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Wayne A. Kerstetter

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CRIMINOLOGY

GATEWAY TO JUSTICE: POLICE AND PROSECUTORIAL RESPONSE TO SEXUAL ASSAULTS AGAINST WOMEN

WAYNE A. KERSTETTER*

I. INTRODUCTION

In their 1966 book *The American Jury*, Harry Kalven and Hans Zeisel provided evidence that statutory elements of rape were being redefined by one segment of the criminal justice process—the jurors. Kalven and Zeisel concluded that

the law recognizes only one issue in rape cases other than the fact of intercourse: whether there was consent at the moment of intercourse. The jury, as we come to see it, does not limit itself to this one issue; it goes on to weigh the woman's conduct and the prior history of the affair. It closely, and often harshly, scrutinizes the female complainant and is moved to be lenient with the defendant whenever there are suggestions of contributory behavior on her part.¹

In the early and mid-1970s this redefinition phenomenon was conceptualized in conflict theory terms. Notions of traditional sex-role norms and the sexual property value of the victim were sometimes advanced to explain the perceived inadequacy of the criminal justice agency response. Thus, if a woman failed to act consistently with prevailing ideas about appropriate female behavior, and she was

* Wayne A. Kerstetter is an Associate Professor of Criminal Justice, University of Illinois at Chicago, and a Senior Research Fellow, American Bar Foundation. J.D., University of Chicago, 1967. Funding for the initial data collection for this study was provided by the Chicago Bar Foundation. Funding for the data collection on case disposition, data analysis, and article preparation was provided by the American Bar Foundation. The assistance of Scott Keenan, Gayle Gilbert, Mary DeSloover, Anthony J. Ragona, Clara Carson, and Barrik Van Winkle was of great importance at various points in this study.

¹ H. KALVEN & H. ZEISEL, *THE AMERICAN JURY* 249 (1971) [hereinafter H. KALVEN & H. ZEISEL].

sexually assaulted, she may not be accorded the full protection of the law. Furthermore, the vigor with which officials would act to redress a sexual assault was determined by the victim's sexual property value. Thus, if the woman was either married or still under the protection of her father, the officials would view the attack as a more serious incident.

In an attempt to better understand the validity of these allegations, this study explores the early stages of the criminal justice system response to rape victims. The study considers two formal decisions made by criminal justice actors: first, the police officers' decision to treat the victim's complaint as legitimate—to "found"² the case; and second, the prosecutor's subsequent decision to accept the officers' judgment and initiate formal proceedings against some individual. These two decisions form the gateway to the criminal justice system. Indeed, these decisions determine which incidents will be taken seriously and which victims will be afforded the full redress of the criminal law.

Section II begins the discussion with an analysis of these conflict hypotheses in relation to the larger body of conflict theory as well as to other theories commonly advanced to explain official decision-making procedures in criminal cases. It will also review previous research to ascertain whether it supports or fails to support the various theories. Section III describes the Chicago complaint processing system for sexual assaults and the data sources and coding instruments used in this study. Section IV presents the aggregated case data in summary form. By relating the data to earlier research findings, this section argues that the data, in this form, fail to recognize a crucial distinction between incidents in which the complainant and the accused were complete strangers and those in which they were previously acquainted.

Section V presents the Chicago data in detail, beginning first with the identity cases (those in which the identity of the accused is often in question because he was a stranger before the incident) and proceeding to the consent cases (those in which consent is an issue because of the existence of a relationship between the complainant and the accused before the incident). In addition to the founding and felony filing decisions, data are presented bearing on three related decisions: first, the victim's decision to prosecute; second, the

² When the police receive a complaint regarding an alleged crime, they must decide whether it meets the requirements established by state law and federal crime reporter standards. If it does so, the complaint is "founded" or found to be a crime. The complaint may also be classified as another type of crime or "unfounded," that is to say, not treated as constituting a crime.

decision by the police to arrest the accused; and third, whether to conduct a lineup of suspects in order to give the complainant an opportunity to identify her assailant. Section VI provides a discussion of the data in order to discern patterns and achieve perspective. Finally, Section VII focuses on four general findings that emerge from the data and relates them to earlier research. It then presents some conclusions regarding the contribution this data will make to an understanding of the police officers' and prosecutor's decision-making in sexual assault cases.

II. RELEVANT THEORIES AND RESEARCH

A. THEORY

Many theories have been advanced to explain decision-making by legal system officials. However, only three theories have been particularly relevant to analyses of the processing of criminal cases; they are legal formalism, criminological theories relating to incident seriousness, and conflict theory, which offers class, race, or sex as relevant explanatory factors. This study suggests the importance of a fourth theory for explaining how criminal cases are processed; this theory is rooted in pragmatic instrumentalism.³

Legal formalism views the law as a static, closed, logical system in which particular conclusions are deduced from established principles.⁴ For example, legal formalism would predict that the statutory elements of a crime are the primary determinates of official decision-making in processing sexual assault complaints. Another important strand of traditional criminological research and theory identifies the underlying seriousness of the criminal incident as determining official reaction.⁵ For example, the use of a weapon or the infliction of physical injury to the complainant are indicia of incident seriousness. Finally, conflict theory sees human life and society as a continuous struggle in which individuals seek to advance their interests by a variety of mechanisms, including banding together with others by race, ethnicity, class, and sex.⁶ Ideological structures such as religion or law are used as weapons in the ongoing struggle for power, often benefiting one group over others.⁷

³ See R. SUMMERS, *INSTRUMENTALISM AND AMERICAN LEGAL THEORY* (1982).

⁴ *Id.* at 157-58.

⁵ Myers & LaFree, *The Uniqueness of Sexual Assault: A Comparison with Other Crimes*, 73 J. CRIM. L. & CRIMINOLOGY 1282 (1982); Bernstein, Kelly & Doyle, *Societal Reaction to Deviants: The Case of Criminal Defendants*, 42 AM. SOC. REV. 743 (1977).

⁶ See R. COLLINS, *CONFLICT SOCIOLOGY* 55-61 (1975); R. WALLACE & A. WOLF, *CONTEMPORARY SOCIOLOGICAL THEORY* 75 (1980).

⁷ R. WALLACE & A. WOLF, *supra* note 6, at 76.

The theory of sexual stratification articulated by conflict theory is based on the notion of "sexual property," or the relatively permanent claim to exclusive sexual rights over a particular person. The concept parallels that of economic property. "Property is not the goods or lands or buildings themselves, but the social relationships that determine access to them."⁸ Randall Collins argues that the notion of sexual property is not a constant but rather covers a large number of different arrangements which reflect variations in the resources available to women to counterbalance the usually greater physical size and strength of males.⁹ For Collins, one important resource is the emergence of the modern state.

Women also gained another ally in the modern state. The state's crucial characteristic is its effort to monopolize all force, and in this, women have been ready supporters. With the development of the police force, rapes could be punished by an impersonal agency, and women no longer needed to rely on the force of their sexual owners for protection against outsiders. The result has been that women have gained some measure of protection even from domestic violence.¹⁰

Other theorists, while acknowledging the potential of the modern state, believe that its internal dynamics are not sufficient, in themselves, to provide an adequate counterbalance to male dominance. They thus call for a substantial shift in power within the agencies of the state in order to achieve this end.¹¹ These theorists argue that a male-dominated criminal justice system acts to protect men's property interests in the sexual and reproductive functions of women.¹² Accordingly, the theorists advance two hypotheses: first, women must conform to sex-role stereotyped behavior or risk reduced protection from the criminal justice system;¹³ and second, the sexual property value of a woman is determined by her status in relation to a man, either as wife or as unemancipated young woman.¹⁴ The second hypothesis predicts that officials will treat an attack on a married woman or a young woman living in her father's house more seriously than an attack on a woman in other circumstances.¹⁵

With regard to race, conflict theorists often suggest ways in which the dominant group—in this case, whites—exercises power to

⁸ R. COLLINS, *supra* note 6, at 234.

⁹ *Id.*

¹⁰ *Id.* at 246.

¹¹ S. BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN, AND RAPE* 387-89 (1975).

¹² *Id.* at 388.

¹³ Myers & LaFree, *The Uniqueness of Sexual Assault: A Comparison with Other Crimes*, 73 J. CRIM. L. & CRIMINOLOGY 1282, 1283 (1982).

¹⁴ *Id.*

¹⁵ *Id.*

control other groups. Thus, they suggest that a complaint will be treated more seriously when a white woman alleges that she has been attacked by a black man than when a black woman alleges that she has been attacked.¹⁶

In addition to the conflict, legal formalism, and criminological theories, preliminary multivariate analysis suggests a fourth theoretical perspective. This theory focuses our attention on the dynamics of the actual processes by which the state operates. As such, it considers the conditions necessary for the state to act, including the cooperation of the complainant, the presence of the accused, and the availability of evidence. This focus could be designated as an instrumental perspective. It seeks to determine what is required to transform the law from written word into enforced reality.¹⁷

Thus, the instrumentalist perspective focuses on those factors either necessary to or facilitative of the administrative and legal processes that transform the statute into official action. Proponents of this perspective argue that one must take account of those factors both to understand the dynamics of official decision-making and to determine whether these decisions can be attributed to extralegal factors, such as those suggested by the conflict theory.¹⁸ As a result, attention must be paid not only to whether evidence of the incident exists, but also to any other factors (*e.g.*, the complainant's willingness to prosecute) that relate to both evidentiary requirements and administrative convenience.¹⁹

B. PREVIOUS RESEARCH

Earlier research identified a number of factors which criminal justice officials may take into account when deciding whether to charge an assailant or to pursue a case. Many of these factors, along with those we identified, are listed in Figure 1. Some factors have more than one dimension and thus are listed under more than one category.

The following discussion of prior research relates the findings of that research to the theoretical perspectives described above.

1. Legal Formalism

Kalven and Zeisel's study of decision-making by jurors in sexual

¹⁶ *Id.*

¹⁷ Robert Samuel Summers has referred to a similar perspective in the context of legal theory. See R. SUMMERS, INSTRUMENTALISM AND AMERICAN LEGAL THEORY 11 (1982).

¹⁸ *Id.*

¹⁹ For a list of these factors, see *infra* Figure 1.

