victims were for the most part students (49.3 percent) while offenders were concentrated in the category of labourer (31.5 percent). The greater number of victims in the student category was reflective of the greater concentration of victims in the school-age range. Information on criminal record of the victim and the offender revealed that a past criminal record was reported for more of

the offenders (23.8 percent) than the victims (56 percent). Finally, the relationship that existed between the victim and the offender was examined and it was determined that the category of strangers constituted the largest one (55.8 percent). In fact, the great majority of the cases were represented by little or no familiarity between the victim and the offender among reported rape and attempted reports made to the police.

The characteristics of the offence revealed that the reported assaults were for the most part night-time, weekend occurrences (56.9 and 56.1 percent, respectively). The time of the year when the reported assaults occurred (specifically the month) did not support a hot season peak whereby it is assumed that crimes against persons will be higher in the summer months. The moderate temperature or intermediate months of the year in spring and fall constituted the largest category for the present study (40.6 percent). The majority of the reported offences took place in the Inner City of Winnipeg where the majority of hotels, drinking establishments and business offices are concentrated. An outdoor location for the offence (15.9 percent) was overshadowed by an assault in a vehicle (28.5 percent), an indoor location apart from the victim or the offender's residence (22.5 percent) and the victim's residence (16.6 percent). Initial contact between the victim and the offender indicated a variety of locations involved with no one category emerging as a predominant one. Again, outdoor contact (13.9 percent) was less frequent than initial contact at a party, a dance or while visiting another person (16 percent) or a public drinking establishment (14.6 percent). The majority of the offences were reported by someone other than the victim (58.2 percent) as compared to reports made by the victim

(41.8 percent). Reports made by others included strangers, parents or guardians and social service agencies, to name a few.

CHAPTER VI

INTERVIEWS WITH THE PROSECUTORS

Introduction

The prosecutors in the Provincial Attorney General's Department who had handled rape cases during the two year study period were interviewed with respect to their general practices in dealing with rape cases. In addition, the problematic aspects of the legal and societal guidelines for the offence of rape were investigated.

A profile of the prosecutors revealed that of the eighteen prosecutors interviewed, all but one was male. Their ages ranged from 28 years to 45 years with the mean age being 33 years. Information pertaining to the amount of experience in handling rape cases indicated that 56 percent of those questioned had 5 years or less experience in terms of prosecuting rape cases. The least amount of experience reported was 2.5 years while the greatest amount of experience reported was 13 years. Ten of the prosecutors interviewed had performed other types of legal work before becoming crown attorneys. The majority of them (N=7), had been in private practice, with the remaining lawyers (N=3) having done defense, labor relations and police work, respectively. Eight prosecutors did not have work experience in other areas of legal work.

The interview schedule consists of four sections. The sections are: prosecutorial procedures and practices in handling rape cases; the relationship between the prosecution and other members of the criminal

justice system; the interaction between the prosecutor and the victim in a rape case; and, the existing rape laws and potential areas for improvement. Prosecutorial procedures and practices include factors pertinent to the filing of charges and in securing a conviction. The utilization of separate and directly-related additional charges were examined. In addition, the prosecutors evaluated the plea bargaining system in Manitoba. The relationship between the prosecution and other members of the criminal justice system included: the degree of access to Crown statements by defense counsel; the amount of influence exerted by the Crown and defense counsel on the granting of bail, the judge who will hear the case and the calendar dates for the proceedings; and, the relationship between the Crown and the police in rape cases. Interaction between the prosecutor and the victim in rape proceedings was comprised of: the frequency of interviewing of the victim; the role of counselling services; and, the frequency and causation of victim withdrawal from the proceedings after a suspect has been charged. Finally, the existing rape laws (in effect during the study period) included: the factors that influence juries; the average sentence for rape imposed in Manitoba; the most important improvements needed to better deal with forcible rape; and, the component rape laws advocated.

The results from the present study are presented in conjunction with the findings of Chappell and others, in a national survey of prosecutors conducted in the United States.[1] There were specific areas of the Chappell study replicated in the present study for comparative purposes

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[1]Forcible Rape. A National Survey of the Response by Prosecutors, Batelle Law and Justice Study Center, 1975.

between the two studies. Whenever applicable, the practices in dealing with rape cases by prosecutors are contrasted for the present study and the American counterpart.

The interview schedule utilized for the interview with the prosecutors is included in Appendix D. An asterisk (*) appears beside each numbered question that was replicated from the Chappell study.

Prosecutorial Procedures and Practices in Handling Rape Cases

Important Factors in the Decision to File Charges and In Securing a Conviction for Forcible Rape

The prosecutors were questioned as to the eight most important factors in their decision to file charges and the eight most important factors in obtaining a conviction for forcible rape. There were a total of twenty categories provided with the inclusion of an additional response category. The categories included legal and extra-legal factors that were to be ranked firstly, for their importance in the filing of charges and secondly, for their importance in securing a conviction for forcible rape. The results are presented in Table 29.

TABLE 29

Prosecutorial Perceptions Regarding the Most Important Factors to Prosecutors in their Decision to File Charges and to Obtain a Conviction for Forcible Rape

Rank in Decision to File Charges		Rank in Obtaining a Conviction		Factor
Rank	Percentage	Rank	Percentage	
1	88.9	1	88.9	Promptness of reporting
2	83.3	2	83.3	Use of physical force
2	83.3	7	44.4	Extent of suspect identification
3	77.8	4	72.2	Injury to victim
4	72.2	3	77.8	Proof of penetration
5	66.7	5	61.1	Relationship between suspect and victim
6	61.1	5	61.1	Use of a weapon
6	61.1	5	61.1	Witnesses
7	44.4	7	44.4	Alcohol or drug involvement on the part of the victim
7	44.4	12	5.6	Suspect's previous criminal history
8	38.9	6	50.0	Circumstances of initial contact
9	33.3	3	77.8	Resistance offered by victim
10	16.7	8	27.8	Alcohol or drug involvement on the part of the suspect
11	11.1	11	11.1	Accomplices (more than one offender)
11	11.1	9	22.2	Sexual acts other than intercourse
12	5.6	10	16.7	Age difference between the victim and the suspect
12	5.6	12	5.6	Race or ethnicity of victim
12	5.6	--	--	Victim's previous arrest history
--	--	--	--	Location of offense
--	--	--	--	Occupation of suspect
--	--	--	--	Race or ethnicity of suspect
N/A	N/A	12	5.6	Other: Credibility of victim

The ranking of the elements that are important in the decision to file charges and in securing a conviction generally corresponded in terms of frequency of response. The five most important factors included three elements that are not necessary components of the crime in the decision to file charges. These were physical force, injury to the victim and the relationship between the victim and the suspect. The same three elements are again present in the top five elements for obtaining a conviction in addition to one other element that is also not a necessary component of the crime. This was use of a weapon. These data support the assertion that the greater the amount of force and injury, especially in terms of obtaining a conviction, the greater are the chances that a rape charge will be fully prosecuted.

The greatest difference between the two questions was the resistance offered by the victim which was ranked as the ninth most important element in the filing of charges and the third most important element in obtaining a conviction. The extent of suspect identification is ranked seventh in obtaining a conviction and is ranked second in the filing of charges. Perhaps the prosecutors perceive that they are inclined to consider the legal elements more seriously in the filing of the charges than those persons (judge and jury) who will determine the final outcome of the charges.

The top five elements obtained by Chappell (1975:54) are similar to those found in the present study with the elements of promptness of reporting, use of physical force, injury to victim and proof of penetration. The extent of suspect identification was also considered more important in the decision to file charges than in obtaining a conviction (ranks of 4 and 7, respectively). The resistance offered by the victim

in the Chappell study was considered to be more important in obtaining a conviction than in the decision to file charges (ranks of 4 and 9, respectively). Similarly, the present study found victim resistance to be more important in obtaining a conviction than in the filing of charges (ranks of 3 and 9, respectively).

The Filing of Separate Additional Charges

The prosecutors were asked what procedures were generally taken for the filing of additional charges apart from the rape charge. The first part of this question examined whether property crimes (separate from the rape charge) were generally included in the charging process or whether only the rape offence was included in the charging process. All but one of the prosecutors replied that the charging of both crimes was the procedure taken. The dissenting prosecutor noted that the property offence would have to be a significant one as the prosecutor felt the more serious charge of rape was the major concern in the charging decision. The prosecutors were then asked under what conditions, if any, that they would file only the property crime. The most frequent reason cited by the prosecutors for the charging of the property offence only was where the evidence of rape was thought insufficient to obtain a conviction. The reasons given for the charging of the property crime only are given in Table 30.

TABLE 30

The Reasons Given by Prosecutors for the Charging of the Property Offence Only[1]

Frequency	Percent	Reason for Charging the Property Offence Only
12	66.7	Evidence of rape was insufficient
7	38.9	Victim did not want to proceed on the rape charge
2	11.1	Victim emotionally unable to testify
2	11.1	Trauma of testifying for a young victim
2	11.1	Always charge for the rape and the property offence

[1]Multiple responses were given by some of the prosecutors.

The results from Chappell (1975:27) indicated that almost 60 percent of the prosecutors filed for both the rape charge and the property charge. The report states: "The filing of multiple charges would clearly be to the prosecutor's advantage, particularly in those cases in which the possibility of plea bargaining arose." (Ibid:27). The data from the present study, however, revealed that there were few property crimes involved with the reported rapes and attempted rapes and that of the nine theft charges listed in the police files, there were none that were followed through at the prosecutor's office.

The reasons given by Chappell (Ibid:29) for the charging of the property crime only were similar to the present study in the areas of weak evidence and victim reluctance which emerged as the most frequent response categories. Also included were divergent elements such as prior history with the defendant and the property crime penalty being greater than the rape penalty. These were in contrast to the data in the present study.

The Filing of Directly-Related Additional Charges

The precedure for the charging of offences involved with the rape (directly-related additional offences) was then ascertained. Directly-related offences would include gross indecency, possession of a dangerous weapon, or unlawful confinement; all of which would facilitate the commission of a rape. Again, the majority of the prosecutors (88.9 percent) stated that they would charge both the rape and the directly-related additional offences as opposed to the prosecutors who stated that they would charge for the rape offence only (11.1 percent). The prosecutors were then asked under what conditions the directly-related additional charges would be considered appropriate. The results obtained are presented in Table 31.

TABLE 31

Conditions Under Which the Charging of Directly-Related Additional Offences Are Considered Appropriate by the Prosecutors[1]

Frequency	Percent	Conditions for the Charging of Directly-Related Additional Offences
8	44.4	For use as a plea bargaining tool
4	22.2	As back-up charges when the rape charge is problematic
9	50.0	When additional charges are clear and distinguishable

[1]Multiple responses were given by some prosecutors.

The results indicate that half of the prosecutors considered directly-related charges appropriate to follow through on when there was sufficient evidence of their occurrence. A sizeable number of responses given, however, (66.6 percent) referred to the directly-related additional

additional charges as ones that facilitated the prosecution of a rape charge as either a plea bargaining tool or as a back-up charge should the main charge be dismissed or problematic in terms of proof of occurrence.

The Plea Bargaining System

The prosecutors discussed their opinion of the plea bargaining system in their jurisdiction (province of Manitoba). The respondents were asked to reply to one of three statements regarding plea bargaining: it's fine the way it is; it should be retained but changed; or, it should be eliminated altogether.

There were 50.0 percent of the respondents who replied that the plea bargaining system was fine in its present form. The main reason given for the satisfaction with the plea bargaining system was that it allowed for a satisfactory agreement for everyone involved. The fact that plea bargaining allowed for flexibility and individualized treatment in dealing with different offenders with different records, for example, was also mentioned. The use of plea bargaining in preventing the waste of valuable court time was referred to: "(Plea bargaining) allows you to have discretion - not to waste valuable court time when it's not appropriate, if the outcome is likely to be negative." Finally, satisfaction with plea bargaining practices was voiced when it is properly done. One prosecutor included the responsibility to the general community in the use of plea bargaining. "It (plea bargaining) maintains community confidence instead of having those who are caught cold going to trial." Valuable court time would then be spared in those cases where the offender was caught committing the offence and admitted guilt.

The remaining prosecutors (50.0 percent) suggested that the plea bargaining system in their jurisdiction should be retained but changed. The main problem with the present form of plea bargaining, according to the respondents, was the practice of plea bargaining that takes place at the last minute. The criticism was levelled against the offender who pleads guilty just before the trial. One solution offered by several respondents called for the institution of stricter guidelines for the timing of plea bargaining. Another solution involved penalties for the offender who pleads guilty just before trial in the form of a fine or an increase in the jail sentence.

The discussion of plea bargaining privately between the counsel and the judge was also a concern. It was felt that plea bargaining should be made public with joint submissions and explanations by defense and Crown counsel in open court. One prosecutor further suggested: "Everything that is said during the course of plea bargaining should be made available to the judge and the public along with the Crown's explanation for its decision." Guidelines for plea bargaining that would allow the judge to make the final decision were also mentioned. The present system, without specific guidelines, according to one respondent ". . . takes the case away from the judge who is supposed to decide. This results in disparaties in decisions of similar cases." Another prosecutor advocated the use of sentence ranges only, by the counsel involved, with the judge having the discretion to set a specific sentence rather than the judge being bound by counsel proposals.

The practice of requiring that junior Crown attorneys consult with senior ones before a plea bargain between defense and Crown counsel was reached was also advocated. It was felt that junior Crown attorneys

could make a bad decision regarding plea bargaining because of their inexperience.

The remaining category, that of the elimination of the present plea bargaining system altogether, was not supported by any of the respondents. However, one of the prosecutors who favored changes in the system remarked: "If a backlog of cases would not result from the elimination of plea bargaining, I personally, would rather work without it."

The prosecutors were also asked to evaluate the adherence of judges to prosecutorial recommendations in plea bargaining (with response categories of "usually", "sometimes", "rarely", or "never"). The result was unanimous agreement among the prosecutors that the judges usually adhered to their recommendations.

The results from the Chappell study (1975:80) indicated a higher degree of satisfaction with the plea bargaining system carried out in the American jurisdictions with 77.0 percent of the prosecutors stating that the present plea bargaining system was fine in contrast to 50.0 percent of the prosecutors from the present study on that same issue. The opinion that the present plea bargaining system should be retained but changed was held by only 19.0 percent of the American respondents (Ibid:80) as compared to 50.0 percent of the respondents from the present study. The elimination of plea bargaining altogether, however, was advocated by 4.0 percent of the American respondents (Ibid:82) whereas there were no advocates for that measure from the present study.

The factors which influence the use of plea bargaining by prosecutors were also discussed. The prosecutors were asked to rank five factors (case pressure, uncertainty of conviction, evidentiary problems, pressures from other members of the criminal justice system and the

notoriety of a particular case) with an additional response category provided. The five factors utilized were taken from the literature review on prosecutorial plea bargaining.[2] The largest percentage for the ranking of each of the five factors is presented in Table 32.

TABLE 32

Relative Banking of Factors by Prosecutors that Influence the Use of Plea Bargaining

Rank	Percent	Factor
1	72.2	Evidentiary problems (strength of evidence and the credibility of witnesses)
2	50.0	Uncertainty of conviction ('no case is 100 percent sure one way or the other')
3	38.9	Notoriety of a particular case (possibility of a vocal public reaction)
4	33.3	Case pressure (backlog of cases)
5	27.8	Pressures from other members of the criminal justice system to plea bargain (police, defense counsel and judges)

The additional factors reported by the prosecutors were: the traumatic effect of the victim testifying, the victim or the family not wanting to proceed, the availability of witnesses, the background of the accused for violence and the individual discretion of the prosecutor. The additional factors reported were all single reasons with the exception of the traumatic effect of the victim testifying which was reported by two of the respondents.

It is apparent from the ranking of the five factors that the

[2]See Chapter II, pp. 10-15 for a discussion of the factors that influence the use of plea bargaining by prosecutors.

prosecutors are committed to prosecute a case with the goal being a conviction; whether it be on the original charge or a reduced one. The two main factors involved in plea bargaining, evidentiary problems and the uncertainty of conviction, supported this notion. The prosecutor must weigh the evidence, the credibility of witnesses and the chances for conviction in determining whether a rape or attempted rape charge will be retained or will be open for plea bargaining. To a lesser extent, the prosecutors must also react to a sense of public duty when considering the use of plea bargaining and will possibly forego plea bargaining if there is the probability of a vocal public reaction. Finally, the prosecutor will react to administrative concerns and pressures such as a backlog of cases or pressures from other members of the criminal justice system in his or her decision to implement plea bargaining.

Relationship Between the Prosecution and Other Members of the Criminal Justice System

The next part of the interview presented deals with the relationship between the prosecution and other key actors in the criminal justice system; namely, defense counsel, judges and the police in rape cases.

Disclosure of Crown Statements to Defense Counsel

The prosecutors were asked if they generally allowed defense counsel full access to the statements of the Crown or if they allowed only the minimal disclosure required by the law. Only one respondent indicated that full access to information, including the statements of witnesses, was the procedure followed (5.6 percent). The majority of the respondents indicated that the disclosure of the particulars of the case, excluding

the actual witness statements, was the procedure followed (72.2 percent). The remaining prosecutors (22.2 percent) stated that minimal disclosure was the procedure taken and would exclude giving full information or witness statements.

An additional component of the question examined the conditions under which the prosecutors considered the disclosure of minimal information appropriate. The reasons given for minimal disclosure are presented in Table 33.

TABLE 33

Reasons Given by Prosecutors for Minimal Disclosure Being Given to Defense Counsel

Frequency	Percent	Reasons Given for Minimal Disclosure
6	33.3	Never appropriate
5	27.8	If victim harassment is likely
4	22.2	Always give minimal information
3	16.7	Bad relationship with defense counsel
2	11.1	Weak case or weak complainant
1	5.6	If investigation not yet terminated

[1]Multiple responses were given by some of the prosecutors.

The conditions under which the prosecutors considered minimal disclosure to defense counsel appropriate revealed that for 22.2 percent of the respondents this procedure was their usual pattern. Other prosecutors indicated specific conditions where minimal disclosure would be utilized. The extenuating circumstances given were if victim harassment was likely (27.8 percent), if there was a bad relationship with defense counsel (16.7 percent), if there was a weak case or a weak complainant

(11.1 percent) and finally, if the investigation was still continuing (5.6 percent). Several of the prosecutors (33.3 percent) responded that minimal disclosure was never appropriate under any conditions.

The release of the Crown's case to defense counsel would then appear to be an individual decision made by each prosecutor. For those prosecutors who indicated specific conditions for minimal disclosure, the concerns ranged from personal ones, such as the relationship with a particular defense counsel, to professional ones, where the prosecutor gave priority to the particular conditions of a case.

Influence Exerted by the Crown and Defense Counsel Regarding Bail, the Presiding Judge and the Calendar Dates

Prosecutorial Influence

The respondents were asked if, in their own estimation, they exerted considerable influence on the amount of and the granting of bail, the judge who will hear or try the case and the calendar dates for the case at any particular stage of the proceedings. The results indicate that 77.8 percent of the prosecutors considered that they exerted considerable influence on the amount of and the granting of bail. The remaining 22.2 percent considered that they did not exert considerable influence on the amount of and the granting of bail with 11.1 percent of the respondents indicating further that it was not appropriate for prosecutors to have any great influence in that area. With respect to the choosing of the judge who will hear or try the case, the prosecutors unanimously agreed that they did not exert considerable influence. The majority of the respondents, 88.9 percent, thought that they exerted considerable influence on the calendar dates for the case throughout the proceedings, while 11.1 percent felt that they did not have considerable

influence regarding the calendar dates.

Prosecutorial Versus Defense Counsel Influence

The prosecutors were then asked if they thought they exerted greater, the same, or less influence than the defense counsel in the three aforementioned areas. The majority of the respondents indicated that they exerted the same amount of influence as the defense counsel; 50.0 percent for the amount of and the granting of bail, 77.8 percent for the choosing of the judge for the case, and 38.9 percent for the calendar dates for the case. A greater amount of influence by prosecutors was perceived as follows: 27.8 percent for bail, 11.1 percent for the choosing of the judge and 33.3 percent for the calendar dates. The responses indicated that the prosecutors generally did not feel they had less influence than the defense counsel, except as follows: 11.1 percent for the amount of and granting of bail, 5.6 percent for the choosing of the judge and 27.8 percent for the calendar dates.

Relationship Between the Crown and the Police

The prosecutors were questioned about their relationship with the police in handling rape cases. The majority of the respondents (94.4 percent) revealed that the degree of cooperation between the two agencies was excellent. One respondent replied that the degree of cooperation was acceptable (5.6 percent) while none of the prosecutors responded that the relationship needed improvement. An elaboration of the responses indicated that the Crown felt that the two agencies had a good working relationship (16.7 percent) and that the police were thorough and very cooperative in their investigations (33.3 percent). Other prosecutors indicated that the prosecution and police agencies had a mutual concern for the rape

victim which strengthened the relationship between them (22.2 percent) and that it was necessary for them to work together to ensure the best results (66.7 percent).

The respondents were also asked how cooperation could best be improved, if at all. The establishment of a more specialized rape unit in the law enforcement agency was the most frequent response (50.0 percent) while the establishment of a specialized rape unit in the prosecution agency was ranked considerably lower (22.2 percent). The use of a liaison person between the two agencies was cited by 33.3 percent of the prosecutors. An increase in the understanding of rape issues was perceived as a need for the law enforcement agency by 16.7 percent of the respondents and an increased understanding for the prosecution agency by 11.1 percent of the respondents. The only response category that was omitted by the respondents was that of having written guidelines for the filing of rape cases. There were also 33.3 percent of the prosecutors who felt that cooperation between the two agencies did not require improvement.

In summary, the relationship between the two agencies, as judged by the prosecutors, was a very positive one. The prosecutors were satisfied with the work done by the police in investigating rape cases. Perhaps most important to the prosecutors was the necessity of the two agencies to work together to ensure that a case was prosecuted to its fullest potential.

In terms of the potential for improvement of the relationship between the two agencies, there was one-third of the prosecutors who saw no need for any improvement. Of those prosecutors who cited potential areas of improvement, the concerns appeared to rest primarily with the law

enforcement agency (66.7 percent) as opposed to concerns with the prosecution agency (33.3 percent) in improving the degree of cooperation. There was also one-third of the prosecutors who identified the need for a liaison person in improving the degree of cooperation. The use of liaison personnel might be a viable option to consider given that Chappell (1975:59) reported that the most frequently cited reason for a cooperative relationship between the two agencies was the result of the use of liaison personnel. Perhaps the liaison personnel could function in the capacity of helping both agencies to better understand the relevant rape issues.

Interaction Between the Prosecutor and the Victim

Interviews Between the Crown and the Victim

The prosecutors were asked how many times the victim was interviewed prior to the trial. The majority of the prosecutors (72.2 percent) replied that the victim was generally interviewed by them twice before the trial. There were 22.2 percent of the prosecutors who replied that the victim was interviewed once before the trial and 5.6 percent who indicated that the victim was usually interviewed more than twice before trial. In addition, the prosecutors revealed that the most intensive interviewing usually took place before the preliminary hearing (72.2 percent) as opposed to before trial (16.6 percent) with several of the respondents giving equal weight to the interviewing process before the preliminary hearing and the trial. The respondents indicated that in most cases (61.1 percent) there were no other persons present during the interviewing other than the prosecutor and the victim. The remainder of the respondents reported that the police officer involved in the case or

a victim advocate from a rape counseling agency were present during the interviewing at 22.2 percent and 16.7 percent, respectively.

Counseling Services

The prosecutors were asked if they thought that counseling services should be provided for rape victims resulting in all of the respondents replying in the affirmative. The agencies that could best deliver the counseling, as perceived by the respondents, were as follows: professionals (psychologists, social workers) at 50.0 percent, specially trained volunteers at 50.0 percent, hospital-based programs at 11.1 percent and a combination of the above-mentioned agencies with law enforcement workers at 5.6 percent. None of the respondents chose the option of the law enforcement agency handling the counseling independently.

Victim Withdrawal of Complaints

The prosecutors were also asked to estimate the frequency of victim withdrawal of a complaint after a suspect had been charged in a percentage value. The majority of the respondents (61.1 percent) indicated that the percentage of victim withdrawal was 10 percent or less. The rest of the prosecutors (38.9 percent) estimated victim withdrawal from 20 to 33 percent with one of the respondents indicating that an estimate could not be made. The frequency of victim withdrawal after a suspect had been charged in the present study was 7.1 percent and resulted in 15 offenders being filtered out of the criminal justice system after being charged with rape or attempted rape.

The prosecutors were asked to identify the major reasons for victim withdrawal of a complaint after a suspect had been charged. The responses are presented in Table 34.

TABLE 34

Major Reason Given by Prosecutors for Victim Withdrawal of a Complaint After a Suspect had been Charged[1]

Frequency	Percent	Reason for Victim Withdrawal
15	83.3	Fear of testifying in court
3	16.7	When the victim knows the offender
4	22.2	Pressure from family and friends to drop the complaint
5	27.8	Intimidation or fear of reprisal from the offender
2	11.1	Victim sympathy for the offender
8	44.4	Victim did not make a sincere complaint
1	5.6	Victim wants to forget the rape
1	5.6	Fear of being known as a rape victim

[1]Multiple responses were given by some of the prosecutors.

Clearly, the prosecutors are aware of the traumatic effect of the court phase on the victim. The majority of the respondents (83.3 percent) identified the fear of testifying in court as the major reason for victim withdrawal of a complaint after a suspect had been charged. The victim's fear of the court phase may be either perceived (withdrawing from the preliminary hearing) or real (withdrawing at some point after the start of the preliminary hearing). Nonetheless, with the victim as the main witness and very often the only witness in rape cases, the traumatic effect on the victim must be addressed and remedied in order to improve the prosecution of rape cases.

The next factor which followed in terms of frequency was the situation where it was perceived that the victim did not make a sincere complaint (44.4 percent). Obviously, the respondents felt that if the

court system does not filter out an insincere complaint the victim would take the initiative and withdraw the complaint. Perhaps this category is also for those reports where the victim disappears or withdraws without giving an explicit reason whereby the prosecutors made the assumption that the victim had not told the truth about the assault. This, however, is only an assumption as there are cases where there are no explanations given for the victim withdrawal from the proceedings.

The remaining factors involved personal reasons, the most frequent of which is intimidation or fear of reprisal from the offender (27.8 percent). Pressure on the victim to drop the complaint from her family and friends (22.2 percent) is also considered an effective deterrent, resulting in victim withdrawal. The next factor, where the victim knows the offender (16.7 percent) may also be related to the fear of reprisal and pressures from family and friends. Victim sympathy for the offender was noted in 11.1 percent of the cases. The fear of being known as a rape victim and the victim wanting to forget the rape were also cited (5.6 percent each).

Apart from the above-mentioned reasons given by the prosecutors for victim withdrawal of a complaint after a suspect had been charged, there is an additional legal factor that may act as a deterrent. A victim who makes a false complaint can legally be charged with contempt of court under the Canadian Criminal Code (Section 635).

Existing Rape Laws and Potential Improvements

The final section deals with the existing rape laws for the study period and the corresponding sentence given. The prosecutors were asked for their opinions of the system and for the areas of potential reform, if any, in dealing with the offence of forcible rape.

Difficulties in Obtaining a Jury Conviction

The prosecutors were asked what they felt were the two major difficulties they found in getting juries to convict for forcible rape. It was interesting to note that all but one of the respondents interviewed (94.4 percent) felt that the credibility of the victim was one of the major difficulties. Included in this category, apart from the veracity of the victim's account of the offence, are the character and the background of the victim. The category which followed in terms of frequency of response was that the corroboration requirements are too strict (38.9 percent).

The remaining categories were as follows: the presentation of the case is limited (22.2 percent), the penalties are too severe (5.6 percent), and there is an insufficient range of penalties (0 percent). The additional response category provided specific examples of victim credibility: the stereotypic notion that good girls don't get raped (5.6 percent) and the behavior and conduct of the victim just before the actual offence (5.6 percent). The final response category listed the lapse of time in having the case concluded (5.6 percent) which represents the notion that the heart may soften with the passage of time.

The results obtained are similar to those of Chappell (1975:84-85). In Chappell's study nearly every respondent (92 percent) listed the credibility of the victim as the most important factor in getting juries to convict for forcible rape. The importance of victim credibility in a jury situation has been acknowledged:

> Because of the necessity to prove force or threat of force and lack of consent, and since the victim is usually the prosecution's only witness, her credibility becomes extremely salient in influencing the decision of jury members. (Ibid:85).

The problem of the strictness of the corroboration requirement was also referred to in Chappell's study and represented 22 percent of the prosecutors in contrast to 38.9 percent of the prosecutors from the present study on that same issue.

Average Rape Sentence in Manitoba

The respondents were asked to give an estimation of the average sentence actually imposed for forcible rape in Manitoba. The lowest estimation given was 1.5 years while the highest estimation given was 5 years. The mean sentence for the responses was 3.5 years. The mean sentence imposed for forcible rape in the present study, by comparison, was 3.2 years. The majority of the prosecutors interviewed felt that the average sentence imposed for rape in Manitoba was inappropriate in terms of being too lenient for the offence involved (61.1 percent). An elaboration of the lenience in sentencing revealed that the concerns of the respondents were that rape is one of the most serious offences and is potentially punishable by life imprisonment by law (22.3 percent). Several of the respondents (16.8 percent) felt that rapes that involve violence should have higher sentences than they do at present. It was also felt that the emotional damage to the victim should be reflected in higher sentences (16.8 percent). The opinion that the low sentences are not an effective deterrent to the public (16.8 percent) was also cited. A final concern regarding the leniency in sentencing was that the sentences are inadequate in terms of punishment to the offender (28.0 percent).

The remainder of the prosecutors interviewed (38.9 percent) had the opinion that the average sentence imposed for forcible rape in Manitoba

was appropriate in terms of being adequate in sentencing. This group of respondents felt that the sentence involved generally corresponded to the type of rape involved. Of the prosecutors who felt the average sentence imposed for rape was too low, there was one prosecutor who commented:

> Far too low - it's ridiculous. Next to murder, rape is one of the most serious crimes. You have a physical assault, a sexual assault and a lot of emotional problems. Those emotional problems far outlast any sentence given by the court.

Major Improvements Needed to Deal with Forcible Rape

The prosecutors were queried as to the most important improvements needed in dealing with the problem of forcible rape. There were nine areas listed with the inclusion of an additional response category. The major improvements needed, as perceived by the prosecutors, are presented in Table 35.

TABLE 35

The Most Important Improvements Needed in Dealing with the Problem of Forcible Rape[1]

Frequency	Percent	Improvements Needed
11	61.1	Sentencing
9	50.0	Public Education (regarding the realities of rape)
8	44.4	Victim services
7	38.9	Treatment and rehabilitation of offenders
6	33.3	Teaching of prevention techniques to potential victims
4	22.2	Legal reform
2	11.1	Police investigation techniques
1	5.6	Prosecution policies
1	5.6	Police training
1	5.6	Other: under-reporting of rape by victims

[1]Multiple responses were given by all of the prosecutors.

Once again, the prosecutors expressed their dissatisfaction with the sentencing in rape cases. The majority of the respondents (61.1 percent) indicated that sentencing improvements were the most important ones needed in dealing with the problem of forcible rape. Public education which deals with the realities of rape as opposed to the stereotypes of rape followed in terms of frequency (50.0 percent). Improvement in the area of victim services, for better aiding the rape victim and ultimately leading to a higher rate of reporting of the offence, was voiced as a major concern (44.4 percent). The next two improvements are concerned with controlling the incidence of rape. These are the treat-

ment and rehabilitation of the offenders (38.9 percent) and the teaching of prevention techniques to potential victims (33.3 percent). It is interesting to note that the prosecutors ranked victim prevention responsibility closely behind that of offender prevention responsibility, with the latter being the actual perpetrator of the crime.

Legal reform was ranked rather low at 22.2 percent. Police investigative techniques and prosecution policies were also considered relatively insignificant (11.1 and 5.6 percent, respectively). Police training was also chosen by 5.6 percent of the prosecutors. Finally, the underreporting of rape was noted by one of the prosecutors (5.6 percent) and can be linked to the improvement of victim services.

It would appear that the prosecutors interviewed do not see the criminal justice system as a whole as playing a significant role in dealing with the problem of forcible rape. The problems cited by the prosecutors that were the lowest in terms of frequency of response concerned legal reform, prosecution policies, police training and police investigative techniques. Although sentencing and victim services were the major problems listed, there was considerable concern with the prevention of rape by way of both the victim and the offender. Public education to the realities of rape was significant yet a corresponding effect in the legal system was not given equal consideration.

Changes to the Rape Laws

The final question examined the most important changes needed, if any, specifically in the area of the rape laws in existence during the study period. The response that the rape laws were adequate was given by 16.7 percent of the respondents. Among the prosecutors who cited potential

areas of reform in rape laws (83.3 percent), there was not general consensus or a specific select number of areas requiring legal reform. However, there were a total of nine areas listed for potential reform, five of which involved the offender and sentencing. The remaining four areas concerned changes in rape laws that affect the trial. A final change involved a change in the public sphere rather than the legal sphere for the offence of rape. The changes needed, as evaluated by the prosecutors, are listed in Table 36.

TABLE 36

The Most Important Changes Needed in the Rape Laws[1]

Frequency	Percent	Important Changes in Rape Laws
4	22.2	Eliminate the necessity of penetration as the law now interprets it
4	22.2	More restrictions on the questioning of the victim's sexual background
3	16.7	Steeper sentences for repeat offenders
3	16.7	Sentences for rape are too low
2	11.1	Remove the discretion of the judge in using the cautionary instruction to the jury, altogether
2	11.1	Less emphasis on the credibility of the victim at trial
2	11.1	Impose a minimum sentence for rape offenders
2	11.1	Parole for offenders is granted too early
2	11.1	Abolish parole altogether

[1]Two of the respondents reported that education of the public to eliminate the misconceptions and stereotypes of rape was necessary.

The substantial weight given by the prosecutors to the area of sentencing was again reflected when questioned as to the most important changes needed in the present rape laws. A total of 66.7 percent of the

respondents referred to changes needed in sentencing. The changes mentioned were minimum sentencing, higher sentencing, later parole and finally, the abolition of parole altogether. One prosecutor remarked that the sentences were already too low and that parole cuts even shorter the already lenient periods of incarceration for rape offenders.

The remaining changes in the rape laws concerned the trial proceedings in rape cases and accounted for 66.6 percent of the responses given. The elimination of the necessity of penetration in order to prove a rape had occurred was one of the major concerns. One prosecutor commented: "If an offender abuses a woman physically and sexually why should the factor of penetration be so important. Just because he can't get an erection it becomes attempted rape or indecent asssault." The prosecutors who favored the abolition of the necessity of penetration felt that penetration should be just one of the factors, not an all-encompassing one, in defining rape.