FIGURE 1
CLASSIFICATION OF VARIABLES

<p>ADMINISTRATIVE FACTORS</p> <ul style="list-style-type: none"> interviews with accused lineup held police district 	<p>AGGRAVATING ELEMENTS</p> <ul style="list-style-type: none"> incident began as another crime injuries to complainant's sex organs property taken injury to complainant weapon present weapon used
<p>INSTRUMENTAL FACTORS</p> <ul style="list-style-type: none"> assailant apprehended complainant will prosecute witness provided identification information 	<p>EXTRALEGAL FACTORS</p> <p><i>Gender Conflict</i></p> <ul style="list-style-type: none"> sex-role norms sexual property value victim misconduct <p><i>Status Conflict</i></p> <ul style="list-style-type: none"> complainant clerical or sales worker complainant unemployed complainant was student complainant was manager/professional
<p>OFFENSE ELEMENTS</p> <ul style="list-style-type: none"> sexual penetration resistance victim a minor 	<p><i>Racial Conflict</i></p> <ul style="list-style-type: none"> complainant's race assailant's race interracial incident
<p>EVIDENTIARY FACTORS</p> <ul style="list-style-type: none"> assailant concealed identity complainant would/could not identify assailant complainant delayed reporting incident complainant used alcohol evidence relevant to consent issue present identification evidence present identification evidence taken incident began as another crime injuries to complainant's sex organs nonsexual discrediting information about complainant property taken weapon present weapon used witness to incident witness provided identification information injury to complainant 	

assault cases challenged the legal formalist position by providing evidence that instead of being bound by the applicable statutory provisions, jurors (who are important even though temporary "officials" in the process) regularly redefined the law to conform to their own notions of fairness.²⁰ Later research, however, has provided data to support the legal formalist position. For example, multivariate analysis of data in Indianapolis indicated that sexual penetration was one of the best predictors of the seriousness of the charge filed by the police.²¹ Other findings provide more limited support for the legal formalist position. Three studies, from different jurisdictions,

²⁰ H. Kalven & H. Zeisel, *supra* note 1, at 254.

²¹ LaFree, *Official Reactions to Social Problems: Police Decisions in Sexual Assault Cases*, 28 Soc. PROBS. 582, 590 (1981).

found the existence of a prior relationship between the perpetrator and the victim to be a significant factor in rape-charging decisions.²² A prior relationship raises the issue of the possibility of consent by the complainant. It suggests that the legal definition of the crime is influential in structuring the issues considered in official decision-making.

2. *Criminological Theory: Incident Seriousness*

Some research supports the view that incident seriousness actually determines official response to sex crimes. LaFree found that the presence of a weapon has a statistically significant relationship to both the arrest and charging decisions.²³ Rose and Randall found that the use of force and the existence of a pattern of similar incidents are likewise significant.²⁴ They also reported that if a sex crime other than rape was involved, the charge filed was likely to be less serious.²⁵ Research using bivariate analysis also provides support for incident seriousness as a factor in charging decisions. Studies of cases from Philadelphia²⁶ and a Texas municipality²⁷ indicate that the use of force was a significant factor in the charging decision.²⁸ Moreover, in Philadelphia, incidents involving juvenile victims were more likely to be treated as serious crimes.²⁹

3. *Conflict Theory: Class and Race*

While none of these studies found *class* to be a significant factor in official decision-making, several have concluded that *race* was significant. LaFree found that officials are more likely to file felony charges if the incident involved an attack by a black male against a white female.³⁰ Rose and Randall concluded that when the victim is

²² See V. ROSE & S. RANDALL, ATTRITION OF JUSTICE PHENOMENON IN THE PROCESSING OF RAPE/SEXUAL ASSAULT CASES 43 (report prepared for the Nat'l Inst. of Mental Health, 1984) [hereinafter V. ROSE & S. RANDALL]; Office of the Deputy Commissioner for Legal Matters, *Felony Case Deterioration: Process and Cause* 7, 10-13 (1981) (bivariate analysis of felonious assault cases in New York City); Weninger, *Factors Affecting the Prosecution of Rape: A Case Study of Travis County, Texas*, 64 VA. L. REV. 357, 370-83 (1978) (using bivariate analysis of sexual assault in Texas).

²³ LaFree, *supra* note 21, at 588, 590.

²⁴ V. Rose & S. Randall, *supra* note 22, at 43.

²⁵ *Id.*

²⁶ Comment, *Police Discretion and the Judgment That a Crime Has Been Committed—Rape in Philadelphia*, 117 U. PA. L. REV. 277, 288 (1968).

²⁷ Galton, *Police Processing of Rape Complaints: A Case Study*, 4 AM. J. CRIM. LAW 15 (1975-76).

²⁸ Comment, *supra* note 26, at 288; Galton, *supra* note 27, at 24-26.

²⁹ Comment, *supra* note 26, at 301.

³⁰ LaFree, *Official Reactions to Social Problems: Police Decisions in Sexual Assault Cases*, 28 SOC. PROBS. 582, 590 (1981).

nonwhite, prosecutors will more likely file less serious charges.³¹ Finally, the Philadelphia study suggested that if both assailant and victim are black, the complaint is more likely to be unfounded.³²

4. *Conflict Theory: Gender-Based*

Determining whether a particular variable should be interpreted as supporting gender-based conflict theory involves ambiguities. For example, does Kalven and Zeisel's finding that a victim's use of alcohol negatively affected jurors' reactions to her complaint reflect sex-role stereotypes or the jurors' concern about the judgment and accuracy of recall of someone who has consumed alcohol? Kalven and Zeisel also found that the victim's use of alcohol had a similar effect in cases involving a variety of offenses with both male and female victims,³³ thus lending some credibility to the second interpretation.

The issues of the victim's duty to resist and to attempt to escape also involve some of the same ambiguities. Do these "duties" reflect sexual stereotypes adopted in aid of male attempts to dominate women? Alternatively, are the "duties" evidentiary considerations, or are they simply misperceptions of normal reactions to threat situations? Similar questions can be posed about the negative impact of a victim's tardiness in reporting an incident. Indeed, the question might be asked to what extent are these additional examples of what Egon Bittner has described as "the fact that policemen are required to deal with matters involving subtle human conflicts and profound legal and moral questions, without being allowed to give the subtleties and profundities anywhere near the consideration they deserve, invests their activities with the character of crudeness."³⁴

Rose and Randall reported that resistance by the complainant is a significant factor in both the founding decision and determining the seriousness of the charge.³⁵ Galton suggested that police investigators required a complainant to have resisted to the point of being injured, even though the relevant statute did not require resistance.³⁶ He also concluded that investigators expect the victim to attempt to escape even if the assailant has a weapon.³⁷ Finally,

³¹ V. ROSE & S. RANDALL, *supra* note 22, at 51.

³² Comment, *supra* note 26, at 302-05.

³³ H. KALVEN & H. ZEISEL, *supra* note 1, at 254-57.

³⁴ E. BITTNER, THE FUNCTIONS OF THE POLICE IN MODERN SOCIETY 9 (1970).

³⁵ V. ROSE & S. RANDALL, *supra* note 22, at 43, 47.

³⁶ Galton, *Police Processing of Rape Complaints: A Case Study*, 4 AM. J. CRIM. LAW 15, 24-26 (1975-76).

³⁷ *Id.* at 22.

Weninger found that the use of force by the assailant and resistance by the victim affected the probability of indictment.³⁸ The resistance requirement may be viewed in two ways: first, as a statement that a verbal refusal is not sufficient to assert the right of a woman to choose her sexual partners; or second, as an evidentiary requirement, that a woman's after-the-fact statement of nonconsent is not, in itself, a sufficient basis on which to convict someone of a serious felony.³⁹

Other variables provide more straightforward support for the gender-based conflict perspective. For example, Kalven and Zeisel's data revealed that the jurors' decisions were influenced by the fact that the victim and the assailant had met in a bar or that the victim had engaged in sexual activity outside marriage (*e.g.*, she was an unwed mother). The fact that the jurors considered these variables clearly reflect the influence of gender-based views of appropriate female sexual behavior.⁴⁰ LaFree's finding of (weak) statistical significance for victim misconduct also provides evidence to support the gender-based conflict perspective.⁴¹

5. Instrumentalist Perspective

Prior research provides a substantial body of evidence supporting the instrumentalist perspective. This perspective would view Kalven and Zeisel's finding that the victim's use of alcohol affects jurors' decisions in sexual assault as well as negligent homicide, simple assault, and fraud cases involving victims of both sexes, as a reflection of evidentiary concerns about the credibility of a witness who was under the influence of alcohol.⁴²

The reported significance of the internal consistency between what the victim said occurred and her physical condition (evidence of injuries consistent with the amount of force the victim said was involved in the incident)⁴³ would be seen, from the instrumentalist perspective, as reflecting evidentiary concerns rather than a sex-role stereotype requiring resistance by the victim.

Research by Rose and Randall provides further support for the instrumentalist perspective. They found that the complainant's abil-

³⁸ Weninger, *Factors Affecting the Prosecution of Rape: A Case Study of Travis County, Texas*, 64 VA. L. REV. 357, 377-88.

³⁹ *Id.*

⁴⁰ H. KALVEN & H. ZEISEL, *supra* note 1, at 249-51, 254-57.

⁴¹ Myers & LaFree, *The Uniqueness of Sexual Assault: A Comparison with Other Crimes*, 73 J. CRIM. L. & CRIMINOLOGY 1282, 1290 (1982).

⁴² H. KALVEN & H. ZEISEL, *supra* note 1, at 247, 257.

⁴³ Comment, *Police Discretion and the Judgment that a Crime Has Been Committed—Rape in Philadelphia*, 117 U. PA. L. REV. 277, 287-89 (1968).

ity to identify her assailant, her willingness to submit to medical examination, and the existence of another witness were all significant discriminators between founded and unfounded cases.⁴⁴ Their finding that an evidentiary variable—medical corroboration of the attack—was a significant factor in the decision to prosecute provides further support for the instrumentalist perspective.⁴⁵

Finally, LaFree concluded that the complainant's ability to identify her assailant and her willingness to prosecute were the most important factors in the police decision to arrest.⁴⁶ According to the instrumentalists, these two factors would be viewed as evidentiary and instrumental variables; as such, they are much less problematic in the decision to arrest than in the decision to found. These concerns would be inappropriate factors in the founding decision even if viewed as motivated by pragmatic instrumental considerations (rather than as reflections of gender-based conflict) because they are not relevant to the determination that an act constituting rape had occurred.

Thus, a decision may be based on instrumental considerations and still be inappropriate. Nevertheless, discerning the motivation behind an inappropriate decision is important because efforts to change official practices are more likely to be successful if the dynamics of current practice are correctly perceived.

III. THE CHICAGO STUDY

A. THE DATA

The initial stage of this research involved intensive participant observation of and interviews with detectives as they investigated sexual assault complaints. Researchers devoted approximately 150 hours to observations and interviews in the spring and summer of 1980. Interviews with twenty detectives and supervisors provided an opportunity for in-depth discussions about the decisions made during a sexual assault investigation.

The Chicago data consist of two sets drawn from different years and representing different samples. The 1979 data set includes all founded rape cases from that year (N=1,530). The 1981 data set is a one-quarter, random sample of all sexual assault complaints made by women to the Chicago Police Department (N=671). The 1979 data were collected by reading all documents and reports in the in-

⁴⁴ V. Rose & S. Randall, *supra* note 22, at 43.

⁴⁵ *Id.* at 51.

⁴⁶ LaFree, *Official Reactions to Social Problems: Police Decisions in Sexual Assault Cases*, 28 *SOC. PROBS.* 582, 588 (1981).

vestigative file and having researchers complete a 142-item questionnaire. The questionnaire drew on the literature on rape incidents as well as on instruments used in studies of other crimes in Chicago. The questionnaire was compiled in consultation with detectives and supervisors of the Chicago Police Department and colleagues in the criminal justice research community. The questionnaire elicited information about the victim and the offender, the circumstances of the incident, the availability of physical and testimonial evidence, and police enforcement activities.