Further restrictions on the questioning of the victim's sexual background were also advocated. The prosecutors who supported this reform generally felt that the old laws prepared one to deal with the questioning, whereas the amendment which leaves the decision to the discretion of the judge, invites abuse as the practices of particular judges. The main problem observed was the variability amongst judges in allowing or disallowing the questioning of the past sexual behavior of the victim. One prosecutor further commented that such questioning by the defense counsel was basically used ". . . to humiliate and embarrass the victim - to break down a witness - not for any relevant information to the rape incident itself."

The emphasis on the credibility of the victim in a rape trial was

also criticized. One prosecutor remarked that the rape trial was too dependent on the articulation and confidence of the victim. "So an ethnic thing enters here. Native girls are generally not as articulate or as confident." Another prosecutor's concerns were with the emphasis on victim credibility whereas the offender's credibility is rarely an issue as he is not compelled to testify at a rape trial. "(It) becomes the word of the victim whose credibility has been threatened by lawyers against the offender whose credibility has not been tested."

The cautionary instruction to the jury, left to the discretion of the judge, was also referred to. Again, it was felt that judicial discretion led to variability which did not give equal treatment to all rape victims and that it was an unnecessary instruction in rape trials.

Summary

The interviews with the prosecutors from the study period revealed that, as a group, they appreciated the gravity of the offence of rape. An understanding of and a concern for the various legal and societal problems associated with rape was revealed. It is reflective of the considerable involvement of Crown attorneys in their role as the prosecutors of rape cases. Analysis of the results from the interviews provides an insight into the major concerns and perceived problem areas in the prosecution of rape cases.

The relative importance in the ranking of factors not directly linked to the legal definition of rape was noted for both the filing of charges and for the securement of a conviction. The three factors present for each of the phases were the use of physical force, injury to the victim and the relationship between the victim and the offender.

The largest difference between the two phases emerged with respect to the resistance offered by the victim which was ranked as the ninth most important element in the filing of charges whereas the same element was ranked third in the securement of a conviction. The prosecutors considered the filing of separate additional charges to be essential along with the charge of rape, where warranted (94.4 percent). The two major reasons given by prosecutors for the charging of the property offence only were cases where the evidence of rape was insufficient (66.7 percent) and where the victim did not want to proceed on the rape charge (38.9 percent). The charging of directly-related additional charges along with the rape charge was also advocated by the majority of the respondents (88.9 percent). In terms of the most appropriate conditions under which to charge both the rape and directly-related additional charge, the most frequent response was when the additional charges were clear and distinguishable (50.0 percent) followed by the additional charges being used as a plea bargaining tool (44.4 percent).

One-half of the prosecutors felt that the plea bargaining system in Manitoba was fine the way it was. The major reason for the satisfaction expressed was that the plea bargaining system allowed for a satisfactory agreement for everyone involved. The remaining prosecutors (50.0 percent) indicated that the plea bargaining system should be retained but changed. Plea bargaining at the last minute before a trial was the most frequent criticism levelled against the existing system of plea bargaining. The abolition of the existing system, however, was not suggested by any of the respondents, Regarding the adherence of judges to prosecutorial recommendations, all of the prosecutors responded in the affirmative. They indicated that the judge usually followed their recommendations

concerning plea bargaining. Of the factors that influence the use of plea bargaining by prosecutors, the two highest ranking factors were evidentiary problems (72.2 percent) and the uncertainty of a conviction (50.0 percent).

The relationship between the prosecutor and defense counsel revealed that when the Crown released information regarding a case to the defense counsel the majority of the respondents (72.2 percent) released only the particulars of the case, excluding the actual witness statements. The remaining prosecutors indicated that minimal disclosures was appropriate (22.2 percent) or that full access was the general practice (5.6 percent). The most frequent responses to the situation where minimal disclosure would be considered appropriate were that it is never appropriate (33.3 percent) and in circumstances where victim harassment is likely (27.8 percent).

The issue of prosecutorial influence regarding the amount of and granting of bail, the judge who will preside over a case and the calendar dates for the proceedings revealed that the respondents thought they had considerable influence over the areas of bail and calendar dates. However, all of the respondents denied having considerable influence over the judge who will preside over a case. In addition, the majority of the prosecutors estimated that they had the same as or more influence as the defense counsel in those three areas.

The prosecutors perceived their relationship with the police to be a very agreeable one (94.4 percent). The necessity of both agencies working together on rape cases (66.7 percent) and the thorough and co-operative manner in conducting police investigations (33.3 percent) were the most frequently cited responses. Only one of the respondents

termed the relationship as acceptable (5.6 percent). The improvement of the relationship between the two agencies revealed the following frequent responses: the establishment of a specialized rape unit in the police agency (50.0 percent), the use of a liaison person between the two agencies (33.3 percent) and there being no need for improvement in the relationship (33.3 percent).

The victim and prosecutor relationship indicated that the most intensive interviewing takes place before the preliminary hearing (72.2 percent) as opposed to before the trial (16.6 percent) with several of the respondents giving equal weight to each phase (11.1 percent). The victim, according to the prosecutors, is generally interviewed twice prior to the trial (72.2 percent). Most of the respondents (61.1 percent) did not generally have any other persons present during the victim interview with the remaining respondents having victim advocates (16.7 percent) or a police officer involved in the case (22.2 percent) present. The utilization of counseling services for the victim was deemed to be appropriate by all of the respondents. The use of professionals and specially-trained volunteers were favored by 50.0 percent each of the respondents while hospital-based counseling and law enforcement were mentioned by 11.1 percent and 5.6 percent, respectively. The majority of prosecutors (61.1 percent) estimated the frequency of victim withdrawal of charges after a suspect had been charged at ten percent or less followed by 20 to 33 percent of victim withdrawal (38.9 percent). Among the most frequent reasons given for victim withdrawal from the proceedings was: the fear of testifying in court (83.3 percent) and an insincere complaint made by the victim (44.4 percent).

The discussion of the existing rape laws and potential improvements

revealed the following observations from the respondents. When asked to identify the two major difficulties in getting juries to convict for forcible rape, the prosecutors indicated the credibility of the victim (94.4 percent) and the strictness of the corroboration requirements (38.9 percent) most often. The mean sentence given for rape in Manitoba was estimated by the respondents to be 3.5 years. The majority of the prosecutors (61.1 percent) were of the opinion that the sentences given were generally too lenient for the seriousness of the offence. There were 38.9 percent of those interviewed who felt that the average sentence imposed for rape in Manitoba was appropriate. The most frequent responses obtained regarding the most important improvements needed in dealing with the problem of forcible rape indicated the following: sentencing (61.1 percent), public education (50.0 percent), victim services (44.4 percent) and treatment and rehabilitation of offenders (38.9 percent). Changes in the existing rape laws prompted responses that were generally evenly distributed and encompassed the elimination of the legal element of penetration for rape, further restrictions on the questioning of the victim's sexual background and the removal of low sentences for rape.

CHAPTER VII

THE HYPOTHESES FOR THE RESEARCH

Introduction

This chapter will present, describe, and analyze the seven hypotheses for the research. Each of the hypotheses has been formulated from the review of the literature in Chapter II concerning the rape victim in the criminal justice system.

The first two hypotheses have been drawn from the review of the literature concerning prosecutorial discretion and plea bargaining in the criminal justice system. The first hypothesis examines the prosecutorial propensity for the use of plea bargaining and the subsequent reduction of charges after an initial dismissal of the original crown charge. The second hypothesis deals with the frequency of the defendant pleading guilty without an express concession in the form of an arrangement for a reduced charge or a determinate sentence or sentence range.

The third and fourth hypotheses relate to the legal elements in a rape case. The third hypothesis examines the relative importance of consent, corroboration and character of the rape victim as perceived by the prosecutors. The fourth hypothesis looks at the effect of corroborative evidence on the retention, dismissal or plea bargaining of charges from the study period.

The next two hypotheses were derived from the feminist theory of sexual assault. The fifth hypothesis examines the degree of victim

credibility utilizing the victim characteristics of marital status, occupation and criminal record. The retention, dismissal and plea bargaining of the charges from the study will be viewed with respect to these characteristics. The sixth hypothesis studies the extent to which the victim can be held accountable or considered to be at least partly responsible for the occurrence of the sexual attack. The variables used to ascertain the degree of victim responsibility include the use of alcohol by the victim and the nature of the initial contact between the victim and the offender. Once again, the effect of the degree of victim responsibility was examined in conjunction with the retention, dismissal and plea bargaining of charges from the study period.

The seventh hypothesis focuses on the notion of rape as a normal crime. The differentiation between multiple and single offender cases was made to determine the effect on the course of the charges in terms of the final disposition reached.

Hypothesis 1

The first hypothesis states that the majority of rape reports resulting in a conviction will be dealt with as altered charges as opposed to being retained on the original charges laid by the prosecution.

The potential for charge alteration first occurs when the prosecutor's office has accepted the police report and is prepared to initiate criminal proceedings. The charges filed by the prosecution may then take three major routes: they may be retained, altered (plea bargained or tried on a reduced charge) or dismissed in the court system. The hypothesis concerns itself specifically with the original Crown charges that are either retained or altered. The retained Crown charges culminate in a trial either by a judge or jury. Retained Crown charges also include a guilty

plea without any express concessions for the defendant. The altered charges comprise plea bargained and reduced charges. The plea bargained charges involve a reduced charge or sentence in exchange for a guilty plea, thereby foregoing the trial situation. The reduced charges result from an initial dismissal of charges where the crown then makes the decision to lay any lesser charge(s) that might be applicable to the particular rape or attempted rape offence.

The data indicate that the majority of the charges accepted by the prosecution were in fact altered by way of plea bargaining or trial on a reduced charge. The figures in the study reveal that 59.7 percent of the charges were dealt with as altered ones while 40 percent of the charges were dealt with on the original crown charge.[1]

Table 37 provides the outcome for the offenders whose charge(s) resulted in a disposition at the court level for the study period.

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[1]All of the original crown charges that resulted in a disposition were either rape or attempted rape charges except for three charges of contributing to juvenile delinquency.

TABLE 37

Case Outcomes for Offenders by Disposition Type and Disposition Outcome

Disposition Type		Disposition Outcome: Conviction	%	Acquittal	%	Total	%
Guilty Plea	Charge	(N=26)	38.8	-		(N=26)	38.8
	Sentence	(N=5)	7.5	-		(N=5)	7.5
Guilty Plea	No Concessions[1]	(N=2)	3.0	-		(N=2)	3.0
Trial	Reduced Charge[2]	(N=7)	10.4	(N=2)	3.0	(N=9)	13.4
Trial	Original Charge	(N=19)	28.4	(N=6)	9.0	(N=25)	37.4
	Total[3]	(N=59)	88.0	(N=8)	12.0	(N=67)	100.0[4]

[1]Two of the defendants pled guilty to the original crown charge of rape, devoid of any explicit plea bargaining concessions. These charges are included in the analysis as original crown charges.

[2]One of the seven defendants was convicted of attempted rape instead of the trial charge of rape by the presiding judge.

[3]One offender for whom no information on conviction was available, was excluded from the table. In addition, two defendants who had their charges of rape dealt with by consent committal (that is, they were deemed to be unfit to stand trial by both the crown and defense psychiatrists and were given psychiatric rehabilitation) were also excluded from the table.

[4]The total does not add up to 100.0 percent due to rounding.

Of the defendants whose charges were filed in criminal court (N=67), 88 percent (N=59) resulted in conviction. The conviction rate of 88 percent was distributed as follows: 56.7 percent were disposed of as altered charges (46.3 percent by a guilty plea which was plea bargained in relation to charge or sentence and 10.4 percent by a reduced trial charge); and 31.4 percent were disposed of as retained Crown charges (28.4 percent as trial convictions and 3.0 percent as a guilty plea

without concessions). The remaining 12 percent (N=8) of the charges resulted in an acquittal for the defendant. A finding of not guilty was reached for 9.0 percent on the original Crown charge and for 3.0 percent on a reduced Crown charge.

LaFree's data (1980:4) on conviction outcome in a large mid-western city in the United States showed that 59.7 percent of the cases resulting in a conviction were by a guilty plea and 40.3 percent of the cases were dealt with by a trial.[2] Of the trial charges, there were 16.1 percent that resulted in an acquittal. Similarly, Williams' research for the District of Columbia for the years 1973 and 1974 revealed that 33.6 percent of the forcible rape charges resulted in conviction on a rape charge while 66.4 percent of the convictions were for reduced charges. A comparison of the present study with Williams' results, in relation to conviction resulting from original versus reduced charges, yielded similar results. Conviction for defendants revealed that 64.4 percent were convicted of reduced charges and 35.6 percent were convicted of original crown charges. In contrast, Williams' reported that robbery cases for the year 1974 resulted in conviction for seventy-three percent of the persons on a type of robbery charge (1978:36).

The use of reduced charges in rape cases is predominant in both the present study and comparable American research. There are several explanations for the phenomenon of altering rape charges once at the court level. One explanation concerns the potential severity of sentence that makes conviction difficult to obtain (Gager & Schurr, 1976:161).

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[2] LaFree does not refer to a distinction between original and reduced charges that result in a trial situation.

The maximum penalty for rape is life imprisonment and the gravity of punishment may make juries and judges apprehensive in convicting. In addition, the legal premise of acquittal should reasonable doubt exist[3] is all the more problematic in rape cases where social attitudes and legal practice place the onus on the victim: her character, motives and behavior which frequently move beyond the scope of the rape incident itself.

Hypothesis 2

The second hypothesis states that the frequency of defendants pleading guilty, devoid of plea bargaining concessions, will be extremely low. The defendant in such cases admits guilt to the rape offence without any pre-arranged promise of a reduced charge or a determinate sentence or sentence range. The potential for leniency in terms of sentence may exist in such cases given that the defendant has spared the use of considerable court time in determining the final outcome of the charge(s) (Cousineau and Verdun-Jones, 1977:2). Nevertheless, there has been no explicit concession offered to the defendant by way of an agreement between defense and prosecution in these cases and such cases stand as a guilty plea without an express plea bargain.

The potential for a guilty plea without concessions exists at any time after the prosecutor's office has received the police report and has filed a charge(s). There were only two defendants out of ninety-three

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[3] Dean and deBruyn-Kops (1982:84) indicate that a reasonable doubt on the part of the judge or jury may be based on an evidentiary weakness at times, as opposed to a sincere belief that the accused is innocent of the crime.

defendants whose charge(s) were filed by the prosecutor's office who pled guilty without concessions. In both cases a guilty plea without concessions was submitted after the preliminary hearing where it had been determined that each of the rape charges should proceed to trial. Thus, 2.1 percent of the defendants whose charge(s) were filed by the prosecutor's office opted for a guilty plea without concessions.

The rationale for the particular hypothesis relates to the propensity for plea bargaining where the defendant and the legal counsel benefit from a guilty plea[4] (Blumberg, 1956; Ferguson and Roberts, 1974), as opposed to the situation where there is no explicit concession offered to the defendant and the prosecution secures a conviction. The results from the present study confirm this tendency with only two of the defendants opting for a guilty plea without concessions. In contrast, there were a total of thirty-one defendants whose charge(s) were plea bargained with an express concession determined out of the ninety-three defendants. The use of the negotiated plea with a concession in charge or sentence was then substantially higher, accounting for 33.4 percent of the defendants and for 46.3 percent of the sixty-seven defendants whose cases went to disposition.

Hypothesis 3

The third hypothesis states that the character of the rape victim will be the major element dictating the strength of the prosecution's case. The issues of consent and corroboration, respectively, will follow

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[4]The defendant and the defense counsel receive a reduced charge or sentence and the prosecution receives the certainty of conviction by way of a guilty plea.

in terms of relative importance for the prosecution's case. The hypothesis attempts to determine if victim-related issues are the central focus in a rape case and will be examined by the relative importance given to the character of the victim; a characteristic that translates into victim credibility. The underlying assumption here is: Is this the type of victim who could be raped? In other words, it was hypothesized that non-legal, subjective factors such as the character of the rape victim would be more important in determining the strength of the prosecution's case as opposed to the legal factors of consent and corroboration, respectively.

The prosecutors who were interviewed were asked to consider a hypothetical rape charge where there were problems with each of the elements of consent, character of the rape victim and corroboration. They were asked to rank the three elements in order of importance for the prosecution's case. The results indicate that the majority of the prosecutors ranked the element of consent as the most significant factor (83.3 percent), followed by corroboration (22.2 percent) and the character of the rape victim (11.1 percent). Table 38 provides a frequency distribution of the relative rankings given by the prosecutors for each of the three elements.

TABLE 38

The ranking, in order of importance, of the elements of consent, corroboration and character of the rape victim in a rape case by the 18 prosecutors interviewed[1]

Element	Rank 1 Frequency	%	Rank 2 Frequency	%	Rank 3 Frequency	%
Consent	15	83.3	2	11.1	1	5.6
Corroboration	4	22.2	11	61.1	3	16.7
Character of the rape victim	2	11.1	4	22.2	12	66.7

[1]Several of the prosecutors gave an equal ranking to two of the elements.

The above rankings given by the prosecutors were to be the major indicators in the testing of the hypothesis. That indicator provides a ranking of consent, corroboration and character of the rape victim, respectively, as compared to the hypothesized ranking of character of the rape victim, consent and corroboration, respectively. The determination of the relative rankings of each of the three elements were made by the prosecutors so that the testing of the hypothesis is based on prosecutorial perceptions.

Upon examination of another indicator, however, there are some interesting results. The prosecutors were asked to choose the two major difficulties they find in getting juries to convict for forcible rape. The results indicate that the credibility of the rape victim was the most frequent response at 94.4 percent, followed by the statement that the corroboration requirements are too strict as the second most frequent response (38.9 percent). While consent was not one of the categories provided (there was an additional response category provided) there was

near unanimous agreement among the prosecutors that victim credibility was one of the two major difficulties in getting juries to convict for forcible rape. While corroboration was ranked more frequently as more important than the character of the rape victim in the first indicator (22.1 percent versus 11.1 percent, respectively) the character of the rape victim (victim credibility) was ranked more frequently than corroboration in the second indicator (94.4 percent versus 38.9 percent, respectively).

While the results for the hypothesis are inconclusive, one cannot diminish the significance of the victim's character or credibility for a rape case, given a legal system that puts the victim on trial as the main witness. Edwards makes the following statement:

> Where rape is concerned the traditional methods of criminological analysis, criminal motivation and criminal behavior are superseded by a preoccupation with the victim, her motivation, her proclivity for sexual experience and her moral behavior. And yet it is not the sexual experience of the complainant that is on trial, but a man who it is alleged has had sexual intercourse with her by force (1981:70).

Hypothesis 4

The greater the amount of corroborative evidence the more likely is the rape charge to be retained as opposed to being dismissed or plea bargained.

Corroborative evidence refers to any testimony or physical evidence that is provided, apart from the victim, in a crime. Medical evidence, medical testimony, physical evidence and police testimony are all components of corroborative evidence. Although much of the evidence concerns the victim's behavior and condition after the offence, corroborative evidence aids in strengthening or weakening the prosecution's case:

independent of the victim's account of the event. Medical evidence provides a verification that sexual penetration took place and whether or not the victim suffered any injuries. Police evidence provides information regarding the offence and the condition of the victim.

The indicators to be utilized in examining the strength of the corroborative evidence included medical and police evidence. Past research (Chappell et al., 1975) indicated that prosecutors ranked injury to the victim[5], promptness of reporting and proof of penetration in the top five factors that they perceive to be important in obtaining a conviction for forcible rape.

Medical evidence from the present study includes whether or not there was a medical examination and whether or not there were victim injuries. It is suggested that the presence of a medical examination and physical proof of victim resistance through injuries constitutes strong corroborative evidence in determining that an offence has taken place. Police evidence comprises the time interval between the offence and the report to the police. It is suggested that the shorter the time interval between the offence and the report the stronger will be the corroborative evidence. It is then hypothesized that the stronger the corroborative evidence the more likely is the rape charge to be retained as opposed to being dismissed or plea bargained.

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[5]The relative importance of victim injuries as the major determinant of nonconsent was underlined in the interviews with the prosecutors. When prosecutors were asked to indicate the major determinant of non-consent (reponse categories provided were actual force and implied threats, either verbal or by use of a weapon) the great majority of the respondents (87.5 percent) cited the category of actual force used (leading to varying degrees of victim injury).

Medical Examination

The variable dealing with the presence or absence of a medical examination after the attack revealed that the presence of a medical examination did result in less filtering out of charges.[6] The results indicate that 35.8 percent of those cases reaching the prosecutor's office where there was a medical examination resulted in retained charges. Of those cases where there was no medical examination, only 20 percent of the charges were retained. The dismissal of charges category shows a percentage of 34.3 for a medical examination and 26.7 for no medical examination. The plea bargained category shows the greatest difference between the presence or absence of a medical examination (29.9 percent and 53.3 percent, respectively.

The figures for medical examination are presented in the table below.

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[6]Of the charges at the police level, there were 76.5 percent (N=49) of the "no victim examination" charges terminated in contrast to 46.8 percent (N=59) of the "victim medical examination" charges terminated. Moreover, the unfounded category accounted for the termination of 67.2 percent of the total termination of 76.5 percent where the victim had not received a medical examination. Alternately, an unfounded designation was only given for 10.3 percent of the total termination of 46.8 percent where the victim had received a medical examination.

TABLE 39

Disposition of the Charges at the Crown and Court Levels by Victim Medical Examination

Disposition of the charges	Medical Examination for Victim			
	Yes		No	
	Number	Percent	Number	Percent
Retained	24	35.8	3	20.0
Plea Bargained	20	29.9	8	53.3
Dismissed	23	34.3	4	26.7
Total Charges	67	100.0	15	100.0

[1]There were 4 offenders' major charges where no information on a victim medical examination was available.

The results indicate that there are more charges retained with the presence of a medical examination. The differences are not substantial and the absence of a medical examination does not invalidate a report of rape or attempted rape. Rather, it makes it more likely to be plea bargained as opposed to being retained and subject to the scrutiny of a trial situation.

Victim Injuries

The presence of victim injuries were also examined with regard to whether the charge is retained, dismissed or plea bargained. Injuries, when examined alone, did not appear to have a great influence on the course that a particular charge took once at the Crown and court levels.[7]

[7]However, an examination of victim injuries at the police level revealed that more of the charges containing no victim injuries (63.8 percent) were terminated than were the charges where the victim had sustained injuries (45.7 percent).

There were 33.3 percent of the charges where the victim had injuries that were retained in comparison to 32.4 percent where the victim had no injuries that were retained. More of the charges (35.3 percent) with victim injuries were plea bargained as opposed to the charges (29.4 percent) with no victim injuries. The largest difference occurred in the dismissal category with 31.4 percent of the injured victim charges dismissed and 38.2 percent of the no victim injuries charges dismissed.

TABLE 40

Disposition of the Charges at the Crown and Court Levels by Victim Injuries

	Victim Injuries			
	Yes		No	
	Number	Percent	Number	Percent
Retained	17	33.3	11	32.4
Plea Bargained	18	35.3	10	29.4
Dismissed	16	31.4	13	38.2
Total Charges	51	100.0	34	100.0

Williams (1978:31) reported that serious cases where there were injuries to the victim were not more likely to result in a conviction than the less serious cases where there were no victim injuries. Data from the present study did not allow for a viable comparison with Williams' research as initially 56.2 percent (N=117) of the defendants' charges contained no information on victim injuries. The data, however, do show a lower dismissal rate for those charges where there are victim injuries. Victim injuries had more impact at the police level where there was a higher rate of terminated charges for assaults where the victim had not sustained injuries.

Time Interval Between Offence and Report to the Police

The time interval between the offence and the report made to the police indicates that 60.0 percent of the charges where the police arrived at the scene during or just after the offence were retained charges. This situation has the least time span between the offence and the report.[8] In those cases where the police do not arrive immediately, there are four time interval categories utilized: within one hour, 1 hour to 4 hours, 10 hours to 2 days and 2 days or more.[9]

The largest difference in the course a particular charge takes is exhibited when the report is made 2 days or more. The majority of the reports are plea bargained (66.7 percent). The remainder of the cases were dismissed and none were retained. Those reports that are made within 10 hours to 2 days are not as decisive with 37.5 percent that are plea bargained, followed by dismissal and retention at 31.3 percent each. The reports that are made between 1 hour and 4 hours and within 1 hour do not exhibit any great differences. The reports made within 1 to 4 hours are evenly distributed at 33.3 percent each for retention, dismissal and plea bargaining. Similarly, those reports made within 1 hour have 31.9 percent retained, 38.3 dismissed and 29.8 percent plea bargained.

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[8]Study of the outcome of charges at the police level yielded inconclusive results. The hypothesized strongest situation of a report made within 10 minutes was slightly more prone to termination than was the weakest situation of a report made 2 days or later (16.6 percent and 0 percent, respectively). Moreover, the remaining categories that fell between the two extremes all had substantial termination rates of at least thirty-seven percent.

[9]The specific report times to the police were rounded to the nearest appropriate category of time intervals.

TABLE 41

Disposition of the Charges at the Crown and Court Levels by the Length of Time Between the Offence and the Report Made to the Police

Disposition of the Charges	Length of Time Between Offence and Report to the Police									
	Within 10 Minutes		10 Minutes to 1 Hour		1 - 4 Hours		10 Hours to 2 Days		2 Days or More	
	#	%	#	%	#	%	#	%	#	%
Retained	3	60.0	15	31.9	5	33.3	5	31.3	-	
Plea Bargained	1	20.0	14	29.8	5	33.3	6	37.5	2	66.7
Dismissed	1	20.0	18	38.3	5	33.3	5	31.3	1	33.3
Total Charges[1]	5	100.0	47	100.0	15	100.0	16	100.0	3	100.0

[1]All of the total percentages may not add up to 100 as a result of the rounding of percentages within the categories.

The table reveals that the greatest difference in charge disposition occurs between the reports made almost immediately after the offence and those made two days or later. The report times that are made between the two extremes are fairly evenly distributed amongst the retention, dismissal and plea bargained options.

Medical Examination, Victim Injuries and the Time Interval Between the Offence and the Report to the Police

The variables of medical examination, victim injuries and the time interval between the offence and the report were then combined and examined to determine the effect of the three variables, when combined, in the filtering process. There were eight possible combinations formed utilizing the following variables: medical examination, no medical examination, victim injuries, no victim injuries, initial report made

within one hour and report made after one hour.[10]

It is hypothesized that the strongest situation will be the combination of a medical examination, victim injuries and a report made within one hour. Conversely, it is hypothesized that the weakest situation will be the absence of a medical examination, no victim injuries and a report made after one hour. The strongest situation would then result in the largest number of cases being retained as opposed to the weakest situation with the lowest number of cases being retained.

The results indicate the hypothesized strongest situation, that contained a medical examination, victim injuries and a report made within one hour, contained the largest number of charges reaching the prosecutor's office (N=29 or 37.2 percent). The hypothesized weakest situation with no medical examination, no victim injuries and a report made after one hour had the smallest number of cases reaching the prosecutor's office (N=1 or 1.3 percent).

The eventual outcome of the charges is presented in Table 42.

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[10]The four original time interval categories were divided into two categories to simplify the analysis: (1) reports made within 1 hour (2) reports made after 1 hour.

TABLE 42

Disposition of Charges at the Crown and Court Levels by the Degree of Corroborative Evidence[1]

Disposition of the Charges	Degree of Corroborative Evidence													
Medical Exam. =	Yes		Yes		Yes		Yes		No		No		No	
Victim Injuries =	Yes		Yes		No		No		Yes		No		No	
Report w/i 1 hr. =	Yes		No		Yes		No		No		Yes		No	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Retained		44.8		22.2		35.7		25.0		--		20.0		
Plea Bargained		34.5		33.3		21.4		25.0		100.0		40.0		100.0
Dismissed		20.7		44.4		42.9		50.0		--		40.0		--
Total Charges[2]	(N=29)	100.0	(N=18)	100.00	(N=14)	100.0	(N=4)	100.0	(N=2)	100.0	(N=10)	100.0	(N=1)	100.0

[1]There were 8 charges where information on all three indicators was not available.

[2]All of the total percentages may not add up to 100 as a result of the rounding of percentages within catefories.

The hypothesized strongest situation of a medical examination, victim injuries and a report made within an hour not only had the largest number of charges reaching the prosecutor's office; it also contained the largest number of retained charges (44.8 percent). Conversely, the anticipated weakest situation with no medical examination, no victim injuries and a report made after one hour was represented by only a single charge which was subsequently plea bargained.[11] The remaining categories did not show any consistent pattern and were hampered by few charges involved for several of the categories. The category of a medical examination, a report made within an hour and no victim injuries, however, emerged as the second strongest combination in terms of the retention of charges at 35.7 percent.

In summary, while the presence of the three indicators of corroborative evidence indicate a greater tendency to result in a retention of charges, there are numerous other legal and extra-legal factors that affect every charge. However, the presence of the three indicators does allow us to predict the retention of the charges.

Hypothesis 5

The higher the victim credibility, measured through positive moral and social attributes, the more likely is the rape charge to be brought to trial on the original charge. The lower the victim credibility, measured through negative moral and social attributes, the more likely is the case to be dismissed or plea bargained.

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[11] One other category contined no retained charges, that of no medical examination, victim injuries and a report after 1 hour.

The indicators utilized are specifically concerned with the victim's moral and social attributes. It is hypothesized that the more favorable and socially acceptable are the victim's attributes, the more likely is the rape/attempted rape report to result in a trial situation. Conversely, where victim credibility is low, as determined by the victim's attributes, the less likely is the case to result in a trial situation. The alternate outlets for the latter instance are plea bargaining on charge or sentence or dismissal of the charge(s) at some point in the criminal justice system.

The specific indicators are taken from previous research that has focused on the role of the moral and social attributes of the victim in determining the filtering process of rape complaints. The indicators examined are marital status, criminal record and occupation of the victim and the relative influence of each on the retention, plea bargaining or dismissal of the rape charges.

Victim's Marital Status

Firstly, the moral character of the victim will be examined by way of the victim's marital status and hence living arrangements. Previous research (Burgess & Holmstrom, 1978; Clark & Lewis, 1977) has indicated less serious social sanctions or low victim credibility in terms of non-traditional living arrangements. Non-traditional living would include co-habitation, separation or divorce statuses where the rape victim is not living with parents or a husband (ie. a male protector). Clark and Lewis comment on the findings of their research: ". . . the Canadian criminal justice system tends to dismiss those rape victims who if of a roughly marriageable age are not living within the approved bonds of holy

matrimony" (1977:85).

It is hypothesized that the status of the victim will have an effect on the outcome of the charges. It is expected that victims with traditional living arrangements will be more likely to have their report retained as opposed to those victims with non-traditional living arrangements.

The effect of the victim's marital status will be determined by examining the outcome of the offender's major charge in the criminal justice system. Of the 187 offenders' charges where the victim was of the age to have marital status considered relevant[12] to the charges, there were 38 instances (20.3 percent) where there was no information available on that variable. The remaining 149 offenders' charges formed the basis for the examination of the effect of the victim's marital status.

Initially, the data reveal that regardless of the victim's marital status there is a great deal of filtering out of charges at the police level before being accepted by the prosecutor's office. The figures indicate that at least 50 percent of the charges were filtered out at the police level regardless of the marital status of the victim. The category with the greatest amount of filtering was that of victim cohabitation at 69.2 percent of the total charges under that category. In addition, the cohabitation category accounts for 38.5 percent of the filtering where the victim had taken the initiative to terminate the proceedings.

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[12]Only those victims whose age was 15 years or older were considered for the purposes of examining the effect of marital status.

Alternately, the category of divorced victims experienced the least amount of filtering at 50.0 percent with no victim termination of charges in that category. While the termination of charges at the police level is substantial, there are no trends or patterns that emerge with respect to the marital status of the victim. The only exception is a greater propensity for cohabitating victims to withdraw support for the continuation of the proceedings by way of dropping the charges or refusing to make a formal complaint.

The remainder of the charges were dealt with at the Crown and court levels. There are three major courses of action for the charges at this point: dismissal by the victim, Crown or judge, plea bargaining prior to a trial situation and retention of Crown charges resulting in a trial situation. Sixty-five percent of the charges proceeding past the police level are not disposed of on the original Crown charge; they are either dismissed or plea bargained (35.0 and 30.0 percent, respectively). In contrast, only 35.0 percent of the charges were retained.

The number of charges at the Crown and court level is small and comparison based on the marital status of the victim becomes problematic (four of the five categories have less than 10 charges each while the fifth category has 36 charges). Table 43 presents the final outcome of the charges.

TABLE 43

Disposition of the Charges at the Crown and Court Level by the Marital Status of the Victim

Disposition of the Charges	Victim's Marital Status									
	Married		Single		Divorced		Separated		Cohabitation	
	No.	%	No.	%	No.	%	No.	%	No.	%
Retained	1	25.0	11	30.5	1	33.3	4	44.4	4	50.0
Plea Bargained	1	25.0	14	38.9	1	33.3	1	11.1	1	12.5
Dismissed	2	50.0	11	30.5	1	33.3	4	44.4	3	37.5
Total Charges at the Crown and Court Levels[1]	4	100.0	36	100.0	3	100.0	9	100.0	8	100.0

[1]All of the categories may not add up to the total percentages given as a result of the rounding of percentages within categories.

The table reveals that the cohabitation category contains the highest percentage of charges that are retained. However, the category of married victims has the lowest percentage of retained charges (25 percent) and refutes the original contention that those victims who are living in socially acceptable situations (ie. married) will be the least likely to have their charges altered or filtered out of the system. Moreover, single victims contained the second lowest percentage of retained charges and the highest percentage of plea bargained charges. The categories of divorced and separated had retention rates of 33.3 percent and 44.4 percent, respectively.

Victim Criminal Record

Another indicator of the moral character of the rape victim is the

presence or absence of a previous criminal record. Past research (Williams, 1978) has indicated that the chances of conviction were decreased if the victim had a previous criminal record. It is hypothesized that the presence of a criminal record will be considered a negative moral attribute and thus will be more likely to be dismissed or plea bargained. The absence of a criminal record, it is expected, will result in fewer dismissals and plea bargained cases and more retained charges at trial.

Information on the absence or presence of a victim criminal record was incomplete. Of the total offenders' major charges (N=208) there were 75 cases where no information was available on a victim criminal record. There were, however, 133 cases where information was available and the analysis will be based on these cases.

The great majority of charges involved a victim without a criminal record (N=122 or 91.7 percent). The remaining charges involved victims who had a criminal record as indicated in the police files (N=11 or 8.2 percent). The initial termination of charges at the law enforcement level by victim criminal record is presented in the table below.

TABLE 44

Termination of Charges at the Police Level by Victim Criminal Record

Reason for Termination of Charges at the Police Level	Victim Criminal Record			
	Yes		No	
	No.	%	No.	%
Victim Drops Charges	-		11	9.0
Victim Makes No Formal Complaint	1	9.1	10	8.2
No Suspect Apprehended	1	9.1	17	13.9
Complaint Unfounded	8	72.7	30	24.6
Total Filtering	10	90.9	68	55.7
Total Charges	11	100.0	122	100.0

The results from the table confirm that the presence of a criminal record for the victim leads to increased filtering out or termination of the corresponding charges. Nearly all of the cases in which the victim had a criminal record were dropped at the police level. Conversely, there were 55.7 percent of the charges terminated for those cases where there was no victim criminal record mentioned. While the termination of charges was high, regardless of the presence or absence of a victim criminal record, and the number of those victims with criminal records is low, there appears to be a substantially higher chance to have charges filtered out at the police level should the victim have a criminal record. For instance, the unfounding of a complaint represented 72.7 percent (N=7) of the charges where there was a victim record whereas the unfounding of a report represented only 24.6 percent (N=30) of the charges where there was no victim record.