The 1981 questionnaire was expanded to 171 questions in order to obtain more information about the victim's background and behavior. This additional information was needed to explore the factors considered relevant to official decision-making by the proponents of conflict theory. The 1981 questionnaire also recorded additional information on both evidentiary matters and police response and enforcement activity. Criminal arrest histories were also obtained for individuals arrested in all 1979 and 1981 cases. These documents provided information regarding the dispositions of the charges filed in the cases studied here.

As stated above, the 1979 data include all cases the police classified as founded in that year. The data are included here because, unlike the 1981 data, they provide a data base large enough (381 identity cases and 256 consent cases) for use of discriminant analysis techniques in examining the felony filing decision. Differences between the data sets, however, may limit the comparison of findings from the different years.⁴⁷

The 1979 data do not replace the multivariate analysis of the 1981 felony filing decision. Rather, they supplement the bivariate analysis of the 1981 data. The results of these analyses are not strictly comparable to the results from the 1981 data, but they do provide an opportunity to enrich our understanding of this important screening decision.

Several coders were used in both data collection efforts. Senior researchers directly supervised their work and periodic recoding was used to increase intercoder reliability. A coding decision log was kept and reviewed regularly for this purpose as well.

⁴⁷ The felony filing decision inevitably involves a smaller number of cases both because of official action (*e.g.* police screening) and because not all assailants are apprehended. The 671 randomly selected cases from 1981 were reduced first to the 266 cases the police classified as founded and then to 128 cases in which the police sought felony charges against some individual. In 67 of the 128 cases, the assailant was a stranger and in 61 the assailant was an acquaintance. After these adjustments, the sample sizes allowed only bivariate analyses.

B. METHODOLOGY

The method chosen for analysis of the data was discriminant analysis, a statistical procedure for distinguishing between two or more groups of cases by using a collection of variables that measure characteristics on which the groups are expected to differ.⁴⁸ "The mathematical objective of discriminant analysis is to weight and linearly combine the discriminating variables in some fashion so that the groups are forced to be as statistically distinct as possible."⁴⁹

Discriminant analysis produces results which provide relatively rich insights into the phenomena being studied, but it assumes that the dependent variables have normal distribution.⁵⁰ In order to test whether the dependent variables analyzed here violate that assumption to a degree that would undermine the validity of these results, each decision was modeled first with discriminant analysis and then with a logit analysis.

Logit is a special case of the general log-linear model, designed for use with dichotomous variables, although it can be used with polytomous variables.⁵¹ Logit makes fewer assumptions about the normality of distribution of the dependent variables than does discriminant analysis.⁵² This double analysis affords us the richness of discriminant analysis results while protecting against those violations of assumptions which might undermine the validity of those results.

The discriminant analyses here use a stepwise procedure that is appropriate when there are more discriminating variables than necessary to achieve satisfactory discrimination. The procedure begins by selecting the single best-discriminating variable according to a user determined criterion, in this case Rao's V . Next, a second discriminating variable is selected as the variable best able to improve the value of the discriminating criterion in combination with the first variable. The third and subsequent variables are similarly selected according to their ability to contribute to further discrimination. At each step, variables already selected may be removed if they are found to reduce discrimination when combined with more recently selected variables. Eventually, either all the variables will have been

⁴⁸ Klecka, *Discriminant Analysis*, in *STATISTICAL PACKAGE FOR THE SOCIAL SCIENCES* 435 (N. Nie 2d ed. 1975).

⁴⁹ *Id.*

⁵⁰ Aldrich & Cnudde, *Probing the Bounds of Conventional Wisdom: A Comparison of Regression, Probit, and Discriminant Analysis*, 19 *AM. J. OF POL. SCI.* 571, 585-98 (1975).

⁵¹ J. ALDRICH & F. NELSON, *LINEAR PROBABILITY, LOGIT, AND PROBIT MODELS* 48-52 (1984).

⁵² Aldrich & Cnudde, *supra* note 50, at 589.

selected or the conclusion will be reached that the remaining variables are no longer able to contribute to further discrimination.⁵³

Three statistics, which are contained in the Tables that report on the various decision models, are of particular importance. First, the canonical correlation, when squared, can be interpreted as reflecting the percentage of variation in the data explained by the function, or group of functions, generated by the discriminant analysis. Second, the contribution of a particular variable to the change in Rao's V , presented as a percentage figure, reflects the potency of that variable in the development of the function or functions which distinguish between the groups of cases represented by the dependent variable. Finally, the third statistic, the standardized canonical coefficient, reports the degree of correlation between a variable and the function or functions generated in the discriminant analysis. This coefficient is particularly useful when more than one function is significant. In these instances, this coefficient informs us of the correlation between a particular variable and each of the functions.

Use of the Rao's V method results in the selection of variables that provide the greatest overall separation of the groups of cases. "The use of the stepwise procedure results in an optimal set of variables being selected. The result is only optimal—rather than maximal—because not every possible subset is considered. The assumption is that the stepwise procedure is an efficient way of approximately locating the best set of discriminating variables."⁵⁴ Beginning with a stepwise procedure for variable entry allows the data to define the most appropriate model. Additionally, in order to test the theoretical implications of this data, we repeated the discriminant analyses and entered the variables in theory related groups in a manner which allowed us to specify the contribution of each group to the total variance explained by the function.

C. CASE PROCESSING

1. *Founding a Case*

After conducting a preliminary investigation into an allegation, the police detective must decide whether to treat the incident as a crime and, if so, how to classify it as a particular crime. Police department rules require the detective to make the decision and to justify it in a report submitted within seven days of the incident. A supervisor in the violent crimes unit to which the detective is assigned reviews and approves the report. After a full investigation

⁵³ Klecka, *supra* note 48, at 436.

⁵⁴ *Id.* at 435.

has been completed, the entire file is reviewed by specialists at detective division headquarters to ensure that the complaint had been handled properly.

Despite the two-stage review process, a television news investigation of departmental crime classification practices in Chicago disclosed that complaints were being inappropriately unfounded or reclassified.⁵⁵ An internal audit conducted by the police department examined a random sample of 2,386 unfounded complaints, including 377 unfounded rape complaints filed in 1982.

TABLE I
RESULTS OF CHICAGO POLICE DEPARTMENT AUDIT OF
UNFOUNDING DECISION
(in percent)

Finding	Crime Type			
	Rape	Robbery	Burglary	Theft
Not Supported	18%	36%	47%	52%
Supported	36%	10%	16%	18%
Unable to Determine	46%	53%	37%	31%

Source: Audit A-82-35, Auditing and Internal Control Division, Chicago Police Department, April 14, 1983.

Table I displays the findings of the audit team on whether the unfounding decision was or was not supported by the material within each file. In addition, the table illustrates the percentage of situations where the auditors were unable to determine the proper decision. While these findings support the contention that the police sometimes misclassify complaints, the table also indicates that such failures are not limited to rape cases. In fact, Table I indicates that rape cases are more often appropriately unfounded than are robbery, burglary, or theft complaints.

The audit report states: "In our opinion, the Detective Division is not in compliance with uniform reporting guidelines as recommended by the *Uniform Crime Reporting Handbook* of the Federal Bureau of Investigation."⁵⁶ The report found fault with the quality of the investigations, with the adequacy of supervisory review, and with

⁵⁵ *Killing Crime: A Police Cop Out* (CBS television broadcast, Nov. 7-10, 1982), cited in AUDITING AND INTERNAL CONTROL DIV., DETECTIVE DIVISION REPORTING PRACTICES (1983) (available through Chicago Police Dep't).

⁵⁶ AUDITING AND INTERNAL CONTROL DIV., DETECTIVE DIVISION REPORTING PRACTICES Letter of Transmittal (1983) (available through Chicago Police Dep't).

crime reporting practices.⁵⁷

Two findings are particularly noteworthy. First, "[t]here exists a perception that detectives are expected to unfound, clear or reclassify a certain percentage of their cases. No detective interviewed could quantify this expectation or tell us the relative worth of a closed, cleared, unfounded or reclassified case."⁵⁸ Second, the report concluded that

[t]here exists among detectives an insensitivity to the victim's plight. This is evidenced by the number of cases which are classified as unfounded because of lack of cooperation. Victimization is often traumatic to its sufferers. In violent crimes where confrontation with the offender occurs, or even where property alone is the object of the attack, victims suffer from this phenomenon. To interpret a broken appointment as apathy and a basis for unfounding is a misinterpretation.⁵⁹

In addition to the rape complaints, it should be noted that the auditors observed these practices in the processing of robbery, burglary, and theft complaints as well. While this fact in no way lessens the gravity of these conclusions, it does suggest that these problems may be endemic to the criminal investigation process.

The Chicago Police Department audit points to inadequate administrative and supervisory practices and bureaucratic and political pressure as the causal factors of these problems. In contrast, the gender-conflict critique alleges that sexual stereotypes and sex-based interests motivate police response to rape complaints. The purpose of this study is to examine the information contained in investigative files to assess the evidence that bears on these issues.

2. Felony Filing

This study also focuses on another formal state decision, namely whether to file a felony charge. While this decision is less visible and less controversial in both the public and the academic literature, it is nevertheless important to both the victim and the potential defendant. While it perhaps has less emotional impact on a victim than an inappropriate unfounding decision,⁶⁰ the denial of felony charges means that a victim will not be afforded the full redress of the criminal law.

Felony review, as it is formally designated, occurs when the po-

⁵⁷ The audit further revealed that the crime reporting practices did not provide adequate controls to ensure victim/complainant contact. *Id.* at 43.

⁵⁸ *Id.* at 44.

⁵⁹ *Id.* at 45.

⁶⁰ To unfound the complaint is a declaration that the complaint is not legitimate. See *supra* text accompanying note 2.

lice reach the point in their investigation where they either have an individual in custody against whom they wish to file felony charges or have identified a suspect and are seeking a warrant for his arrest. An assistant prosecutor will meet with the detectives, listen to their statement of the evidence, and usually interview the victim, the suspect (if available), and any other witnesses. On the basis of this information, the assistant prosecutor will then decide whether to file a felony charge against the suspect.⁶¹ The primary purpose of this review is to reduce the incidence of police overcharging. If the detectives strongly disagree with the prosecutor's decision not to file the felony charges, then the officers may appeal to the senior police official on duty. This officer may, but seldom does, overrule the prosecutor and authorize the filing of felony charges.

These two decisions—the police complaint classification decision and the prosecutorial decision whether to file felony charges against the suspect—constitute the primary official screening of the complaint. These decisions are the gateway to justice.

D. CHARACTERIZATION OF THE VARIABLES

In this study, variables are characterized in a variety of ways (see Figure 1). Variables are characterized as *administrative* when they reflect routinized practices that are usually within the discretion of officials. Examples of administrative variables include interviews with and lineups of suspects when apprehended. Alternatively, variables may be characterized as *instrumental*. Instrumental variables are the factors necessary to facilitate the processing of a complaint but are usually not completely within the discretion of criminal justice officials. The apprehension of the accused and the victim's decision to press charges are examples of instrumental variables.