Analysis cannot be carried out at the Crown and court levels since

only one charge involves the presence of a victim criminal record; this single charge was dismissed as a result of victim reluctance to proceed at the level of the crown.

The results must be interpreted with caution as there was a significant amount of missing information (36.0 percent of the charges). Nevertheless, the available charges for analysis do confirm the hypothesis with respect to a greater likelihood of charges being filtered out of the criminal justice system when there is the presence of a victim criminal record.

The above results coincide with those obtained by Williams for a two-year period in the District of Columbia. Williams reports that the chances of conviction for the defendant were significantly reduced where the victim had a previous criminal record (1978:34). The importance of the presence of a victim criminal record is referred to by Williams: "When the victim testifies, she may be 'impeached' as a witness if she has prior convictions. The defendant's criminal history, however, can be introduced in court only if he chooses to testify" (1978:Ibid). The notion of the victim on trial rather than the defendant is once again reinforced upon examination of the significance of a victim criminal record.

Victim's Occupational Status

The social status or attributes of a rape victim was examined by using the occupational category of the victim. There will be four main categories: student, unskilled labor, work requiring special training and a final category of marginally respectable lines of work, eg. dancer,

masseuse, unemployment and welfare.[13] Previous research (Clark & Lewis, 1977) indicated that those rape victims of low occupational status were more likely to have their rape complaints dismissed. It was hypothesized that the higher the occupational status the greater were the chances of the charge being retained and brought to trial as opposed to being dismissed or plea bargained.

The examination of the victim's occupation comprises occupational categories derived for the present research. It was expected that of the categories of student, work requiring special training, unskilled labor and marginally respectable occupations, that the last category would be the most likely to be filtered out of the criminal justice system or altered as opposed to being retained on the original Crown charge. The category of unskilled labor is expected to be second most likely to be filtered followed by the categories of student and special training occupations.

The information compiled from the police files on the victim's occupation is limited; of the 208 applicable offenders' charges there were 118 charges with no information (56.7 percent). The results indicate that the specialized training category had 66.6 percent of the total charges terminated at the police level (the total number of charges in that category is only six). The next highest category for the filtering out of charges was the marginal occupations at 63.2 percent followed by students at 40.8 percent. The least amount of filtering out of charges occurred within the unskilled labor category at 37.5 percent.

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[13] See section on Victim Occupation which deals with the victim occupation categories (Chapter V).

Information on the victim's occupation was available for forty-eight of the cases that reached the Crown. The disposition of the charges at the Crown and court levels is given in Table 45.

TABLE 45

Disposition of the Charges at the Crown and Court Levels by the Victim's Occupational Category

Disposition of the Charges	Victim's Occupational Category							
	Student		Marginally Respectable		Unskilled Labor		Specialized Job Training	
	No.	%	No.	%	No.	%	No.	%
Retained	8	27.6	3	42.8	3	30.0	1	50.0
Plea Bargained	12	41.4	3	42.8	3	30.0	-	
Dismissed	9	31.0	1	14.3	4	40.0	1	50.0
Total Charges at the Crown and Court Levels[1]	29	100.0	7	100.0	10	100.0	2	100.0

[1]All of the categories may not add up to the total percentage as a result of the rounding of percentages within categories.

The course of the charges indicate that at least half of the charges for each occupational category were disposed of by dismissal or plea bargaining as opposed to the charges being retained on the original Crown charge. The student category exhibited the lowest percentage of retained charges (27.6 percent) and was followed closely by the unskilled labor category (30 percent). Although limited in representation, the specialized training category contained the highest percentage of retained charges (50 percent). The marginally acceptable occupations category had a percentage of 42.8 retained charges.

The results from the victim's occupational category do not support

the hypothesis that proposed the lower the occupational status of the victim the lower were the chances of the respective charges resulting in a trial situation. The presumed lowest status category of unacceptable occupations was only slightly less prone to retention of charges (42.8 percent) in comparison to the presumed highest status category of specialized job training (50.0 percent).

In conclusion, the examination of victim credibility, utilizing the indicators of marital status, criminal record and occupation, resulted in a lack of support for the hypothesis. The contention that positive moral and social attributes would result in more retained charges was not borne out. The indicators of marital status and occupation of the victim refuted the hypothesis while criminal record could not be analyzed at the court and Crown levels.[14]

Several limiting factors should be acknowledged in interpreting the results. Firstly, the number of observations for analysis was small in terms of attempting to establish patterns based on victim characteristics. The number of available observations was further hampered by inconsistent recording of the three indicators in the police files by the police. The available information was too small to prevent any meaningful multiple regression analysis.

Hypothesis 6

The rape charges where the victim is perceived to have been careless or at least part responsible for the offense will be less likely to be

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[14]The effect of a victim criminal record could not be analyzed at the crown and court levels; the one case where the victim had a criminal record was dismissed after victim withdrawal.

retained and more likely to be dismissed or plea bargained.

Less serious societal reactions to women who have placed themselves in "vulnerable" social situations for a female in rapes have been documented (Burgess & Holmstrom, 1978; Sebba & Cahan, 1975). Kalven and Zeisel, in referring to the actions of juries in acquitting rape defendants, suggest lenience is in effect ". . . akin to the assumption of risk on the part of the victim" (1966:250). They further state:

> The jury's stance is not so much that involuntary intercourse under these circumstances is no crime at all, but rather that it does not have the gravity of rape. If given the option of finding a lesser offense, the jury will avail itself of it. However, if this option is not available, the jury appears to prefer to acquit the defendant rather than to find him guilty of rape. (Ibid:250-51).

LaFree's study (1979:16) confirmed the finding that cases in which the victim had engaged in "deviant" behavior during or prior to the incident were less likely to result in a guilty verdict.

The present study examined instances of perceived contributory behavior on the part of the rape victim in determining the course that a particular rape charge took. In this study the variables utilized are the use of alcohol by the victim and the circumstances under which the victim and the offender met. The use of alcohol by the victim (Amir, 1967) is expected to reflect on victim carelessness or victim responsibility for the event. Similarly, the victim who initiates or encourages interaction between herself and the offender before the incident will indicate contributory behavior on the part of the victim, as opposed to the victim who is attacked suddenly by a stranger. The degree of responsibility on the part of the victim is then the focal point. The hypothesis is that the greater the perceived victim responsibility the greater are the chances that the charge will be handled through a dis-

missal or a negotiated guilty plea in contrast to a retained charge.

Use of Alcohol by the Victim

The use of alcohol by the victim prior to the offence had an effect on the retention or non-retention of the offenders' major charge by the prosecutor.[15] For those charges where it was recorded that the victim had consumed alcohol (three categories: alcohol in victim only, alcohol in victim but no information for the offender and alcohol in victim and offender) only 25.0 percent were retained. This result is in sharp contrast to those charges where there was no mention of alcohol consumption by the victim or the offender with 75.0 percent of the charges retained by the prosecutor. The number of charges in the latter category was small, however, so one should be cautious in interpreting the results.

The dismissal rate between the two instances reveals that the victim group of alcohol consumption had a dismissal rate of 35.0 percent while none of the cases where the victim had not consumed alcohol were dismissed. Plea bargained charges again indicated a higher rate (40.0 percent) where the victim had consumed alcohol as opposed to a rate of 25.0 percent where neither the victim nor the offender had consumed alcohol. The results are given in Table 46.

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[15]Similarly, the use of alcohol by the victim prior to the attack influenced the outcome of the charges at the police level. Where victim use of alcohol was present, there were 64 percent of the charges terminated whereas only 33.3 percent of the charges were terminated where there was no use of alcohol reported for the victim.

TABLE 46

Disposition of the Charges at the Crown and Court Levels by Use of Alcohol by the Victim

Disposition of the Charges	Use of Alcohol: Victim Only (N=1), Victim and Offender (N=38), Victim (No Info. for Offender)(N=1)		Not by Either (N=4)	
Retained	10	25.0	3	75.0
Plea Bargained	16	40.0	1	25.0
Dismissed	14	35.0	-	
Total Charges[1]	40	100.0	4	100.0

[1]There were 23 charges where there was no information available.

The use of alcohol by the offender and not the victim was considered as a separate category and it provided some unexpected results. Of those charges where only the offender had consumed alcohol (N=19) only 15.8 percent of the charges were retained while 47.4 percent were dismissed and 36.8 percent were plea bargained (the corresponding numerical values are 3, 9 and 7, respectively). The results from the study indicate that the chances for retention are even lower where only the offender has consumed alcohol as opposed to where the victim has consumed alcohol. Drawing from these findings, it would appear that alcohol consumption by the offender works to his advantage by way of less severe penalties while alcohol use by the victim works to her disadvantage by way of the erosion or alteration of the original Crown charges.

Initial Contact Between the Victim and the Offender

The initial contact between the victim and the offender revealed

that the highest percentage of retained charges at the Crown and court levels were those where the victim was abducted or attacked suddenly by a stranger (either outside or in the victim's home) with a percentage of 46.2.[16] In contrast, those charges that have the lowest percentage of retained charges were those where the victim and the offender lived in the same residence or where the offence occurred at the place of work of either the victim or the offender (no retained charges in either of the circumstances), where the contact occurred by way of a party or dance (22.2 percent) and finally, where the victim was hitchhiking (22.2 percent).

In terms of the dismissal of charges, the largest percentages occur where the contact was through a party or dance (44.4 percent) and where the victim was hitchhiking (55.6 percent). In contrast, only 15.4 percent of the charges in the sudden attack by a stranger category were dismissed.

The results for all of the categories of the initial contact between the victim and the offender are given below.

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[16]The termination of charges at the police level was highest for the situations where the offender and the victim met in a bar (69 percent), where the victim was attacked suddenly outdoors (64.9 percent) and where the victim initially went to the offender's residence (61.5 percent). Conversely, the lowest amount of terminated charges occurred in the situations where the offender came to the victim's residence (25 percent) and where the victim was attacked at her place of work (25 percent).

TABLE 47

Disposition of the Charges at the Crown and Court Levels by the Initial Contact Between the Victim and the Offender[1]

Disposition of the Charges	Sudden Attack by a Stranger		Victim Accepts a Ride		Victim Hitch-hiking		Party/Visiting/ Dance		Offender Comes to Victim's Residence		Victim Goes to Offender's Residence		At Place of Work		Live in same Residence		Met in Bar	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Retained	6	46.2	5	35.7	2	22.2	4	22.2	5	41.7	2	40.0	-	-	-	-	4	44.4
Plea Bargained	5	38.5	4	28.6	2	22.2	6	33.3	3	25.0	1	20.0	3	100.0	2	66.7	2	22.2
Dismissed	2	15.4	5	35.7	5	55.6	8	44.4	4	33.3	2	40.0	-	-	1	33.3	3	33.3
Total Charges[2]	13	100.0	14	100.0	9	100.0	18	100.0	12	100.0	5	100.0	3	100.0	3	100.0	9	100.0

[1]There are 18 charges for which no information on initial contact was available.

[2]Categories may not all add up to 100 percent as a result of the rounding of percentages within categories.

The data from the present study confirm that the degree of perceived victim responsibility, through the circumstances of initial contact, affects the retention of charges. The instances where the victim can be seen to be the least responsible, that of a sudden attack or abduction by a stranger, are the charges that are most likely to be retained and the least likely to be dismissed. However, those instances of initial contact involving place of work, the residence that the victim and the offender both live in, party/visiting/dance and victim hitchhiking contain the least likely charges for retention. Among the categories, the highest dismissal rate was found in the victim hitchhiking category and the highest plea bargained rate was found in the place of work category.

Hypothesis 7

The rape charges that involve more than one offender will be more likely to be retained as opposed to being dismissed or plea bargained.

The results from the present study indicate that multiple offender cases reported to the police are small in number. Of the cases reported to the police, 81.2 percent were classified as single offender cases and 18.8 percent were classified as multiple offender cases. The percentage of those cases reaching the office of the prosecutor increased the gap between single and multiple offender cases with the former at 85.7 percent and the latter at 14.3 percent.[17]

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[17]The termination of charges for single versus multiple offenders charges revealed that as the number of offenders involved in an assault increased so did the filtering out of charges at the police level. There were 65.5 percent of the multiple offender charges terminated in contrast to 50.4 percent of the single offender charges terminated at the police level. It is interesting to note that nearly twice as many of the terminated charges for multiple offender assaults (31.0 percent), as opposed to single offender assaults (16.4 percent), were initiated by the victim.

The number of offenders for any given case in the present study is represented at the Crown and court levels.[18] The findings indicate that the single offender charges were less likely to be retained than the multiple offender charges (30 percent versus 38.5 percent, respectively). The disposition of charges for the single and multiple offender charges are presented in the following table.

TABLE 48

Disposition of the Charges at the Crown and Court Levels by the Number of Offenders[1]

Disposition of the Charges	Single Offender		Multiple Offenders	
	Number	Percent	Number	Percent
Retained	18	30.0	10	38.5
Plea Bargained	19	31.7	9	34.6
Dismissed	23	38.3	7	26.9
Total Charges[2]	60	100.0	26	100.0
Total Cases	60			

[1]There was no information available on the number of offenders for one of the charges.

[2]All categories may not add up to 100 percent as a result of the rounding of the percentages within categories.

The data reveal that at the court level the multiple offender charges involved a higher retention rate and a lower dismissal rate than the one offender charge. Insofar as the multiple offender charges represent "atypical" rape and attempted rape offences, the hypothesis

[18]The two cases that involved five offenders were both terminated at the police level when the victim refused to make a formal complaint to the police.

is confirmed with the multiple offender charges from the study resulting in a lower percentage of altered charges (dismissed and plea bargained total) at 61.5 percent, as opposed to one offender charge at 70.0 percent. However, the differences are not substantial.

CHAPTER VIII

SUMMARY AND CONCLUSIONS

In this study, a detailed examination was made of the filtering of rape reports in the criminal justice system. The police, Crown and court levels were included in the analysis. In addition, the role of the prosecutor in the processing of rape reports was examined. There were two data sources utilized in collecting the information for the processing of rape reports. These were the rape report files from the police and personal interviews with the Crown attorneys who had handled the reports from the study period. The study addressed two major areas of sexual assault research which have not been emphasized in past research. The first of these was the provision of a detailed examination of the processing of the reports at the police, Crown and court levels.[1] The research also provided an in-depth investigation of prosecutorial practices in dealing with the offence.

Apart from the focus on the filtering of rape reports and prosecutorial practices, there were several other areas examined. There was a discussion of the characteristics of the offence which included victim, offender and offence characteristics. The participation of the victim, police, defense counsel and judiciary in the legal proceedings have also been discussed. A summary of the major findings and conclusions are

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[1]The preponderance of existing sexual assault literature has focused on the police level.

presented in this chapter.

The Filtering System

The filtering system in effect for the reports involved the termination, alteration or retention of the charges as they proceeded through the criminal justice system. Termination of reports at the police level was substantial. In total, 52.6 percent of the cases, involving 57.8 percent of the offenders were terminated by the police. The most frequent designation was that of unfounded for the termination at the police level. This accounted for 27.3 percent of the reports and 28.9 percent of the offenders being filtered out of the system. The unfounding of a report involved both police and victim apprehension about proceeding with the report. The police were involved in the unfounding of the majority of the reports, either unilaterally or in combination with the victim. The remainder of the total unfounded reports comprised reports made by someone other than the victim, who did not want the offence reported, and reports made by and subsequently denied by the victim. Finally, there was no information available for the unfounding of two of the reports.

Reports that were terminated at the police level as a result of victim initiative represented 11 percent of the reports made and 18 percent of the offenders involved. In these cases the victim terminated the report either by refusing to make a formal complaint to the police (6.4 percent) or by dropping the charges at the police level before Crown involvement (4.5 percent). The two major reasons for victim withdrawal from the proceedings were refusal to testify in court and the decision against any further legal action. Finally, 14.3 percent of the reports comprising 10.9 percent of the offenders were terminated as a result of

the inability to apprehend the offender.

The Crown received the remaining 47.4 percent of the reports made (N=73). There were 42.2 percent of the offenders' major charges involved (N=89). Termination of charges at the Crown level resulted in the filtering out of a further 5.7 percent of the charges. Five of the reports were given to the Crown by the police for a classification. The Crown classified two of the reports as unfounded involving 2.4 percent of the offenders. In addition, 3.3 percent of the charges were terminated after the victim refused further participation in the proceedings before the preliminary hearing had begun. Plea bargaining also took place at the Crown level and resulted in the alteration of both charge (3.3 percent) and sentence (1.4 percent). The reclassification of original police charges for nine of the offenders occurred after the Crown received the reports. The remaining 31.8 percent (N=7) of the total charges were dealt with at the court level. The three major courses of action followed were the dismissal, alteration or retention of the Crown charges. Dismissal and subsequent termination accounted for 4.2 percent of the charges and primarily resulted from judicial dismissal at a preliminary hearing or victim withdrawal from the legal process, where information on dismissal was available. The reduction of charges (8.9 percent) and determinate sentence or sentence range (.9 percent) in the form of plea bargaining represented a total of 9.8 percent of the charges. Reduced Crown charges after an initial dismissal at the court level saw 2.8 percent found guilty and .9 percent found not guilty. The remaining charges resulted in 9 percent of the defendants being found guilty while 2.8 percent were acquitted of the major Crown charge. There were also .9 percent involved in a guilty plea devoid of an express concession and .9

percent who were given a consent committal in lieu of the charges being heard in a criminal court.

It was found that 71.1 percent of rape reports were filtered out after reaching the courts. Further, only 28.9 percent of the original offenders were convicted of an offence resulting from the rape complaint. This finding is similar to that of Williams (1978:26) who indicated that only 20 percent of the original offenders in her study in Washington, D.C. had their charges result in a conviction. A final breakdown of disposition for the present study revealed that only 9 percent of the offenders were convicted on the original charge. The greatest amount of filtering was done at the police level. This was tempered by the fact that the police must address the various legal and social issues that are unique to the offence of rape in the founding and unfounding of reports (Clark & Lewis, 1977).

Characteristics of the Rape Reports

The data regarding the characteristics of the rape reports provided information on the victim, the offender and the circumstances surrounding the assault. The young victim and offender emerged as the predominant groups. The great majority of the victims (86.4 percent) and offenders (86.3 percent) were under thirty years of age. Most of the victims (61.9 percent) and offenders (58.2 percent) were single. The cohabitation category followed in terms of frequency for the victim (13.5 percent) whereas the married category followed in terms of frequency for the offender (21.4 percent). Most of the victims were students (49.3 percent) as opposed to the majority of the offenders who were classified as labourers (31.5 percent). A criminal record was noted for more of the

offenders (23.8 percent) than for the victims (5.6 percent).

Most of the victims and offenders in the study were strangers (55.8 percent) with a further 18.2 percent of them classified as strangers but having general knowledge of each other. The category of acquaintance followed at 10.4 percent. Most of the previous research utilizing an official statistics data source has supported the preponderance of the victim and the offender as being strangers.

The majority of the offences occurred on weekends and at night (56.1 and 56.9 percent, respectively). In addition, the moderate temperature months during the spring and fall seasons[2] constituted the largest category for the season of the offence (40.6 percent) and did not support the view that crimes against persons are highest during the hot months.

The present study paralleled other North American research with respect to the place of the offence. The Winnipeg data indicated that an assault in a vehicle was the largest category representing 28.5 percent of the reported assaults. The place of initial contact between the victim and the offender did not indicate any definite pattern, but rather, a wide variety of locations were involved. However, the social function categories of "party, visiting, dance" and "public drinking establishment", together, accounted for 30.6 percent of the reports whereby initial interaction could be facilitated.

Information regarding who was responsible for reporting the offence to the police indicated that the largest single category was that of a

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[2]The three categories utilized were hot, intermediate and cold months of the year.

victim report (41.8 percent). Nevertheless, reports made by someone other than the victim, when combined into a single category, emerged as predominant and represented 58.2 percent of the reports. The largest single category for a report made by someone other than the victim was that of stranger/passerby (17 percent).

Several stereotypes and myths surrounding rape have been dispelled by the examination of the offence characteristics for the present study. The young, sexually-attractive female was not the only type of victim as evidenced by an age range that included the very young (1-9 years of age) and the older victim (40-59 years of age). The unmarried rapist, while present in the study, was not the sole type of offender. The married or cohabitating offender was also represented in the data. Sexual assault occurred predominantly in the spring and fall months as opposed to the hot summer months. Rape as an outdoor attack by a rapist on a victim was less frequent than attacks in vehicles, at a residence other than that of the victim or the offender and the victim's residence. While these results are not consistent with many of the stereotypes held by the public they are, by and large, congruent with the results of previous research.

Interviews with the Prosecutors

The role of the prosecutor was highlighted by personal interviews with prosecutors regarding their procedures for handling rape cases. Caringella-MacDonald observed that the traditional orientation towards the criminal justice system has focused on the police, courts and corrections, while noting that: "The paramount importance of prosecutors must not be overlooked any longer, given the nature and impact of their roles and decisions upon case treatment and outcomes" (1982:2).

Eighteen prosecutors were interviewed, all of whom had been involved in the prosecution of the rape cases in the sample.

Prosecutorial perceptions regarding the most important factors in their decision to file charges and for obtaining a conviction for forcible rape revealed that the elements of the use of physical force, injury to the victim, and the relationship between the suspect and the victim, while not necessary components in defining rape, were included in the top five factors for both the filing of charges and the securing of a conviction. In comparison, the Chappell study (1975:54) found that the elements of the use of physical force and injury to the victim were in the top five factors for both of the phases, while the resistance offered by the victim was present in the top five factors only for obtaining a conviction. The largest difference between the two legal phases for the present study concerned victim resistance which was found to be more influential in obtaining a conviction than in the filing of charges (rankings of 3 and 9, respectively). Similarly, Chappell (1975:54) determined that victim resistance was perceived as being more crucial in obtaining a conviction than in the filing of charges. Victim resistance then emerged as a salient factor in both studies for securing a conviction.

Information on the utilization of additional charges indicated that all but one of the prosecutors (94.4 percent) considered the use of additional charges apart from the sexual offence to be appropriate. The reasons given for the charging of the separate offence only, revealed that 66.7 percent of the respondents would do so if the evidence of rape was insufficient while a further 61.1 percent considered victim-related issues in the decision to charge for the separate offence only. Such issues included situations where the victim did not want to proceed on the rape

charge, the victim was emotionally unable to testify, or the trauma of testifying was believed to be too great for a young victim. Two of the prosecutors stated that they would always charge for both of the offences, regardless of any perceived problems with prosecuting the rape offence. The Chappell study (1975:29) paralleled the present research with weak evidence for the rape case and victim reluctance to proceed, emerging as the most frequent responses.

The use of directly-related additional charges with the rape charge was supported by 88.7 percent of the prosecutors from the present study and was considered most appropriate when the additional charges were clear and distinguishable (50 percent). Additional responses included the use of directly-related additional charges to facilitate plea bargaining (44.4 percent) and as back-up charges when conviction on the rape charge was problematic (22.2 percent). It is interesting to note that 66.6 percent of the responses indicated the use of additional charges for reasons other than its distinguishable occurrence.

The plea bargaining system in Manitoba was evaluated by the prosecutors. One-half of the respondents indicated that the present plea bargaining system was fine with the main reason being that it allowed for a satisfactory agreement for everyone involved. The remaining prosecutors (50 percent) felt that the plea bargaining system in Manitoba should be retained but changed. The occurrence of plea bargaining at the last minute was seen as the major concern. The solutions offered by the prosecutors included establishing stricter guidelines regarding the timing of plea bargaining and penalties in the form of a fine or an increase in jail sentence for the offender. None of the respondents advocated the abolition of plea bargaining altogether. Chappell's

results (1975:80) revealed a higher degree of satisfaction with the plea bargaining system (77 percent) and a lower degree of change advocated (19 percent) than was found in the present study. Among the factors that influence them to engage in plea bargaining, the prosecutors in the present study cited evidentiary problems (72.2 percent) and the uncertainty of conviction (50 percent) as the two major factors influencing its use. The prosecutors unanimously agreed that the judges usually adhered to their recommendations concerning plea bargaining. It would appear that the prosecutors perceive their influence to be substantial in terms of the discretion allowed for the use of plea bargaining.

The relationship between the prosecutors and other members of the criminal justice system was also examined. Concerning the access given to defense counsel for the Crown statements, most of the prosecutors usually allowed the disclosure of the full particulars of the case, excluding the actual witness statements (72.2 percent). The minimal disclosure allowed, excluding full information and witness statements was allowed by 22.2 percent of the prosecutors, with only one prosecutor providing full access to Crown statements. The prosecutors appear to enjoy considerable latitude in the decision regarding the information to be released to the defense counsel.

The prosecutors were asked if they exerted considerable influence on the granting and amount of bail, the selection of the judge who will hear the case, and the calendar dates for the case throughout the proceedings. The results indicated that most of the prosecutors felt they exerted considerable influence on bail (77.8 percent). None of the respondents believed that they exerted considerable influence on the selection of

the judge involved in the trial. The majority of the prosecutors stated that they had considerable influence on the calendar dates for the proceedings (88.9 percent). When asked to compare their degree of influence with that of the defense counsel, the majority of the prosecutors indicated that they exerted greater or the same amount of influence as the defense counsel in the three areas.

The relationship between the police and the prosecution was evaluated as excellent by the majority of the prosecutors (94.4 percent) and as acceptable by the remaining prosecutor (5.6 percent). None of the respondents characterized the relationship as one requiring improvement. The major reasons given for the positive relationship were the necessity of both agencies to work together to ensure the best results (66.7 percent) and the cooperative and thorough manner in which the police conducted their investigations (33.3 percent). When all of the prosecutors were asked how cooperation could best be improved, the following frequent suggestions were obtained: the establishment of a specialized rape unit in the police agency (50 percent), the use of a liaison person between the two agencies (33.3 percent), and that no changes in the existing relationship were required (33.3 percent).

The prosecutors were also queried as to the state of the existing rape laws and any areas requiring improvement as of the time included in the present research. The majority of the prosecutors indicated that the credibility of the victim (94.4 percent) and the strictness of the corroboration requirements were the two major difficulties in getting juries to convict for forcible rape. Interestingly, the major concern of the prosecutors involved extra-legal considerations that focus on the victim. The most important improvements needed in dealing with the

problem of forcible rape were perceived by the prosecutors to be: sentencing (61.1 percent); public education (50 percent); and victim services (44.4 percent). The changes seen as being necessary to the present rape laws included the elimination of the necessity of penetration in proving rape, further restrictions on the questioning of the rape victim and the elimination of low sentences for rape.

The prosecutors were understandably concerned with the successful prosecution of a rape case. In securing a conviction, the benchmark of a successful prosecution, the prosecutor may retain, plea bargain or reduce charges, depending upon the circumstances of the case. For example, the use of directly-related additional charges was most often advocated for its utility in securing an eventual conviction.

When asked to identify the major difficulties in obtaining a conviction, the problem of the credibility of the victim (whether rightly or wrongly an issue) was cited by most of the respondents, especially in a jury trial situation. Sentencing was also a major concern of the prosecutors in that they often felt sentences were too low given the gravity of the offence. Sentencing policies were a greater concern than police and prosecution policies. The prosecutors appeared to be, above all else, pragmatic and realistic in prosecuting rape cases as reflected by their perceptions of their relationship with the victim and other members of the criminal justice system.

The Hypotheses for the Research

The first hypothesis proposed that the majority of rape reports resulting in a conviction would be dealt with as altered charges as opposed to being retained on the original charges laid by the prosecution.

The hypothesis was supported, as it was found that of the sixty-seven defendants' charges disposed of, 59.7 percent of the charges were disposed of as altered charges in relation to either a plea bargain (on charge or sentence) or a reduced Crown charge without bargaining. The remaining 40.3 percent of the charges were disposed of by conviction (31.4 percent) or acquittal (9 percent) on the original Crown charges that were retained throughout the Crown and court levels. A comparison of the present study with the Williams study (1978:28) revealed that the latter study exhibited a higher guilty plea rate (66.6 percent or 40 of 60 charges) than did the present study (49.3 percent or 33 of 67 charges)[3] of those charges that resulted in a guilty plea or trial. The hypothesis was supported as the majority of the convictions involved altered charges.

The second hypothesis was that the frequency of defendants pleading guilty, devoid of plea bargaining concessions, would be extremely low. It was then expected that the majority of the guilty pleas would involve an express concession in terms of charge or sentence reduction. The hypothesis was confirmed with only 2.1 percent (N=2) of the defendants whose charges were accepted by the prosecutor's office opting for a guilty plea without concessions. Conversely, of the defendants whose charges were accepted by the prosecutor's office, 33.4 percent were involved in a guilty plea that involved an express concession in terms of charge or sentence reduction. In view of this observation, therefore, the hypothesis was accepted.

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[3]The charges included were all charges resulting in a guilty plea: plea bargained on charge or sentence or a guilty plea without concessions.

The third hypothesis stated that the character of the rape victim would be the major element dictating the strength of the prosecution's case, followed in importance by the issues of consent and corroboration, respectively. The results were inconclusive. The initial indicator came from the interviews with the prosecutors, where they were asked to rank each of the three elements in order of importance for the prosecution's case, where all were problematic. The results obtained refuted the hypothesis; consent as the most significant factor (83.3 percent); corroboration as the most significant factor (22.2 percent); and the character of the rape victim as the most significant factor (11.1 percent). The examination of another indicator, however, lent some support to the hypothesis. Prosecutors referred to the credibility of the rape victim (94.4 percent) as the most common difficulty encountered in getting juries to convict for forcible rape. The indicator utilized from the interviews with the prosecutors did not support the hypothesis.

The fourth hypothesis stated that the greater the amount of corroborative evidence, the more likely was the rape charge to be retained as opposed to being dismissed or plea bargained. The first indicator examined was a medical examination for the victim. The presence of a medical examination did result in a higher percentage of retained charges than for those cases where there was no medical examination (35.8 and 20 percent, respectively). The differences, however, were not substantial and the charges containing no medical examination of the victim emerged as being most likely to be plea bargained. The second indicator utilized was the presence or absence of victim injuries. Victim injuries did not affect the retention rate as the observed categories of "victim injuries" and "no victim injuries" were roughly the same. In terms of dismissal

of the charges, the victim injury category was slightly less prone to dismissal than the no victim injury category. The level of the police saw the greatest difference between the presence or absence of victim injuries. Charges containing no victim injuries were more likely to be terminated (63.8 percent) than were charges containing victim injuries (45.7 percent) at the police level. The time interval between the offence and the report to the police confirmed that the strongest situation in terms of a high retention rate was when the report was made to the police within 10 minutes and the weakest situation for the retention of charges was when the report was made 2 days or later. The time intervals between the two extremes, however, were fairly evenly distributed and did not indicate a trend either for or against the hypothesis. When the three indicators were combined and examined, the hypothesized strongest situation of a victim medical examination, victim injuries and a report made to the police within one hour emerged as the most favorable one for the retention of charges. The hypothesized weakest situation contained only one charge and it was disposed of through plea bargaining. The hypothesis concerning corroborative evidence was not supported and provided inconsistent results.

The fifth hypothesis stated that the status of the victim would affect the outcome of the charges. The victim attributes examined in this research were marital status, criminal record and occupation which were taken from the feminist theory regarding rape (Clark & Lewis, 1977; Brownmiller, 1975). The indicators of marital status and the occupation of the victim did not lend support to the hypothesis as the perceived positive victim attributes (married; job requiring special training) were

no more likely to be retained than the perceived negative victim attributes (cohabitating; marginally acceptable occupation). The effect of a criminal record of the victim on the final outcome could not be analyzed as there was only a single charge where the victim had a criminal record and it was subsequently dismissed on the initiative of the victim. The outcome of the charges at the police level, however, did exhibit a substantially higher termination rate where the victim had a criminal record (90.9 percent) as compared to cases where the victim did not have a criminal record (55.7 percent). While the hypothesis concerning victim credibility was not supported, the analysis was hampered by a small number of observations.

The sixth hypothesis proposed the rape charges where the victim was perceived to have been at least partly responsible for the offence would be less likely to be retained and more likely to be dismissed or plea bargained. The contention was that there would be less serious societal reactions (Burgess & Holmstrom, 1978) and disposition outcome (Kalven & Zeisel, 1966) where there was perceived contributor behavior on the part of the victim. To test this, use of alcohol was examined and it was discovered that the absence of alcohol use by the victim did result in a higher retention rate (75 percent) than where the victim had used alcohol (25 percent). The initial contact between the victim and the offender revealed that those charges where the victim would be held the least responsible (a sudden attack by a stranger) were also the charges that were the most likely to be retained (46.2 percent). Conversely, the charges least likely to be retained were those involving initial contact at the residence where both the victim and the offender live and

at the place of work of either the offender or the victim (neither of the categories contained any retained charges), where the victim was hitchhiking and where initial contact occurred at a party, visiting or dance (both categories contained 22.2 percent retained charges). Apart from the perceived situations where the victim could be held least responsible, the hypothesis was not supported for the remaining situations.

The seventh hypothesis stated the rape charges that involved more than one offender would be more likely to be retained as opposed to being dismissed or plea bargained. The results revealed that the multiple offender charges were more likely to be retained and less likely to be dismissed than the single offender charges, although not to a great extent. There was moderate support for the hypothesis than rape charges involving more than one offender would be more likely to be retained and less likely to be dismissed or plea bargained.

Legal Reform

In 1983, the existing rape laws in Canada were replaced by sexual assault legislation.[4] The changes to the Criminal Code are substantial and far-reaching. Although it is difficult to assess the effect of the legislation at this early stage, there are several major features that will be highlighted.

The first and most obvious change is that of the designation of the offence. The offence of rape has been abolished and replaced by the offence of sexual assault. The designation of assault is crucial since

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[4] Martins Annual Criminal Code, 1983, section 246.

it shifts the emphasis from sexual to assaultive. As a result, the necessity of penetration has been replaced by the violence of the entire act. Sexual assault contains a three-tiered structure of degrees of assault that is delineated by factors such as injury, use of a weapon, the number of offenders and the endangerment of life. There are also varying sentences ranging from ten years to life imprisonment, depending on the severity of the offence.

Under the sexual assault legislation, either a male or a female can be classified as a victim or an offender.[5] In addition, the spousal immunity clause has been removed and allows for charges against a victim's spouse.

For the most part, the changes outlined are considered to be beneficial. The stigmatization of the "female rape victim" has been removed and replaced by an equitable definition that encompasses either of the genders. The focus on the assaultive, violent nature of the offence removes the former concentration on the sexual aspect of the offence in law. Correspondingly, the length of sentence has been structured to reflect the severity of the sexual assault.