Closely related to but not synonymous with instrumental factors are matters of *evidence*, which may be either testimonial, documentary, or physical. Much of the research on criminal justice response to sexual assault cases gives insufficient attention to the process whereby the words that prohibit certain conduct as criminal become the living reality of applied law. The most serious oversight made in this regard concerns the role of evidence, and in particular, testimonial evidence and its inherent credibility problems. The early research divided factors into "legal" (elements mentioned in the statute) and "extralegal" (and thereby illegitimate). Even more recent research only gives grudging recognition to these evidentiary

⁶¹ The police may file misdemeanor charge without prosecutorial approval.

matters, labeling them "quasi-legal."⁶² These conceptualizations fail to recognize the integral role that evidence plays. The assertion that an element of an offense exists without first providing credible and admissible evidence that establishes its existence is insufficient within the context of the legal process.

The elements of an offense represent yet another classification of variables used in this study. At a fundamental level, an official's response to sexual assault complaints is dictated by legislatively enacted statutes and court decisions interpreting these enactments. As a consequence of these legislative and judicial statements, each crime consists of elements that define the act(s) and associated states of mind that constitute the crime. These variables will be called *offense elements*.

Other factors, such as an injury to the victim or the use of a weapon, have evidentiary relevance but also contribute independently to the perceived seriousness of the incident. These are characterized as *aggravating variables*.

Finally, but of importance, are the variables that the literature calls (and appropriately so) *extralegal*. These include race, social position, and conformance to sex-role and other social stereotypes. This study considers the race of the complainant, the race of the accused, and the interracial composition of the incident—black male accused, white female complainant—as racially based explanatory variables. This study also uses the complainant's occupational status to investigate the possible influence of class on official decision-making. The complainant's occupational status is the only information relevant to class which is consistently available in police investigative files, which are our primary data source.⁶³

Two gender conflict variables are used in this study: victim's sexual property value and victim's violation of sexual role norms. Sexual property value is conceptualized as the value of a woman as wife or unemancipated daughter to a husband or father, respectively.

Gary LaFree constructed a variable to operationalize the notion of victim violation of sex role norms. His "victim misconduct" variable included (1) hitchhiking, (2) drinking at the time of the offense, (3) being in a tavern or bar without a male escort, (4) allegedly engaging in sex outside of marriage, and (5) willingly entering the sus-

⁶² V. ROSE & S. RANDALL, *supra* note 22, at 11.

⁶³ Six categories were used to classify complainants' occupations: unemployed; student; service employee/physical laborer; clerical worker/salesperson; housewife; professional/manager/technician.

pect's car, house, or apartment.⁶⁴

In light of its significance in the Kalven and Zeisel study, in this study the victim's use of alcohol prior to the attack is treated as a separate variable. Otherwise the "sex role norms" variable in this study covers the same types of activity as LaFree's "victim misconduct" variable. We did, however, test this variable coded both in a dichotomous any factor present/no factor present form as well as a cumulative score of the number of factors present. The dichotomous version proved to have greater discriminating power. The analyses presented here are based on that version of the variable.

IV. CHICAGO AGGREGATED CASE DATA

In this section the aggregated Chicago data (both cases in which the parties were strangers and cases in which they were acquainted before the incident) are presented in summary form and discussed in relation to earlier studies. The data are aggregated here to allow them to be compared to earlier research reporting aggregated data.

In several analyses, the Chicago aggregated cases data confirm earlier research findings: first, on the importance of the complainant's willingness to prosecute and her capacity to identify her assailant in the founding and arrest decisions;⁶⁵ second, on the importance of medical examinations and of medical evidence of violence consistent with the complainant's allegations;⁶⁶ third, on the effect of the complainant's promptness in reporting;⁶⁷ and fourth, on the importance of witnesses and other corroborating evidence.⁶⁸

LaFree constructed a "misconduct" variable from a number of variables the literature suggested were related to sex-role norms. He found weak evidence that complainant "misconduct" had a negative relationship with arrest.⁶⁹ While the Chicago aggregated data did not confirm the influence of this factor on either the founding or arrest decisions, discriminant analysis of complainant willingness to prosecute (a variable making a major contribution to the decision to treat the complaint as a crime) indicated that the complainant's violation of sex-role norms had a negative impact on that decision.

⁶⁴ LaFree, *Official Reactions to Social Problems: Police Decisions in Sexual Assault Cases*, 28 SOC. PROBS. 582, 586 (1981).

⁶⁵ See *id.* at 588; V. ROSE & S. RANDALL, *supra* note 22, at 43. The multivariate analyses in both these studies combine the founding and arrest decisions.

⁶⁶ See Comment, *Police Discretion and the Judgment That a Crime Has Been Committed—Rape in Philadelphia*, 117 U. PA. L. REV. 277, 286-89 (1968); V. ROSE & S. RANDALL, *supra* note 22, at 43.

⁶⁷ See Comment, *supra* note 66, at 282-86; LaFree, *supra* note 64, at 588.

⁶⁸ See V. ROSE & S. RANDALL, *supra* note 22, at 43.

⁶⁹ LaFree, *supra* note 64, at 586.

The Chicago data suggests that "complainant willingness to prosecute" is more complex than a simple statement of complainant volition. The complainant's violation of sex-role norms was the least powerful of the significant variables in the discriminant function developed as a result of our analysis of the "will to prosecute" decision. Incident seriousness (weapon used, complainant threatened after incident), evidentiary considerations (existence of a witness to the incident and destruction of evidence by the complainant), and instrumental factors (accused apprehended) all contributed more to the function that discriminates between cases in which the complainant was willing to prosecute and those in which she was not.

These results suggest that victims are willing to pursue the prosecution of the accused when there are evidentiary and instrumental factors that facilitate that course of action (*e.g.*, the accused is in police custody, or there is a witness to the incident), or when aggravating factors exist that make the incident more serious (*e.g.*, a weapon was used or a threat was made toward the victim at the close of the incident—"I know your name and address; if you call the police, I'll come back and kill you").

Conversely, when the complainant impeded the investigation and prosecution by destroying potential evidence (*e.g.*, took a bath before a medical examination or threw away torn clothes) or violated sex-role norms, an association was found with the decision not to prosecute.

One could offer interpretations of these findings that would rely primarily on the subjective influence of the various factors on the attitudes and judgments of the complainant (*e.g.*, the existence of a witness might reassure her that her story would be believed, or the use of a weapon might add to her outrage). However, the pattern of the findings suggest that the complainant's decisions are based more on administrative and bureaucratic considerations.

A felony arrest is a bureaucratic "success" for a detective, who is evaluated in part on the number of arrests made and cases "cleared." Thus, when an accused is in custody (*i.e.* the detective does not have to expend time searching for the suspect) or there is a witness (which enhances the likelihood of success in obtaining a felony charge from the prosecutor), it is in the detective's interest to pursue the case and to convince the complainant that it is desirable to do so as well. On the other hand, when there are problems in the case (the complainant destroyed evidence or her behavior would make her a less credible witness—that is, at least in the mind of the investigator), it may be in the detective's bureaucratic interest to un-

found the case. If no decision on founding the case is made, the case is classified as unsolved⁷⁰ and the detective's clearance rate is reduced. One way to unfound a case is to have the complainant withdraw her complaint, which is the way a statement that she does not want to prosecute could be interpreted.

Unlike two earlier studies,⁷¹ the Chicago data did not indicate that the race of those involved in the incident affected the founding and arrest decisions. The Chicago aggregated data did indicate that the complainant's capacity to identify her assailant and her consumption of alcohol were significant variables that discriminated between cases in which the prosecutor filed felony charges and those in which felony charges were denied. The effect of the complainant's use of alcohol is consistent with the findings of Kalven and Zeisel⁷² and Rose and Randall.⁷³

The presence of a weapon was significant in both Chicago and LaFree's data.⁷⁴ The complainant's capacity to identify her assailant was not found to be significant by LaFree, but it was so found by Rose and Randall. While these researchers found sexual penetration—a statutory element—to be important in prosecutorial decision-making regarding felony charges,⁷⁵ this variable was not found to be significant in the aggregated Chicago data.

One study found that more serious charges were likely to be filed in cases in which the complainant resisted the attack and cases in which the complainant was white.⁷⁶ These variables were not significant in the analysis of the felony filing decision in the Chicago aggregated case data.

Overall, the Chicago aggregated cases findings appear to be more consistent with earlier research on the police founding decision than they are on the prosecutorial screening decision.

V. FINDINGS: THE CHICAGO DATA

Most of the literature analyzing the official processing of sexual assault complaints has failed to adequately distinguish between cases in which the parties are acquainted and those in which they are

⁷⁰ This is unsolved in the sense that the detective could not obtain authorization to file felony charges because of the lack of credible evidence.

⁷¹ Comment, *supra* note 66, at 302-06; LaFree, *supra* note 64, at 590.

⁷² H. KALVEN & H. ZEISEL, *supra* note 1, at 254-57.

⁷³ V. ROSE & S. RANDALL, *supra* note 22, at 46.

⁷⁴ LaFree, *supra* note 64, at 588.

⁷⁵ See *id.* at 590; V. ROSE & S. RANDALL, *supra* note 22, at 47.

⁷⁶ V. ROSE & S. RANDALL, *supra* note 22, at 47.

strangers.⁷⁷ The initial stage of the research reported on in this article involved intensive participant observation of detectives as they investigated sexual assault complaints. The observer often accompanied one detective when the second detective of a team was not working or had a court appearance, which allowed the observer to take part in indepth discussions about the decisions made in the course of a sexual assault investigation. This experience soon made very clear the importance of a distinction between complaints that in most of the literature has been insufficiently treated.

From the investigator's point of view, three primary facts need to be established: first, an act of sexual intercourse occurred; second, the identity of the assailant; and third, the complainant did not consent to the act at its occurrence. The latter two are closely related. If the assailant is unknown to the complainant until the attack begins, the issue of whether she consented becomes easier to resolve. To the extent that the complainant and the person accused are acquainted, the problem of identifying the accused diminishes but the question of the complainant's state of mind at the time of the incident becomes more important, depending on the circumstances of the situation. Thus, complaints may be classified into two groups: those in which the assailant's identity is at issue and those in which the complainant's consent is the issue.

Statistics support this basic distinction. The cross-tabulation of the acquaintance variable and the founding decision had a chi square significant at 0.000. The acquaintance variable contributed significantly to both of the discriminant analysis functions⁷⁸ for the aggregated data founding decision.

This report presents the Chicago data in disaggregated form. It first reviews those cases in which the assailant and victim were not acquainted before the attack, and then analyzes those cases in which they were acquainted. In both forms, the discriminant analyses of all the decisions, except the felony filing decisions, are based on the 1981 data. The discriminant analyses of the prosecutorial decision to file felony charges use 1979 data because these data sets are of sufficient size for this purpose.