There are a number of cautionary aspects, however, that are associated with the legislation. There is an absence of a clear definition of sexual assault that separates it from assault. The same necessary elements are applied to both assault and sexual assault. Consequently, the interpretation of sexual assault will be left to the members of the criminal

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[5]The degenderizing of offences, however, applies only to the former charges (rape, attempted rape, indecent assault) that have now been replaced by the assault legislation. Charges such as "sexual intercourse with a female between 14-16 years of age" and "seduction of female passengers on vessels" still remain.

justice system and may result in uneven or varying applications of the legislation. The continued absence of provisions for the questioning of the victim's sexual background, although further limited, continue to place the onus on the victim in court. Finally, the defense of reasonable doubt has been expanded to include the absence or presence of reasonable doubt. In effect, an unreasonable, yet honest mistake will be included as an acceptable defense and will provide a further outlet for the defendant by way of inferring consent from the victim.

The importance of legal reform is considered to be substantial in the removal of the sexual stereotypes of sexual assault and in the improvement of the treatment of the victim in the criminal justice system. The sexual assault legislation is an important step in attaining those goals.

Future Research

There are a number of issues that evolved during the course of the research that require further examination and research. To begin with, there is a lack of knowledge concerning the actual incidence of rape in Canada, involving both reported and unreported sexual assaults (Clark & Lewis, 1977). Among reported sexual assaults, there is a need for more research dealing with the processing of sexual assault cases in the Canadian criminal justice system. Research from numerous jurisdictions will enable greater insight into the differences and similarities in the processing of sexual assaults throughout Canada on a national scale. Little is known about unreported offences, although some work has been

done[6]. More knowledge can be gained concerning the incidence of sexual assault by utilizing the information available at the victim advocate centres and any other agencies that might counsel victims. A more effective response to dealing with the problem of sexual assault can be attained through a greater knowledge of the incidence and legal processing of the assaults in Canada.

There is also a need for more research that focuses on the criminal justice personnel who are involved with the processing of sexual assault cases. The research to date has emphasized the role of the police, yet there is a corresponding need to examine the role of other key criminal justice members: namely, the defense, prosecution and judges. The interdependence of the various members can only be understood by more comprehensive criminal justice research. Connidis (1979;397-398) advocates more research that includes the examination of the entire criminal justice system.

The police files were an invaluable source for providing information on the rape reports made during the study years of 1976 and 1977. However, the problem of incomplete information concerning the offence characteristics resulted from non-standardized recording of the information by the police. More complete information for the purposes of research, for both the police and outside agencies, could be achieved by the consistent and standardized recording of information. Especially problematic were the personal data for the victim and the offender in terms of missing information.

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[6]See "Canadian Urban Victimization Survey", Ministry of the Solicitor General, 1983; Gunn, R., "Factors Pertaining to the Reporting of Sexual Assault", Unpublished M.A. Thesis, University of Manitoba, 1984.

Finally, research that addresses the effect of the sexual assault legislation in Canada would be most beneficial. Comparative studies between the previous rape laws and the current sexual assault legislation would serve to indicate the changes, if any, that have resulted with the introduction of the re-structured legislation.

Conclusions

Filtering of the rape reports in the criminal justice system resulted in the termination of 71.1 percent of the charges. While criminal justice personnel were responsible for most of the filtering out of charges, the victim was the initiator for nearly one-third of the terminated charges. The filtering of charges in effect for the study period was considerable with the police level containing the majority of the terminated reports. The legal system emerges as being less than adequate in prosecuting rape offenders and ensuring that justice is done. The figures also indicate that the victim is discouraged with the legal proceedings and withdraws from the process. A conviction rate of 28.9 percent is minimal, considering that only 3.8 percent of the defendants were actually acquitted of the charges and formally proclaimed innocent.

Several recommendations stem from the examination of the processing of rape cases in the legal system. First and foremost is the need for criminal justice personnel who are sensitized to the difficulties in successfully convicting rape offenders. The preoccupation with victim-related factors both before and during the offence have effectively functioned to make the conviction rate for rape cases very low. Legal reform, as the initiator of change in the criminal justice system, is

the major impetus for improving the plight of the rape victim in the legal proceedings and ensuring that more of the offenders are convicted.

The role of criminal justice personnel in the improvement of rape prosecutions, however, cannot be overlooked. The prosecutor's involvement in the legal proceedings is substantial. The Crown is responsible for the charges from the time they leave the police level to the final disposition. Prosecutors, in their role as the representative of the Crown and ultimately the victim, must ensure that rape proceedings do not continue to place the onus on the victim. Prosecutorial guidelines and courtroom practices which clearly articulate that requirement are needed. It is only when victims can see that rape proceedings are not concentrating on their credibility, that the problem with sexual assault can be adequately addressed and remedied.

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APPENDIX A

LEGAL DEFINITIONS FOR THE RESEARCH

LEGAL DEFINITIONS FOR THE RESEARCH[1]

Appeal	A review of the trial by a higher court.
Bail/Out on Bail	A sum of money or bond or valuable property (surety) which is left with the court to ensure that an accused person will return to court for trial. A person is "out on bail" if he/she has been released by posting bail.
Charge	A formal accusation that a person has committed a particular offence against the law.
Complainant	The person who states that an offence has been committed.
Consent	This is a complex legal concept . . . Briefly, it concerns whether or not the complainant permitted the assault or other action to take place, or whether she made any effort to prevent it.
Conviction	A decision by the court that the accused person is guilty of the charge.
Corroborating	Supporting. Corroborating evidence is evidence that supports or strengthens the information given earlier, but does not necessarily add anything new.
Credibility	Believability. The extent to which a piece of evidence can be trusted or believed. The extent to which a witness is giving a clear and believable picture of what happened.
Crown Attorney	The lawyer who is acting for the Crown (the government) and who is presenting evidence of what is alleged to have happened and trying to see that the case is properly dealt with.
Defence Attorney/ Defence Counsel	The lawyer who is assisting the person who is charged with the offence.
Evidence	Statements or objects that are used in trial to try to prove something relevant to the charge.

[1] "Glossary of Definitions", Helping the Victims of Sexual Assault, Ontario Provincial Secretariat for Justice, 1979, pp. 70-77.

In Camera	When a hearing meets "in camera", everyone not directly necessary to the conduct of the trial is kept out of the room. Witnesses are only allowed in the room while they are actually testifying.
Information/Lay an Information	Give a statement or provide information to the legal authorities on which a formal charge is based.
Jury	A group of people from the community who listen to the evidence given at a trial and they decide if the accused person is guilty or not guilty.
Lesser Included Offence	A crime that is not as serious as the offence originally charged, but is included in it; for example, a rape includes an indecent assault. Sometimes at a trial an accused person will be allowed to plead guilty or will be found guilty of a lesser included offence. This does not necessarily mean that the offence originally charged did not occur, but only that the lesser offence has been proven and the greater one has not.
Penetration	The insertion of the penis into the vagina. Legally this is said to have occurred even if the penis enters only to the slightest degree, and even if sexual intercourse is not completed to orgasm.
Plea	The position taken by the accused pleading at the beginning of a trial, after the charge has been read to him/her. The usual plea is either "guilty" or "not guilty".
Plea Bargaining	A negotiating process between the crown attorney and the defence lawyer concerning a plea to a charge or recommendation on sentence.
Preliminary Hearing	A legal proceeding in which a judge decides whether there is enough evidence to warrant bringing an accused person to trial.
Prosecution	The lawyer who is acting for the Crown (the state) and who is presenting evidence of what is alleged to have happened and trying to see that the case is properly dealt with.

Rape	Sexual intercourse between a man and a woman who is not his wife, which is against her will and without her consent.
Rape Crisis Centre	An organization that assists victims of rape and sexual assault.
Suspect/Accused/ Defendant	A person who is believed to have committed a crime. If he/she is charged he/she becomes "the accused". When the matter goes to court or to a hearing he/she becomes "the defendant".
Testimony	Statements made in court by a person who has sworn or affirmed that he/she will tell the truth.
Trial	A legal proceeding in which a judge or judge and jury hears evidence and decides on the basis of that evidence whether an accused person is guilty or not guilty.
Verdict	The decision of a judge or jury makes at the end of a trial as to whether the defendant is guilty or not guilty of the specific charge.
Voir Dire	A procedure during the trial process when certain legal questions are decided. The jury and all witnesses not testifying in court during the voir dire are excluded from the court.
Warrant	A legal paper which gives the power to arrest someone who is charged with an offence.
Witness	A person who is subpoenaed to appear in court because he has some knowledge of the case.

APPENDIX B

POLICE LEVEL: PHASE ONE

DATA COLLECTION INSTRUMENT

Schedule Number _____

Department of Sociology
University of Manitoba
Winnipeg, Manitoba

Rape in Manitoba
A descriptive and analytical study

CASE IDENTIFICATION SHEET

Case Number from Police records _____

Date when the rape occurred _____

Research Assistant's name _____

RAPE IN WINNIPEG

DATA COLLECTION SCHEDULE - PHASE ONE

Instructions: The following instrument is to be used for obtaining data from the records of the Winnipeg Police. Each item on this schedule must be completed.

I. DESCRIPTION OF THE OFFENSE

1. Classification of the offense: (circle one)

a)	Rape	1
b)	Attempted Rape	2
c)	Indecent Assault	3
d)	Other	4
e)	No information	9

2. Temporal Information:

a) day of the week _____

b) month of the year _____

c) time of the day _____

d) year of the offense _____

3. Meeting place of Initial Contact:

a)	victim's residence	1
b)	offender's residence	2
c)	other residence	3
d)	vehicle	4
e)	public street or lane	5
f)	public building	6
g)	public park	7
h)	other place (please specify)	8
i)	no information	9

4. What was the address at which the offense took place?

_____.

5. Place of Offense: (circle one)

a)	victim's residence	1
b)	offender's residence	2
c)	other residence	3
d)	vehicle	4
e)	public street or lane	5
f)	public building	6
g)	public park	7
h)	other place (please specify)	8
i)	no information	9

6. Did the crime scene change (ie. Did initial contact, rape, and final contact all take place in the same location)

yes	1
no	2
no information	9

7. How did it change?

_____

_____.

8. Specify any characteristics of the location that might have facilitated the rape _____

_____

_____.

9. Offender-Victim Relationship:

a)	stranger	11
b)	stranger, but general knowledge	12
c)	acquaintance	13
d)	neighbour	14
e)	close friend	15
f)	boyfriend	16
g)	ex-boyfriend	17
h)	family friend	18
i)	relative (specify)	19
j)	business associate	20
k)	ex-husband	21
l)	other (specify)	22
m)	no information	99

10. Offense Reported By:

a)	victim	1
b)	spouse	2
c)	friend	3
d)	boyfriend	4
e)	father	5
f)	mother	6
g)	neighbour	7
h)	other (specify)	8
i)	no information	9

11. Number of victims ____

12. Number of offenders ____

13. Use of Alcohol:

a)	Present in victim and offender	1
b)	Present in victim but not in offender	2
c)	Present in offender but not in victim	3
d)	not present in either offender or in victim	4
e)	no information	9

14. How did the offender initially contact the victim?

_____

_____.

15. What were the offender's initial intentions upon contact? (ie. was he a robber, etc. _____

_____

_____

_____.

16. Verbal threats:

yes	1
no	2
no information	9

17. Use of Physical force:

yes	1
no	2
no information	9

18. Describe the nature of any force or intimidation used:

_____

_____

_____

_____.

19. Use of weapon: yes 1
no 2
no information 9

20. If "yes" to #19, please describe: _____

_____

_____.

21. Resistance by Victim: yes 1
no 2
no information 9

22. Describe the victim's reaction when the threat of rape became apparent: _____

_____

_____.

23. Type of sexual contact:

a) genital intercourse 1
b) fellatio 2
c) cunnilingus 3
d) anal intercourse 4
e) combination of a,b,c 5
f) other (specify) 6 _____

_____

g) no information 9

24. Conversation between offender and victim:

yes 1
no 2
no information 9

25. If "yes" to #24, please indicate when the conversation occurred and provide some indication of its substance.

_____

_____

_____

_____

26. Did the offender attempt to normalize or explain the rape to the victim?

yes	1
no	2
no information	9

27. If "yes" to #26, discuss his attempts in as much detail as possible, ie., Did he apologize, ask to meet her again, say he was doing her a favour, etc. _____

_____

_____

_____

28. Did the offender explain his actions to police?

yes	1
no	2
not applicable (ie. offender not picked up)	3
no information	9

29. What was the nature of this explanation? _____

_____

_____

_____.

30. Concomitant offenses:

Did another offense occur as well as the rape or attempted rape?

yes	1
no	2
no information	9

31. If "yes" to #30, when did the concomitant offense occur?

a)	prior to the rape	1
b)	concurrent with the rape	2
c)	after the rape	3
d)	no information	9

32. If "yes" to #30, please describe the concomitant offense or offenses: _____

_____

_____.

33. Does the record indicate that the offense was planned or spontaneous? (circle one)

planned	1
partially planned	2
spontaneous	3
no information	9

34. Describe nature of pre-planning _____

_____

_____.

35. Did the particular victim appear to have been pre-selected?

yes	1
maybe	2
no	3
no information	9

36. If yes or maybe, what was the basis of pre-selection?

_____

_____.

37. How did the offender leave (depart from) the victim after the offense?

_____

_____

II. DESCRIPTION OF THE VICTIM

38. Age of the victim at the time of the offense:

age _____

no information 99

39. Marital status at the time of the offense: (circle one)

a) married 1
b) single 2
c) divorced 3
d) separated 4
e) common law 5
f) other (specify) 6
g) no information 9

40. Race of the victim: _____

41. National origin of victim: _____

42. Victim's occupation: _____

43. Occupation of victim's father: _____

44. Number of victim's children: (circle one)

a)	none	1
b)	one	2
c)	two	3
d)	three	4
e)	four or more	5
f)	no information	9

45. Victim's address at the time of the offense:

_____

46. Educational level of the victim: (circle one)

a)	no formal schooling	1
b)	some elementary school	2
c)	completed elementary school	3
d)	some high school	4
e)	completed high school	5
f)	some college	6
g)	college degree	7
h)	other (please specify)	8
i)	no information	9

47. In any of the questioning or evidence was there any indication that the victim was "of bad character" or promiscuous?

yes	1
no	2
no information	9

48. If "yes" to #47, what was the nature of this evidence?

_____

_____

49. Did the victim have a criminal record?

yes	1
no	2
no information	9

50. If "yes" to #49, what was the nature of this record?

_____

_____.

51. Physical description of the victim: (height, weight, body build, complexion, hair, clothing, and peculiarities)

_____

_____

_____

_____

_____.

52. Specify any characteristics of the victim that suggest vulnerability? (ie. retarded, handicapped, live alone, etc.)

_____

_____

III. DESCRIPTION OF THE OFFENDER

53. Discuss the description of the offender given by the victim

_____

_____

_____

54. Sex of the offender: (circle one)

male 1

female 2

55. Age of the offender at the time of the offense:

age _____

no information 99

56. Marital status of the offender: (circle one)

a) married 1
b) single 2
c) divorced 3
d) separated 4
e) common law 5
f) other (specify) 6
g) no information 9

57. Race of the offender: _____

58. National Origin of the Offender: _____

59. Occupation of the Offender: _____

60. Occupation of the offender's father: _____

61. Number of the offender's children: (circle one)

a) none 1
b) one 2
c) two 3
d) three 4
e) four or more 5
f) no information 9

62. Offender's address at the time of the offense:

_____

63. Educational level of the offender: (circle one)

a)	no formal schooling	1
b)	some elementary school	2
c)	completed elementary school	3
d)	some high school	4
e)	completed high school	5
f)	some college	6
g)	college degree	7
h)	other (please specify)	8
i)	no information	9

64. Physical description of the offender: (height, weight, body build, complexion, hair, clothing, any peculiarities)

_____

_____

_____

_____

_____

65. Did the offender have a previous criminal record?

yes	1
no	2
no information	9

66. If "yes" to #65, what was nature of record? (specify charges, frequency, disposition).

_____

_____

67. Is a psychiatric report available on the offender?

yes 1

no 2

68. What is the nature of this report? _____

_____

_____.

69. Is a pre-sentence report available on the offender?

yes 1

no 2

70. What is the nature of this report? _____

_____

_____

IV. POLICE PROCESS

71. To whom was the first complain following the rape made?

_____

72. When was the first complaint following the rape made?
(ie. How long after the offense?)

_____

73. If there was a delay in reporting, what were the reasons?

_____

_____

_____.

74. Was the victim able to identify a suspect? (circle one)

yes 1
no 2

75. If "no" to #74, how was suspect identified?

_____

_____

76. How many interviews did the police conduct in the course of the investigation?

_____

77. How many interviews did the victim have with the police?

_____

78. With whom were police interviews conducted? (circle one)

same policeman 1
different policemen 2
no information 9

79. How was the initial complaint following the rape made? (circle one)

a) personally at the police station 1
b) by telephone to the police 2
c) at the scene of the offense 3
d) other (please specify) 4
e) no information 9

80. Police reaction to the complaint: (circle one)

complaint founded 1
complaint unfounded 2

81. What charge was initially laid? (circle one)

a)	rape	1
b)	attempted rape	2
c)	indecent assault	3
d)	other (specify)	4
e)	no information	9

82. Was the investigation of this case terminated at the request of the victim?

yes	1
no	2

83. If yes, give details (ie. stage of termination, reasons)

_____

_____

_____

_____.

V. MEDICAL PROCESS

84. Did the victim go to a medical facility? (circle one)

yes	1
no	2
no information	9

85. If "yes" to #84, to what medical facility did the victim go. (specify clinic or hospital, etc.)

_____

86. When did the victim go to a medical facility in relation to the initial complaint to the police?

before the initial complaint	1
after the initial complaint	2
no information	9

87. Who was the medical examiner? (circle one)

a) private physician 1
b) hospital intern 2
c) other (specify) 3
d) no information 9

88. Did the medical examiner question the victim about the rape? (circle one)

yes 1
no 2
no information 9

89. Were any injuries suffered by the victim?

yes 1
no 2
no information 9

90. If "yes" to #89, discuss the nature of those injuries.

_____

_____.

APPENDIX C

CROWN LEVEL: PHASE TWO

INTERVIEW SCHEDULES

RAPE IN WINNIPEG

THE PROSECUTION OF RAPE CASES

_____Respondent Number

RAPE CHARGE WAS: RETAINED

1. Who in your office, specifically, decided that the rape charge should be retained?

   1. _____You, yourself
   2. _____Senior prosecutor
   3. _____Group decision among prosecutors in your office
   4. _____Other (specify):

      _____

2. Did you act as prosecutor for both the preliminary hearing and the court trial?

   1. _____Yes
   2. _____No

3. Was the trial a bench trial (with judge alone) or a jury trial (with judge and jury)?

   1. _____Bench trial
   2. _____Jury trial

4. What was the defense for the rape charge at trial?

   1. _____Identity of accused
   2. _____Consent
   3. _____Other (specify):

      _____

5. Did the complainant appear as a witness at the trial willingly or was she legally compelled to do so?

   1. _____Willingly
   2. _____Legally compelled

6(a). Were there any additional charges at trial other than the rape charge?