⁷⁷ *But cf.* L. HOLMSTROM & A. BURGESS, *THE VICTIM OF RAPE: INSTITUTIONAL REACTIONS* (1978) (recognizing the distinction between acquaintance and stranger cases).

⁷⁸ The acquaintance variable in this study is an extensive category that includes acquaintanceship from slight to intimate. Thus, it includes incidents in which the complainant and the alleged assailant had just met in a bar as well as those in which they had a much more extensive history, even a history of sexual intimacy. It includes all cases in which there exists enough indication of complainant consent to the relationship to allow the logical possibility of consent to the sexual act.

A. IDENTITY CASES

When a complainant alleges that she was attacked by an unknown assailant, the investigator faces three questions: (1) Did a sexual assault actually occur? (2) Who was the assailant? and (3) Where may he be found? Whether the complainant consented to the sexual contact does not usually, except in cases involving prostitutes, require serious attention.⁷⁹

1. *Founding a Case*

Table 2 displays the results of the analysis of the police founding decision in cases where the assailant's identity is unknown. In the first function (F1), which discriminates those cases that were classified as rape from the rest of the complaints, instrumental variables such as "will the complainant prosecute?" and "is the accused in custody?" were the most significant. They accounted for thirteen percent of the discriminating power of this function⁸⁰ and for thirty-six percent of the change in Rao's V for the two functions generated by the discriminant analysis of the founding decision.

Three factors have both evidentiary and crime-aggravating dimensions: first, whether a weapon was used; second, whether the complainant resisted the attack; and third, whether the incident began as another crime. These three factors contribute significantly to the first function (F1). When theory linked variables were tested as a group, offense aggravating variables⁸¹ accounted for 5.3 percent of the discrimination power of the first function. Evidentiary variables, which include the presence of nonsexual discrediting information about the complainant⁸² and the victim's or witnesses' identification of the offender, provided 5.6 percent of the discriminating power of the first function.⁸³

The second founding decision function (F2) reveals two conclu-

⁷⁹ A claim by an accused that a woman whom he did not know consented to have sex with him is viewed as inherently lacking in credibility.

⁸⁰ This is based on a discriminant analysis model in which variables are entered in groups which were defined by theoretical implications.

⁸¹ This group included cases involving multiple offenders, those which began as another crime, those in which property was taken from the victim, incidents involving victims under 18 years of age, cases in which a weapon was used, incidents in which there was injury to the victim's sex organs, or in which the victim was hospitalized.

⁸² Nonsexual discrediting information includes, for example, a history of false complaints, of mental illness, or of drug abuse.

⁸³ In order to test for the possibility that the dependent variables used in this discriminant analysis violated the assumption of a normal distribution to the extent that the validity of the analysis was challenged, the analysis was repeated using the logit model. All the key variable in the discriminant analysis were significant in the logit analysis.

TABLE 2
FOUNDING DECISION-IDENTITY CASES (F1 & F2)

Variable	% Contribution to change in Rao's V	Standardized Canonical Coefficient	
		F1	F2
Complainant will prosecute	20%	.46	.23
One or more accused apprehended	16%	.31	.04
Attempt or completed crime	11%	-.07	.73
Weapon used	10%	.31	.04
Complainant was student	7%	-.37	.04
Resistance	6%	.37	.13
Non-sexual discrediting information			
re Complainant	6%	.01	.48
Police held line-up	4%	.23	-.08
Incident began as crime other than rape	4%	.19	-.17

Percentage of eligible cases used in analysis = 59% (N=230)

F1: Canonical correlation = .66

F2: Canonical correlation = .42

Group centroids: F1 = founded cases (.70) distinguished from unfounded (-1.21) and reclassified cases (-.08). F2 = reclassified cases (1.59) distinguished from unfounded (-.15) and founded cases (-.13).

sions. First, if the assault is not completed or if there is nonsexual discrediting information about the complainant, the case is more likely to be reclassified as a less serious crime. Second, in an attempt case or when the complainant is willing to press charges but nonsexual discrediting information about the complainant exists, the police will take some action even though they do not treat it as a rape incident.

Numerous studies have found the *complainant's willingness to prosecute* to be a significant factor in the official decision to initiate criminal charges.⁸⁴ LaFree reports that a rape victim's willingness to prosecute was one of the two most important variables in his analysis of the arrest decisions in Indianapolis.⁸⁵ He also found that it is

⁸⁴ See, e.g., Bercal, *Calls for Police Assistance: Consumer Demands for Governmental Service*, 13 AM. BEHAV. SCI. 681 (1970); B. FRIEDRICH, *THE IMPACT OF ORGANIZATION, INDIVIDUAL, AND SITUATIONAL FACTORS ON POLICE BEHAVIOR* (Ph.D. Dissertation, U. Mich. 1977); Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low-visibility Decisions in the Administration of Justice*, 69 YALE L. J. 543 (1960); M. GOTTFREDSON & D. GOTTFREDSON, *DECISIONMAKING IN CRIMINAL JUSTICE: TOWARD THE RATIONAL EXERCISE OF DISCRETION* (1980); Black, *The Social Organization of Arrest*, 23 STAN. L. REV. 1087 (1971); Lundman, *Routine Police Arrest Practices: A Commonweal Perspective*, 22 SOC. PROBS. 127 (1974); A. REISS, *THE POLICE AND THE PUBLIC* (1970); K. WILLIAMS, *THE PROSECUTION OF SEXUAL ASSAULTS* (1978); K. WILLIAMS, *Few Convictions in Rape Cases: Empirical Evidence Concerning Some Alternative Explanations*, 9 J. CRIM. JUST. 29 (1981); LaFree, *Official Reactions to Social Problems: Police Decisions in Sexual Assault Cases*, 28 SOC. PROBS. 582, 588 (1981).

⁸⁵ LaFree, *supra* note 84, at 588.

a significant factor in determining the seriousness of charges filed by police and in the prosecutor's approval of felony charges.⁸⁶ Our interviews support these conclusions. The detectives point out that since they have more cases than they can handle, they have little incentive to pursue a case if the complainant does not want to prosecute because the complainant's cooperation is crucial to a successful investigation.

2. *Presence of a Weapon*

A number of studies found the use of a weapon in the incident to be a significant factor. The study of Philadelphia cases reported that "it is the relationship between the presence of the weapon and the allegations of the complainant which is important, and not just the presence of the weapon alone."⁸⁷ Galton reported that "the mere presence of a weapon was of little significance. . . . [t]he issue . . . was not that the attacker had a weapon, but what type of weapon was exhibited and how it was used."⁸⁸

The weapon is important when it contributes to a victim's "reasonable belief that bodily harm or death would have resulted had she resisted."⁸⁹ A knife referred to but not displayed did not meet the resistance standard, whereas a gun placed to the complainant's head did.⁹⁰ Thus, in the Philadelphia study, "[w]here the offender had a weapon during the offense—and thus ipso facto the ability to inflict grave bodily harm or death—the police responded accordingly,"⁹¹ unfounding roughly half as many complaints as compared to cases where no weapon was present. LaFree also reported that the presence of a weapon was a significant factor in both the arrest and in the seriousness of the charge filed by police.⁹² Rose and Randall included the presence of a weapon in their analysis of police processing of complaints, but it did not emerge as a significant factor.⁹³

⁸⁶ *Id.*

⁸⁷ Comment, *Police Discretion and the Judgment That a Crime Has Been Committed—Rape in Philadelphia*, 117 U. PA. L. REV. 277, 296 (1968).

⁸⁸ Galton, *Police Processing of Rape Complaints: A Case Study*, 4 AM. J. CRIM. LAW 15, 21 (1975-76).

⁸⁹ Comment, *supra* note 87, at 297.

⁹⁰ Galton, *supra* note 88, at 21.

⁹¹ Comment, *supra* note 87, at 296.

⁹² LaFree, *Official Reactions to Social Problems: Police Decisions in Sexual Assault Cases*, 28 SOC. PROBS. 582, 588 (1981).

⁹³ V. ROSE & S. RANDALL, *supra* note 20, at 43.

3. *Resisting the Attack*

During the data collection period, the Illinois Supreme Court interpreted the Illinois rape statute to require that the woman must resist the attack in order for the incident to be legally considered a rape.⁹⁴ Thus, it is not surprising to find resistance appearing as a significant variable. The Philadelphia study⁹⁵ and Galton's study⁹⁶ both found a resistance standard in use. Rose and Randall report resistance as a significant variable in a discriminant analysis function that distinguishes unfounded complaints from those that were either suspended (treated as legitimate reports of a crime on which nothing further could be done) or processed further in the legal system.⁹⁷

4. *Age of Complainant*

This study's finding that a complainant's status as a student was related to the complaint being reclassified as a crime other than rape may be an artifact of the statutory structure in existence at the time of the data collection. The sexual crimes statutes provided a serious felony charge, in addition to rape, for a sexual assault against a person under the age of sixteen.⁹⁸ Detectives pointed out that conviction under this statute did not require proof of nonconsent or sexual penetration. It thus greatly simplified the task of the investigator, particularly when the victim was a young child. Since seventy-six percent of the students in the sample were under the age of eighteen, the reclassification of complaints by students under the

⁹⁴ Some change in judicial emphasis or resistance appears to have occurred during the study's time period. A 1965 case stated, "Although useless and foolhardy acts of resistance are not necessary, the evidence must show such resistance as will demonstrate that the act was against her will." *People v. DeFrates*, 33 Ill. 2d 190, 194-95, 210 N.E.2d 467, 469 (1965). In 1979 an Illinois appellate court held, "There is no definite standard fixed for the amount of resistance required in rape cases. Resistance is not necessary where it would endanger the complainant's safety or when she is overcome by superior strength or paralyzed with fear." *People v. McCann*, 76 Ill. App. 3d 184, 186, 394 N.E.2d 1055, 1056 (2d Dist. 1979).

⁹⁵ Comment, *supra* note 87, at 293-99.

⁹⁶ Galton, *Police Processing of Rape Complaints: A Case Study*, 4 AM. J. CRIM. LAW 15, 24-27 (1975-76).

⁹⁷ V. ROSE & S. RANDALL, *supra* note 22, at 43.

⁹⁸ During the period in question, the applicable Illinois law stated:

Any person of the age of 17 years and upwards commits indecent liberties with a child when he or she performs or submits to any of the following acts with a child under the age of 16: (1) Any Act of sexual intercourse; or (2) Any Act of deviate sexual conduct; or (3) Any lewd fondling or touching of either child or the person done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the person or both Indecent liberties with a child is a Class I Felony.

ILL. REV. STAT. ch. 38, para. 11-4 (1978).

age of sixteen probably accounts for this finding. No other study using multivariate analysis identified the age of the complainant as a significant factor in their findings.

5. *Complainant's Willingness to Prosecute*

To explore the circumstances associated with the complainant's willingness to prosecute, the results of a discriminant analysis of that variable are displayed in Table 3.⁹⁹ The offense seriousness variable and the evidentiary variable predominate in this function. This function explains only fifteen percent of the variance. The offense seriousness variable accounts for thirty-three percent and the evidentiary variable for thirty-two percent of this explanatory power.¹⁰⁰ Three variables were close to significance: Area 5 (a bureaucratic variable) at 0.023; victim unemployed (a class conflict variable) at 0.021; and victim suffered injuries to her sex organs (an offense seriousness variable) at 0.034. Despite the low percentage of variance accounted for by the function, this analysis is included because of its significance in the founding decision and because of the qualitative evidence derived from participant observation indicating its importance.

TABLE 3
COMPLAINANT WILLINGNESS TO PROSECUTE-IDENTITY
CASES (F3)

<i>Variable</i>	<i>% Contribution to change in Rao's V</i>	<i>Standardized Canonical Coefficient</i>
Weapon used	28%	-.38
Sex role norms	15%	.40
Witness to incident	13%	-.46

Percentage of eligible cases used in analysis = 77% (N=299)

Canonical correlation = .388

Group centroids: complainant will prosecute = -.25; will not prosecute = .70

The importance of the complainant's violation of sex-role norms contributes to the questions about the meaning of this variable. One could argue that the complainant, feeling guilty about her behavior, might be less inclined to pursue the case. It is equally plausible, however, that the detectives would discourage a com-

⁹⁹ The model derived by discriminant analysis was tested using logit. All three variables which were significant in the discriminant model were also significant in the logit model.

¹⁰⁰ This statement is based on the reduction of the explanatory power of the function when these variables are removed.

plainant whose behavior violates these norms. The detectives' reasons for doing so may or may not include their own attitudes toward her behavior as well as their predictions—accurate or inaccurate, reasonable or unreasonable—about the effect of the complainant's actions on later criminal justice process decisions.¹⁰¹

6. *Apprehension of the Accused*

The fact that one or more accused individuals had been apprehended is the second most powerful discriminating variable in the founding function (F1, Table 2). Table 4 displays the factors associated with apprehension. This function (F4) is defined by identifying information factors: the complainant could identify the assailant if she saw him again, if a witness provided information regarding identity, or if other identifying information was available. These factors have both instrumental and evidentiary dimensions. They help locate the accused and provide evidence that can be used in the legal process.¹⁰²

TABLE 4
APPREHENSION OF ONE OR MORE OFFENDERS-IDENTITY
CASES (F4)

<i>Variable</i>	<i>% Contribution to change in Rao's V</i>	<i>Standardized Canonical Coefficient</i>
Identification evidence present	37%	.54
Interviews	24%	.48
Witness provides identification information	6%	.28
Complainant could identify offender	6%	.30
Police held line-up	6%	.28

Percentage of eligible cases used in analysis = 64% (N=248)

Canonical correlation = .568

Group centroids: apprehension = .98; no apprehension = -.48

7. *The Line-up*

The lineup is a significant variable in the discriminant analyses

¹⁰¹ A topic of considerable interest among detectives interviewed in the study was the decision-making of prosecutors, judges, and, particularly, juries. Their comments suggest efforts to understand and predict the decision-making at these future points in the legal process.

¹⁰² The evidentiary variables, as a group, accounted for 40% of the capacity of the function to discriminate between outcomes. The accused interview variable, while powerful, is not very interesting because it is an inevitable concomitant of apprehension. It is also the only variable which is significant in the discriminant analysis model, but not in the logit model.

of both the founding and arrest decisions. To explore the circumstances under which the police conduct a lineup, this study performed a discriminant analysis using the lineup as the dependent variable. Table 5 presents the results of that analysis.

Administrative (interviews), evidentiary (identification evidence present), and instrumental (apprehension) factors taken together dominate this function (F5), contributing fifty-six percent of the discriminating power of the function. When the assailant is a stranger, the importance of evidence regarding his identity for apprehension and the resulting lineup is hardly surprising. When a suspect is in custody, officials will subject him to one or more interviews as a matter of course. Thus, these variables do not particularly inform our inquiry.

It is incongruous in stranger cases that a lineup is more likely to be held if property was taken from the complainant during the incident.¹⁰³ Certainly this factor reinforces the nonconsensual nature of the incident, but consent is usually not a significant issue in cases involving strangers. The presence of this variable in the analysis gives credence to one detective's observation that some detectives are more at ease dealing with nonsexual crimes.

TABLE 5
POLICE CONDUCT A LINE-UP OF SUSPECTS — IDENTITY
CASES (F5)

<i>Variable</i>	<i>% Contribution to change in Rao's V</i>	<i>Standardized Canonical Coefficient</i>
Accused apprehended	43%	.53
Complainant unemployed	15%	-.32
Property taken in incident	12%	.23
Identification evidence present	8%	.26
Interviews	5%	.23

Percentage of eligible cases used in analysis = 75% (N=290)

Canonical correlation = .576

Group centroids: line-up held = 1.599; line-up not held = -.309

On the other hand, a bureaucratic/instrumental interpretation would point to the variables relating to identification evidence and the fact that property was taken from the complainant. This interpretation would argue that these factors, taken together, suggest that the police are more likely to pursue a case when they anticipate a successful investigation. This occurs when there is evidence to fa-

¹⁰³ All the variables which are significant in the discriminant model are also significant in the logit model.

cilitate the assailant's apprehension and to establish his identity in court. The nonconsensual nature of the incident is established by the commission of a property crime in addition to the sexual assault.

To explore the lineup decision further, the study repeated the discriminant analysis (Table 6) after removing the interview and accused apprehended variables. While the evidence variable dominates this function (F6), the significance of the complainant's occupational status is reaffirmed. The emergence of the weapon used in the incident variable and the reduced influence of the property taken variable suggests the possibility that the property crime variable may represent an offense-aggravating factor rather than a particular ambivalence on the part of some investigators toward sex crimes.

Further, the property taken variable is not significant in the logit model, suggesting that its significance in the discriminant model may be a statistical artifact caused by a violation of the assumptions underlying discriminant analysis.

TABLE 6
LINE-UP DECISION WITH ADMINISTRATIVE AND
INSTRUMENTAL
VARIABLES REMOVED—IDENTITY CASES
(F6)

<i>Variable</i>	<i>% Contribution to change in Rao's V</i>	<i>Standardized Canonical Coefficient</i>
Identification evidence present	37%	.50
Complainant unemployed	18%	-.32
Accused's occupation known	8%	.32
Property taken in incident	8%	.21
Complainant was clerical/sales worker	6%	.29
Weapon used in incident	6%	.19

Percentage of eligible cases used in analysis = 76% (N=293)

Canonical correlation = .496

Group centroids: line-up held = 1.28: line-up not held = -.252.

8. *Felony Filing*

The bivariate analysis of the 1981 prosecutorial decision to file felony charges¹⁰⁴ indicates that the decision to file is positively associated with the complainant's willingness to prosecute and negatively associated with the victim's inability to identify the assailant, the assailant's use of a disguise, and the complainant's delay in re-

¹⁰⁴ Charges were denied in only 9% of the requests.

porting the incident. The use of a disguise and the complainant's inability to identify the assailant are obviously related, and, in this analysis, reflect the prosecutor's concern with evidentiary matters. These findings are consistent with those of the study of Philadelphia cases, which suggested that the focus of prosecutorial involvement is on evidentiary matters.¹⁰⁵ The impact of the complainant's delay in reporting the incident may well be explained by the prosecutor's prediction of its effect on the victim's credibility as a witness.

An analysis of the 1979 felony filing decisions¹⁰⁶ where the complainant and the accused were strangers provides the information reported in Table 7. The function (F7) that emerges from the multivariate analysis of the 1979 data presents essentially the same picture as does the 1981 data.¹⁰⁷ To the limited extent that prosecutors do not accede to police wishes, their decisions appear to be driven by evidentiary concerns about the capacity and credibility of the victim.

TABLE 7
FELONY FILING DECISION-1979 DATA-IDENTITY CASES (F7)

<i>Variable</i>	<i>% Contribution to change in Rao's V</i>	<i>Standardized Canonical Coefficient</i>
Complainant used alcohol	27%	.48
Area 4	25%	.49
Complainant could identify assailant	24%	-.47
Assailant concealed identity	9%	.34
Police held line-up	7%	-.32

Percentage of eligible cases used in analysis = 94% (N=360)

Canonical correlation = .51

Group centroids: line-up held = -.20; no line-up held = 1.75.

9. Summary

When the identity of the assailant is unknown, the complainant's willingness to prosecute makes the greatest contribution to the discriminating power of the founding decision function (F1) and contributes the most to defining the function. But the meaning of the willingness to prosecute function (F3) is less clear. The statistics provided in Table 3 do not suggest a predominant factor. It appears that an evidentiary variable (the availability of a witness to the

¹⁰⁵ Comment, *Police Discretion and the Judgment That a Crime Has Been Committed—Rape in Philadelphia*, 117 U. PA. L. REV. 277, 317 (1968).

¹⁰⁶ Police requests for felony charges were denied in 10.3% of the cases.

¹⁰⁷ All the variables which were significant in the discriminant model are also significant in the logit model.

incident) and an offense aggravation variable (the use of a weapon) make the greatest contributions. But the extralegal variable (the violation of sex-role norms) is also significant. The pattern of significant variables suggests that willingness to prosecute is more than simply a matter of complainant volition.

The analysis of apprehension (F4) of the assailant is strongly dominated by identifying information variables. Three of these account for forty-nine percent of the discriminating power of the function (forty-nine percent of the change in Rao's V and forty percent of the canonical correlation). That a lineup was held is significant in both this function and the founding decision function (F1).

Administrative, evidentiary, and instrumental variables dominate the decision to hold a lineup (F5 and F6), but one variable—complainant's occupational status—points to the possible influence of an extralegal factor in the decision. The capacity and credibility of the complainant were key factors in the prosecutorial decision to file felony charges (F7).

B. CONSENT CASES

When the complainant and the accused are acquainted, the issues posed for the investigation are quite different. The identity of the assailant, which is the focus of the stranger case investigations, is known, or at least some information relevant to the assailant's identity is available (e.g., his street name and that he lives in a particular area). As such, the states of mind of the parties, and particularly of the complainant, become the paramount concerns. Table 8 presents the results of a discriminant analysis of police founding decisions in situations where the complainant and accused knew each other before the incident.¹⁰⁸

The analysis resulted in the identification of two functions, the first of which (F8) discriminates between founded and unfounded cases. Police are more likely to do something about the complaint if the accused is in custody or if the complainant has suffered injuries to her sex organs.¹⁰⁹ If there is nonsexual discrediting information (e.g., a pattern of alcohol or drug use, or a history of mental illness or false complaints), the police will tend to disregard the complaint. The second function (F9) suggests that when the assailant injured the complainant's sex organs, the officials are more likely to treat the complaint as a more serious crime. If the accused is in custody

¹⁰⁸ See *supra* text accompanying note 65 (discussion of the acquaintance variable.)

¹⁰⁹ The apprehension variable accounted for 56% of the variance explained by the function.