1._____Yes

2._____No

(b). (If yes) What were the additional charges?

_____

7(a). Was there any discussion of a charge reduction or a pre-determined sentence at any stage of the proceedings?

1._____Yes

2._____No

(b). (If yes) Why were they not accepted?

_____

_____

_____

_____Respondent Number

RAPE CHARGE WAS: PLEA BARGAINED IN RELATION TO CHARGE

1. Who, specifically, first initiated a reduction of charge(s)?

1. _____You, yourself
2. _____Another member in your office (specify):

_____

3. _____Defense counsel
4. _____Accused
5. _____Other (specify):

_____

2(a). Who was approached for a reduction of charges?

1. _____You, yourself
2. _____Another member in your office (specify):

_____

3. _____Defense counsel
4. _____Accused
5. _____Other (specify):

_____

(b). What was the initial reaction of the party approached?

_____

_____

_____

3(a). Was the initial charge reduction the same as the one that was finally accepted?

1. _____Yes
2. _____No

(b) i. (If not) How did the charge reduction differ?

_____

_____

_____

(b)ii. (If no) What objection was voiced against the original charge reduction?

_____

_____

_____

4(a). What was the major factor that led to a reduction of charge(s)?

_____

_____

(b). Were there any other factors involved?

1. _____Yes
2. _____No

(c). (If yes) Could you elaborate on these factors?

_____

_____

5. At what stage of the proceedings was a reduction of charges first introduced?

1. _____Before formal charges laid
2. _____Before preliminary hearing
3. _____During preliminary hearing
4. _____Before court trial

6(a). At what stage was a reduction of charges finally accepted?

1. _____Before formal charges laid
2. _____Before preliminary hearing
3. _____During preliminary hearing
4. _____Before court trial.

(b). (If (3) or (4)) Was the preliminary hearing itself a contributing factor in a reduction of charge(s)?

1. _____Yes
2. _____No

(c). (If yes) In what way? _____

_____

_____

_____

7. Was the complainant consulted during negotiations for a reduction of charge(s)?

1. _____Yes
2. _____No

8. What explanation was given to the complainant for the reduction of charge(s)?

_____

_____

_____

_____Respondent Number

RAPE CHARGE WAS: PLEA BARGAINED IN RELATION TO SENTENCE

1. Who, specifically, first initiated a pre-determined sentence?

1. _____You, yourself
2. _____Another member in your office (specify):

   _____
3. _____Defense counsel
4. _____Accused
5. _____Other (specify):

   _____

2(a). Who was approached for a pre-determined sentence?

1. _____You, yourself
2. _____Another member in your office (specify):

   _____
3. _____Defense counsel
4. _____Accused
5. _____Other (specify):

   _____

(b). What was the initial reaction of the party approached?

_____

_____

_____

3. Why was a pre-determined sentence chosen rather than a reduction in charge?

_____

_____

4(a). Was the initial pre-determined sentence the same as the one that was finally accepted?

1. _____Yes
2. _____No

(b) i. (If no) How did the sentence differ?

_____

_____

ii. What objection was voiced against the original pre-determined sentence?

_____

_____

_____

5(a). What was the major factor that led to a pre-determined sentence?

_____

_____

(b). Were there any other factors involved?

1. _____Yes
2. _____No

(c). (If yes) Could you elaborate on these factors?

_____

_____

_____

6. At what stage of the proceedings was a pre-determined sentence first introduced?

1. _____Before formal charges laid
2. _____Before preliminary hearing
3. _____During preliminary hearing
4. _____Before court trial

7(a). At what stage was a pre-determined sentence finally accepted?

1. _____Before formal charges laid
2. _____Before preliminary hearing
3. _____During preliminary hearing
4. _____Before court trial

(b). (If (3) or (4)) Was the preliminary hearing itself a factor in a pre-determined sentence?

1. _____Yes
2. _____No

(c). (If yes) In what way? _____

_____

_____

_____

8. Was the complainant consulted during negotiations for a pre-determined sentence?

1. _____Yes
2. _____No

9. What explanation was given to the complainant for the pre-determined sentence?

_____

_____

_____

_____Respondent Number

0 PLEAD GUILTY TO RAPE CHARGE - NO CONCESSIONS

1. Why did the accused plead guilty to rape, devoid of concessions?

_____

_____

_____

2. Had defense counsel approached you at any time prior to plea bargaining the charge(s) or sentence?

1. _____Yes
2. _____No

3. Was there a preliminary hearing before the accused pled guilty to rape?

1. _____Yes
2. _____No

4. Where did sentencing take place?

1. _____County court
2. _____Queen's Bench
3. _____St. Boniface

5. What was the length of sentence given?

___ ___ (in months)

6. Was there a period of probation given at sentencing?

1. _____Yes
2. _____No

_____Respondent Number

RAPE CHARGE WAS: DISMISSED AT PROSECUTOR'S OFFICE

1. Who in your office, specifically, decided that the rape charge should be dismissed?

   1. _____You, yourself
   2. _____Senior prosecutor
   3. _____Group decision among prosecutors in your office
   4. _____Other (specify):

   _____

2. Was the complainant allowed any influence in this decision?

   1. _____Yes
   2. _____No

3. What explanation was given to the complainant regarding the dismissal of charges?

   _____

   _____

   _____

4(a). What was the major factor that resulted in a dismissal of charges?

   _____

   _____

   _____

(b). Were there any other factors involved?

   1. _____Yes
   2. _____No

(c). (If yes to 4(b)) Could you elaborate on these factors?

_____

_____

_____

APPENDIX D

INTERVIEWS WITH THE PROSECUTORS

INTERVIEW SCHEDULE

RAPE IN WINNIPEG

THE PROSECUTION OF RAPE CASES

INTERVIEW SCHEDULE

_____Respondent Number

1. Sex of respondent 1. F_____ 2. M_____

2. How long have you been in your present position as a Crown attorney? (in years)
_____

3. Have you ever done any other types of legal work?

1. Yes_____ 2. No_____

(b) (if yes) Please specify. _____

_____

4. How long have you been involved with the handling of rape cases? (in years)
_____

5. Where did you obtain your law degree? _____

6. What is your age? _____

THE FIRST SECTION WILL EXPLORE THE PROCEDURES AND PRACTICES OF PROSECUTORS IN THE FILING OF A RAPE CHARGE.

*7(a). When an additional offense such as robbery or burglary accompanies rape, what is the procedure taken for charging these multiple offenses?

_____Both crimes

_____Rape only

_____Property crime only

*Replicated from Duncan Chappell et al., Forcible Rape, A Natural Survey of the Response by Prosecutors.

7(b). Under what conditions would your office generally file charges for the property crime only?

_____

_____

_____

8(a). In the case of additional charges that are involved directly with the charge of rape (eg. unlawful confinement, gross indecency, possession of a dangerous weapon) what procedures are commonly taken?

1. _____Charge for rape only
2. _____Charge for rape and additional offenses directly related to rape

(b). Under what conditions are multiple charges involved directly with a rape charge considered appropriate?

_____

_____

_____

*9. Of the factors listed, which eight (8) do you consider to be the most important in the decision to file charges? The factors could affect the decision either positively or negatively. (Mark an "X" beside the 8 relevant factors).

1. _____Suspect's previous criminal record
2. _____Relationship between victim and suspect
3. _____Age difference between victim and suspect
4. _____Race or ethnicity of victim
5. _____Race or ethnicity of suspect
6. _____Use of physical force
10. _____Use of weapon
11. _____Occupation of suspect
12. _____Victim's previous arrest history
13. _____Injury to victim
14. _____Resistance offered by victim
15. _____Proof of penetration

*Replicated from Duncan Chappell et al., Forcible Rape, A Natural Survey of the Response by Prosecutors.

16. _____Accomplices (more than one offender)
17. _____Sexual acts other than intercourse
18. _____Circumstances of initial contact
19. _____Alcohol or drug involvement on the part of the victim
20. _____Alcohol or drug involvement on the part of the suspect
21. _____Witnesses
22. _____Promptness of reporting
23. _____Location of offense
24. _____Extent of suspect identification
_____Other (specify): _____

_____

THE NEXT SECTION WILL EXAMINE THE PROSECUTION'S RELATIONSHIP WITH DEFENSE COUNSEL, JUDGES, AND THE POLICE WHEN HANDLING A RAPE CHARGE.

10(a). Do you generally allow defense counsel full access to the statements of Crown witnesses or do you allow only the minimal disclosure required by law?

_____Full access
_____Minimal disclosure allowed by law
_____Other (specify): _____

_____

(b). Under what conditions would only minimal disclosure be considered appropriate?

_____

_____

_____

11(a). In your own estimation, do you exert considerable influence on:

Amount of bail	1. Yes____	2. No____	9. N.A.____
The judge in a bench or jury trial	1. Yes____	2. No____	9. N.A.____
Calendar dates for the case at any particular stage of the proceedings	1. Yes____	2. No____	9. N.A.____

11(b). Estimate the influence of defense counsel in terms of having a greater amount, the same amount, or a lesser amount of influence as the prosecution in these areas.

Amount of bail	1. Greater____	2. Same____	3. Less____	9. N.A.____
The judge in a bench or jury trial	1. Greater____	2. Same____	3. Less____	9. N.A.____
Calendar dates for the case at any particular stage of the proceedings	1. Greater____	2. Same____	3. Less____	9. N.A.____

*12(a). Which of the following statements best describes your opinion of the plea bargaining system in your jurisdiction?

It's fine the way it is. Why? _____

_____

_____

_____

It should be retained but changed. How? _____

_____

_____

_____

It should be eliminated altogether. Why? _____

_____

_____

_____

*Replicated from Duncan Chappell et al., Forcible Rape, A Natural Survey of the Response by Prosecutors.

12(b). Rank in order of importance the following factors that are thought to influence the use of plea bargaining by prosecutors. Rank each factor using the numbers 1 through 5 (number 6 is optional) with number "1" indicating greatest influence through to number "5" (or "6") indicating least influence.

1. _____Case pressure (backlog of cases)

2. _____Uncertainty of a conviction in a trial ("no case is 100 percent sure one way or the other")

3. _____Evidentiary problems (strength of evidence and credibility of witnesses)

4. _____Pressures from other members of the criminal justice system to plea bargain (eg. police, defense counsel and judges)

5. _____Notoriety of a particular case (possibility of a vocal public reaction)

6. _____Other (specify): _____

_____

13. Estimate the adherence of judges to prosecutorial recommendations concerning a pre-determined sentence or charge where the defendant pleads guilty in a rape case.

1. _____Usually 2. _____Sometimes 3. _____Rarely 4. _____Never

*14(a) How would you rate the degree of cooperation between your agency and the local law enforcement agency in dealing with rape cases?

1. _____Excellent

2. _____Acceptable

3. _____Needs improvement

*Replicated from Duncan Chappell et al., Forcible Rape, A Natural Survey of the Response by Prosecutors.

*14(b). What is the most important reason for the level of cooperation which you have indicated in #14(a)?

_____

_____

_____

_____

(c). How could cooperation best be improved? (Mark choice(s) with an "X" - multiple answers accepted).

1. _____Use of a liaison person
2. _____Written guidelines for filing cases
3. _____Establish a special rape unit in your agency
4. _____Establish a special rape unit in the law enforcement agency
5. _____Increase understanding of rape issues in your agency
6. _____Increase understanding of rape issues in the law enforcement agency
9. _____Not applicable
10. _____Other (specify): _____

_____

THE NEXT SET OF QUESTIONS WILL INVOLVE THE INTERACTION BETWEEN THE PROSECUTION AND THE COMPLAINANT IN A RAPE CASE.

*15. When does the most intensive interviewing take place with the complainant?

1. _____Prior to filing accusatory pleading
2. _____At the time of filing accusatory pleading
3. _____Prior to the preliminary hearing
4. _____Prior to the court trial

*Replicated from Duncan Chappell et al., Forcible Rape, A Natural Survey of the Response by Prosecutors.

*16. Who is usually present at the interview other than the prosecutor and the complainant?

1. _____No one else is present
2. _____Another prosecutor or investigator
3. _____A family member or friend of the victim
4. _____Victim advocate
5. _____Other (specify): _____

_____

*17. How many times is the complainant usually interviewed prior to trial?

1. _____Once
2. _____Twice
3. _____More than twice

*18. Estimate the frequency of complainant withdrawal of a rape complaint after a suspect has been charged. (in a percentage value)

_____

*19. What do you perceive to be the major reasons for complainant withdrawal of a rape complaint after a suspect has been charged?

1. _____

_____

2. _____

_____

3. _____

_____

4. _____

_____

*Replicated from Duncan Chappell et al., Forcible Rape, A Natural Survey of the Response by Prosecutors.

20(a). Do you feel counseling services should be provided for rape victims?

1. _____Yes
2. _____No

* (b). (if "Yes") How do you feel counseling services should be provided for rape victims? (Mark the one best choice with an "X").

1. _____Law enforcement agencies should provide them
2. _____There should be a hospital-based program
3. _____Professionals (psychologists, social workers, etc.)
4. _____An agency staffed by specially trained volunteers
5. _____Other (specify): _____

_____

THE NEXT SECTION WILL DEAL WITH THE RELEVANT LEGAL ELEMENTS IN A RAPE CASE AFTER CHARGES HAVE BEEN LAID.

*21. The absence or presence of which eight (8) factors would you consider to be the most important in obtaining a conviction for forcible rape? (Indicate the 8 most important factors by placing an "X" in the corresponding space provided. The factors could affect the decision either positively or negatively. Mark 8).

1. _____Suspect's previous criminal record
2. _____Relationship between victim and suspect
3. _____Age difference between victim and suspect
4. _____Race or ethnicity of victim
5. _____Race or ethnicity of suspect
6. _____Use of physical force
10. _____Use of weapon
11. _____Occupation of suspect
12. _____Victim's previous arrest history
13. _____Injury to victim
14. _____Resistance offered by victim
15. _____Proof of penetration
16. _____Accomplices (more than one offender)
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19. _____Alcohol or drug involvement on the part of the victim
20. _____Alcohol or drug involvement on the part of the suspect
21. _____Witnesses
22. _____Promptness of reporting
23. _____Location of offense
24. _____Extent of suspect identification
_____Other (specify): _____

_____

22. The influence of the unique legal elements of consent, corroboration, and the character of the rape victim are thought to be substantial in a rape charge. Consider a hypothetical situation where a rape charge contained problems with all three of these legal elements. How would each element rank in order of importance? Or would a combination exist? (Rank from "1" - most important through to "3" - least important).

_____consent _____character of the rape victim _____corroboration

23. In terms of the legal elements of consent, which would you consider to be the major determinant of proof of nonconsent on the part of the rape victim?

1. _____Implied threats through use of a weapon by the offender
2. _____Verbal threats
3. _____Extent of injuries sustained by the victim

*24. What are the two (2) major difficulties you find in getting juries to convict for forcible rape? (Mark 2 with an "X").

1. _____Penalties are too severe
2. _____There is not enough range of penalties
3. _____Corroboration requirements are too strict
4. _____The credibility of the victim
5. _____The presentation of the case is limited
6. _____Other (specify): _____

_____

*Replicated from Duncan Chappell et al., Forcible Rape, A Natural Survey of the Response by Prosecutors.

*25. What is the average sentence actually imposed for forcible rape in Manitoba in your estimation?

_____

*26(a). Do you feel that the average sentence imposed is appropriate?

1. _____Yes
2. _____No

(b). Why or why not? _____

_____

_____

_____

*27. What do you consider to be the three (3) most important improvements needed in dealing with the problem of forcible rape? (Mark 3 choices with an "X").

1. _____Victim services
2. _____Legal reform
3. _____Sentencing
4. _____Police investigative techniques
5. _____Prosecution policies
6. _____Treatment and rehabilitation of offenders
10. _____Public education
11. _____Police training
12. _____The teaching of prevention techniques or measures to potential victims

_____Other (specify): _____

_____

* Replicated from Duncan Chappell et al., Forcible Rape, A Natural Survey of the Response by Prosecutors.

*28. What are the most important changes in rape laws that you would like to see? (Include rules of evidence, sentencing, release, etc.).

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