TABLE 8
FOUNDING DECISION — CONSENT CASES (F8 & F9)

Variable	% Contribution to change in Rao's <i>V</i>	Standardized Canonical Coefficient	
		F8	F9
Accused apprehended	25%	-.46	.37
Non-sexual discrediting information re complainant	14%	.52	-.04
Injuries to sex organs	11%	-.27	-.48

Percentage of eligible cases used in analysis = 55% (N=148)

F8: Canonical correlation = .59

F9: Canonical correlation = .48

Group centroids: F8 = founded cases (-.53) and reclassified cases (-.35) distinguished from unfounded cases (1.13). F9 = reclassified cases (.87) distinguished from founded cases (-.46) and unfounded cases (-.09).

but an aggravating factor, such as injuries to the complainant's sex organs, does not exist, then the case is likely to be reclassified as a less serious crime.¹¹⁰

That the accused was apprehended contributed most to the first function. Table 9 displays the factors associated with apprehension in cases where the complainant and accused were acquainted.¹¹¹ The most striking thing about this function (F10) is the significance of the sexual property variable.¹¹² This variable was created to test one of the gender-based conflict hypotheses. It is coded so that cases involving married women and young/single women carry a higher value. In the cases we are considering here, the police, by definition, have some information about the identity of the accused. The police thus have greater discretion over whether or when they will apprehend the accused. In this context, the role that the sexual property variable plays in this function becomes significant. It suggests that officials perceive that attacks against women belonging to certain groups¹¹³ require more serious official attention; this perception in turn influences the exercise of discretion in these decisions.

The analysis of complainant's willingness to prosecute disclosed a function (Table 10—F11) defined by instrumental (appre-

¹¹⁰ The apprehension and nonsexual discrediting information variables were both significant in the logit model at the .01 level. The injuries to victim's sex organs variable was significant at .012.

¹¹¹ All of these variables, with the exception of the victim occupation variable, were also significant in the logit model.

¹¹² It contributed less than 10% to the explained variance, but was significant in the logit model.

¹¹³ Defined in terms of their relation to husbands or fathers.

TABLE 9
 APPREHENSION OF ONE OR MORE ACCUSED-CONSENT
 CASES (F10)

Variable	% Contribution to change in Rao's <i>V</i>	Standardized Canonical Coefficient
Complainant will prosecute	21%	.51
Occupation of accused known	20%	.48
Interviews	18%	.50
Witness to incident	15%	.38
Sexual Property value	14%	.29
Victim employed as manual laborer	12%	.19

Note: Percentage of eligible cases used in analysis 71% (N=192)

Canonical correlation = .5917

Group centroids: apprehended = .57; not apprehended = -.93

hension), evidentiary (witness to incident), and offense seriousness (weapon used) factors. Unlike the findings for the aggregated cases and identity cases, the police lineup was not a significant factor in the analyses of acquaintance cases. The instrumentalist's explanation for this result is that the assailant's identification is a less important concern in these cases. A discriminant analysis was not conducted for the lineup decision because the proportion of cases in which a lineup was held (six percent) to those in which no lineup was held (ninety-four percent) was too diverse; the validity of the results would therefore be undermined. Interview data nonetheless suggests an instrumental interpretation: the police will conduct a lineup only when the detective perceives some possibility that the complainant's identification of the accused might be challenged.

In the 1981 data, the number of police interviews and apprehension of the accused were significantly related to the *felony filing decision*, but neither of those variables is particularly enlightening with regard to the dynamics of that decision in consent cases.¹¹⁴ The existence of nonsexual discrediting information had a statistically significant negative impact on felony filings. However, so few cases were involved that little weight can be placed on that finding.¹¹⁵

One finding is of interest: when the complainant reported the attack first to the police, felony charges were filed in seventy-one percent of the cases; however, when she reported the incident to

¹¹⁴ Recall that 1979 cases are being used to supplement the primary analysis of 1981 case processing because the greater number of cases allows us to extend the analysis to the early prosecutorial decision to file felony charges.

¹¹⁵ Of the sixty cases considered, only one case involved nonsexual discrediting information, and in only five cases were felony charges denied.

TABLE 10
COMPLAINANT'S WILLINGNESS TO
PROSECUTE-CONSENT CASES (F11)

<i>Variable</i>	<i>% Contribution to change in Rao's V</i>	<i>Standardized Canonical Coefficient</i>
Accused apprehended	72%	.79
Witness to incident	17%	.38
Weapon used	11%	.34

Percentage of eligible cases used in analysis = 99% (N=269)

Canonical correlation = .38

Group centroids: willing to prosecute = .33; not willing to prosecute = -.52.

her spouse first, felony charges were filed in ninety-seven percent of the cases. This finding may reflect a prosecutorial assessment as to whether the complainant used the complaint as a buffer in her relationship with her spouse. Thus, if the spouse joins in the complaint, the officials treat it with greater respect. One may interpret this result either as supporting the sexual property notion or as a reflection of concern about the credibility of the complainant and the possibility that the legal system is being used as a tool within the context of the marital relation.

In the discriminant analysis of the 1979 *felony filing decision* (Table 11—F12), only one variable—the use of a weapon in the incident—makes a statistically significant (at 0.01) contribution to the resulting function. The sex-role norms variables registered just below the level of significance—at 0.017. This represents the only occasion where the sex-role norms variable was close to significant in the analysis of the formal decisions—whether or not to found and file felony filing.¹¹⁶

TABLE 11
1979 FELONY FILING DECISION-CONSENT CASES (F12)

<i>Variable</i>	<i>% Contribution to change in Rao's V</i>	<i>Standardized Canonical Coefficient</i>
Weapon used	.25%	-.64

Percentage of eligible cases used in analysis = 72% (N=185)

Canonical correlation = .387

Group centroids: felony filed = -.18; not filed = .94.

¹¹⁶ Neither of these variables was significant in the logit model.

1. Summary

Where the complainant and the accused were acquainted before the incident, the police are more likely to treat the incident as a crime if the accused is in custody. Apprehension in these cases is strongly associated with the complainant's willingness to prosecute and with a witness providing information about the accused. By definition, the complainant will know something about the accused, but sometimes that information will be limited.¹¹⁷ Thus, the existence of a witness who can provide additional information is important for facilitating the apprehension of the accused.

Apprehension contributes substantially to the complainant's willingness to prosecute function (and vice versa), as does the presence of a witness and the use of a weapon in the incident. Again, the existence of a pattern of findings dominated by instrumental, evidentiary, and offense-aggravating factors suggests that the complainant's willingness to prosecute is strongly influenced by the investigator's perceptions of the likely success of prosecution.

The existence of nonsexual discrediting information about the complainant is associated with unfounded cases; conversely, the existence of injuries to the complainant's sex organs is associated with founded cases. Evidentiary and offense-aggravating factors apparently play an important role.

Prosecutors denied felony charges in a higher percentage of cases (19% in 1979 cases compared to 10.3% of identity cases) when the complainant and accused were acquainted. The use of a weapon was the sole significant factor in the prosecutorial decision function. This variable may be seen as having both offense aggravating and evidentiary dimensions in consent cases. A gender-conflict variable, the violation of sex-role norms, was close to being statistically significant.

VI. DISCUSSION

Figures 2 and 3 display the results of the statistical analyses of the five decisions that are the focus of this article. We include both multivariate and bivariate results because at this point we wish to take a larger view of the data in order to draw some tentative conclusions. It thus appeared useful to include the bivariate analysis of the 1981 felony filing decisions as well as the lineup analyses, even

¹¹⁷ The term "acquaintance" represents an extensive category that can include, for example, someone the complainant had just met in a bar.

though these analyses are based on an artificial removal of administrative and instrumental factors.

FIGURE 2
SUMMARY OF SIGNIFICANT VARIABLES IN IDENTITY CASES

FOUNDING DECISION - F1

Instrumental (will prosecute)
Offense Element (victim a minor)
Offense Element (resistance)
Instrumental (apprehended)
Administrative (line-up held)
Aggravating Element/Evidence
(incident began as another crime)

COMPLAINANT WILL PROSECUTE - F3

Aggravating Element (weapon present)
Gender Conflict (sex role norms)
Evidence (witness to incident)

LINEUP HELD - F5

Instrumental (apprehension)
Status Conflict (complainant unemployed)
Evidence/Aggravating Element
(property taken)
Evidence (identification evidence taken)
Administrative (interviews)

FELONY FILING 1981

Instrumental (complainant will prosecute)
Evidence (complainant cannot identify
assailant)
Evidence (assailant concealed identity)
Evidence (complainant delayed in
reporting incident)

FOUNDING DECISION - F2

Offense Element (attempt)
Evidence (non-sexual discrediting
information)
Instrumental (will prosecute)
Aggravating Element/Evidence (incident
began as another crime)

APPREHENSION - F4

Evidence (identification evidence present)
Administrative (interviews)
Evidence (complainant can identify
assailant)
Evidence/Instrumental (witness provided
identification information)
Administrative (line-up held)

LINEUP HELD WITH ADMINISTRATIVE AND
INSTRUMENTAL VARIABLES REMOVED - F6

Aggravating Element/Evidence (weapon
present)
Evidence (identification evidence present)
Status Conflict (complainant unemployed)
Evidence/Aggravating Element (property
taken)
Status Conflict (complainant clerical or
sales worker)

FELONY FILING 1979 - F7

Evidence (complainant used alcohol)
Administrative (line-up)
Administrative (area 4)
Evidence (complainant could identify
assailant)
Evidence (assailant concealed identity)

A. IDENTITY CASES

Thirty-four variables emerged as statistically significant in these analyses. Evidentiary and instrumental variables account for twenty-six of these, and they are significant in every decision. These variables are the predominant contributors to the discriminating power of the function in six of the seven analyses. They are also the variables most highly correlated with the discriminating function in six of seven analyses, including the one decision in which these variables were not the predominant contributor. Thus, it can be said that evidentiary and instrumental variables structure official decision-making in the processing of these sexual assault complaints.

FIGURE 3
SUMMARY OF SIGNIFICANT VARIABLES IN CONSENT CASES

FOUNDING DECISION - F8

*Instrumental (apprehended)**Evidence (non-sexual discrediting information)**Evidence/Aggravating Element (injuries to complainant's sex organs)*

APPREHENSION - F10

*Instrumental (will prosecute)**Administrative (interviews)**Gender Conflict (sexual property value)**Evidence (evidence relevant to consent issue present)*

FELONY FILING - 1981

*Administrative (interviews)**Instrumental (apprehended)*

FOUNDING DECISION - F9

*Instrumental (apprehended)**Evidence/Aggravating Element (injuries to complainant's sex organs)*

COMPLAINANT WILL PROSECUTE - F11

*Instrumental (apprehended)**Evidence (witness to incident)**Aggravating Element/Evidence (weapon present)*

FELONY FILING - 1979 -F12

*Aggravating Element/Evidence (weapon used)**Gender Conflict (sex role norms)*

At the initial classification stage, represented by the two founding decisions functions, the evidentiary and instrumental variables share influence with the variables reflecting the formal legal elements. These variables address whether the complainant is provided special statutory protection as a juvenile, whether the complainant resisted, and whether the intercourse actually occurred.

After the evidentiary and instrumental variables, those variables reflecting the seriousness of the incident have the most pervasive influence, appearing in the founding decision functions, the willingness to prosecute function, and the second lineup function. While their influence is relatively pervasive, the seriousness of the incident is the predominant factor only in the willingness to prosecute function, where it contributes the most to the discriminating power of that function.

Status-conflict theory variables play a clear role in the lineup decision functions. This is particularly true with the second function where two variables reflecting status-conflict hypotheses are significant. Neither, however, is the predominant factor in the function.

The only significant role played by a gender-conflict variable is in the willingness to prosecute function. While considerable ambiguity surrounds this variable, the qualitative data helps us to see this decision as representing a major point of discretion, partly because the decision is superficially not an official decision. But its discretionary potential also reflects the complainant's circumstances at that point in time: she is usually physically safe, has recovered from

the immediate trauma, and now must decide how much more time and effort she is willing to invest in the situation. In this environment, the detective does not have to create the elements by which to manipulate the victim's decision; all that is required is a selective presentation of the reality, an understandable and credible reality, that confronts her. Indeed, the ambiguity that surrounds the complainant's decision not to prosecute, which is a graceful way to withdraw a false complaint, provides the detective the possibility for manipulation. Finally, such manipulation may serve the detective's bureaucratic interests. These interacting dimensions, namely low visibility, credible risks for the citizen, situational ambiguity, low credibility of potential complainant, and self-interest of an official, provide a model for the appearance and dynamics of the abuse of discretion in official decision-making.

Thus, official decision-making in identity cases appears to be structured by evidentiary and instrumental variables, with formal legal requirements exerting important influence in the early classification decisions. Offense seriousness variables are influential at several points but are not a predominant factor at any of them. Finally, status- and gender-conflict variables were each significant in one function, but neither as the predominant factor in their respective functions.

B. CONSENT CASES

As with identity cases, instrumental and evidentiary variables are significant in the discriminant analyses of five of the six decisions. In the sixth decision, the 1979 felony filing decision, only one variable—whether a weapon was used in the incident—was statistically significant at 0.01. While the use of a weapon is classified as an offense seriousness variable, it has an evidentiary dimension as well.

The influence of the evidentiary and instrumental variables is predominant as well as pervasive. In both of the founding decision functions in the complainant will prosecute function and the apprehension function, the evidentiary and instrumental variables contribute the most to the discriminating power of the function and are most highly correlated with the function.

Unlike the identity case analyses, there does not appear to be a shift in relative influence from instrumental to evidentiary variables as the cases proceed through the criminal justice process. Additionally, offense element variables are not significant in any of the decision functions. Offense seriousness variables, however, continue the pattern of pervasive but limited influence. They appear as sig-

nificant variables in both founding decision functions, the willingness to prosecute function, and the 1979 felony filing decision function.

While status-conflict variables are not significant in the consent cases discriminant analyses, gender-conflict variables play a stronger role than they do in identity cases. The notion of sexual property value is the second most highly correlated variable with the apprehension function. In the function which resulted from the analysis of the 1979 felony filing decision, only one variable, weapon used in incident, proved statistically significant at 0.01. However, a gender-conflict variable, sex-role norms, registered just below that level of significance at 0.017.

In identity cases, whether the victim resisted determines whether the incident is classified as the more serious crime of rape. In consent cases, on the other hand, whether the complainant is *injured* appears to be the test for classifying the incident as a more serious crime.

In both identity and consent cases, instrumental and evidentiary variables structure the official decision-making; however, the structures created are different. In the early decisions on identity cases, instrumental variables are more important than evidentiary variables and formal legal elements play a significant role. In these cases, evidentiary variables become more influential as the case progresses through the process; however, a similar pattern is not evident in the consent cases.

In both types of cases, offense seriousness plays a significant but not predominant role. Status- and gender-conflict variables occasionally emerge as significant variables but are often surrounded by some ambiguity regarding the evidentiary dimensions of these variables.

A few comments about other variables are in order. Kalven and Zeisel identified the complainant's use of alcohol as the factor that most often moved jurors to mitigate their judgments about the defendant's behavior.¹¹⁸ The analyses of Chicago data disclosed that in only one decision, the prosecutor's felony filing decision in identity cases, did alcohol become a significant variable. In these situations, the complainant's ability to make an accurate identification of a stranger is a key issue. Thus, it is understandable, on evidentiary grounds, that a prosecutor would be influenced by the complainant's use of alcohol.

LaFree reported that race affected the charge seriousness deci-

¹¹⁸ H. KALVEN & H. ZEISEL, *supra* note 1, at 254-57.

sion in two ways: where the assailant was black and the complainant white, more serious charges tended to be filed than with other racial combinations; alternatively, where both assailant and complainant were black, an arrest was less likely.¹¹⁹ The Philadelphia study reported that when both assailant and complainant were black, the police were more likely to unfound the complaint than when the parties to the incident were both white or were of different races.¹²⁰

Only one of the analyses of the Chicago data indicated that race might be a significant variable. The analysis of felony filing decisions in 1979 identity cases disclosed that officials in Area 4 cases were significantly less likely to file felony charges. An analysis using Area 4 as the dependent variable indicated that three variables distinguished these cases from those in the rest of the city. In Area 4 cases (see Table 12), the complainant, who was more likely to be black, was less likely to be willing to prosecute. Additionally, the incident was more likely to involve multiple assailants. The variable reflecting the complainant's willingness to prosecute contributed thirty-three percent of the discriminatory power of this function and was the variable most highly correlated with it. Race of complainant and number of offenders contributed roughly the same amount to the change in Rao's V and had similar standardized canonical coefficients (though in different directions). Both of these variables, however, were substantially less significant in the analysis than the willingness of the complainant to prosecute. Thus, there is little evidence that race is a significant factor in these decisions.

TABLE 12
AREA 4 CASES - IDENTITY CASES (F13)

<i>Variable</i>	<i>% Contribution to change in Rao's V</i>	<i>Standardized Canonical Coefficient</i>
Will Prosecute	.32%	.54
Number of Offenders	.18%	-.36
Race of Complainant	.17%	.32

Percentage of eligible cases used in analysis = 94% (N=1038)

Canonical correlation = .293

Group centroids: Area 4 cases = -.61; Other Area Cases = .15

Occupational status appeared to be related to the police decision to hold a lineup. Lineups were less likely to be conducted in

¹¹⁹ LaFree, *Official Reactions to Social Problems: Police Decisions in Sexual Assault Cases*, 28 SOC. PROBS. 582, 591 (1981).

¹²⁰ Comment, *Police Discretion and the Judgment That a Crime Has Been Committed—Rape in Philadelphia*, 117 U. PA. L. REV. 277, 304 (1968).

cases involving unemployed complainants. However, in cases where the complainants were employed as clerical or sales personnel, line-ups were more likely to be conducted. As with variables derived from gender-based conflict theory, the evidence of the influence of variables derived from class-based conflict theory is slight and limited to an informal, secondary decision.

VII. CONCLUSIONS

Four mid-level findings emerge from the Chicago data. The first, discussed above, is the conclusion that it is necessary to distinguish between cases in which the primary issue was the identity of the assailant and cases in which the consent of the complainant was a potentially significant issue. The other three findings (or sets of related findings) are the following: (1) that evidentiary and instrumental variables are the most pervasive and influential in the discriminant analyses of the decisions studied; (2) that victim willingness to prosecute—an important variable in the discriminant function of a number of decisions—is more complex than simply a statement of victim volition; and (3) that variables derived from gender-based conflict theory are statistically significant in some of the secondary, more informal police decisions.

A. Pervasiveness and Predominance of Evidentiary and Instrumental Variables

As indicated earlier, Figures 2 and 3 display the significant variables and their categorizations.¹²¹ Examination of these figures discloses that either an evidentiary or an instrumental variable is significant in every decision analyzed except for the felony filing decision in consent cases. In the latter decision, the only significant variable—the use of a weapon—has an evidentiary dimension because it diminishes the credibility of any claim that the complainant consented to sexual intercourse.

Further, in five of the seven identity case decisions, an evidentiary or instrumental factor is the predominant variable in the discriminant function. These factors contribute the most to the capacity of the function to discriminate among cases and were most highly correlated with the function. In three of the five functions that emerged from the analyses of consent case decisions, an evidentiary or instrumental factor predominates in the same manner.

In the two consent case functions in which evidentiary and in-

¹²¹ See *supra* section VI.

strumental variables are not the most influential, namely the second function identified in the analysis of the founding decision and the felony filings decision function, the predominant variables, respectively that the complainant suffered injuries to her sex organs and that a weapon was used in the incident, have evidentiary dimensions. In fact, particularly in consent cases, both of these variables could be considered as primarily evidentiary variables.

Thus, the influence of evidentiary and instrumental variables is both pervasive and predominant. Indeed, these variables appear to be the major factors structuring the official decision-making in both the identity and consent cases.

B. COMPLAINANT'S WILLINGNESS TO PROSECUTE

This decision is superficially unlike the others in that it is not the decision of a criminal justice official. In the discriminant analysis of the founding decision in identity cases, it emerged as the variable that contributed the most to the discriminating capacity of the two functions. Moreover, it was the variable most highly correlated with the function that distinguished those complaints which were treated as rape cases from those which were treated as a less serious crime or as not constituting a crime.

When willingness to prosecute was analyzed as the dependent variable in a discriminant analysis, three variables made significant contributions to the resulting function. The use of a weapon in the incident variable contributed the most to the discriminating power of the function. We treated this variable as an offense-aggravating factor, although it has an evidentiary dimension as well. It is surprising that this factor, rather than other offense-aggravating factors such as injury to the complainant or deviate sexual assault, proves to be so influential in the complainant's decision.

The variable most highly correlated with the function, although making the least contribution to its discriminating power, was the presence of a witness to the incident. Again, it seems unusual that this factor would be influential in the complainant's decision. One would think that personal outrage, vindictiveness, or simple a wish to protect others from attack would not be influenced by whether another witness existed.

The third significant variable, specifically that the complainant had violated sex-role norms, ranked second in contribution to the discriminatory power of the function. It adds substantively to the ambiguity surrounding this analysis. One may possibly read the witness and sex-norms variables together to suggest that when the

complainant feels uneasy about her own behavior, the presence of a third party to reinforce her position becomes important.

Participant observations and interviews with detectives, however, suggest an alternative explanation. Complainant willingness or unwillingness to prosecute is an important factor in the police evaluation of a complaint. If the complainant is unwilling to prosecute, it is much more difficult to pursue the case. Even if the victim is compelled to participate in the investigation, she retains a near-determinative capacity to thwart it by withholding identification or by introducing ambiguity into her testimony. In fact, detectives who are overburdened with cases are simply not going to expend effort unless the complainant is cooperative. Furthermore, the detectives' experience suggests that a face-saving way of recanting a complaint is to choose not to pursue it. Thus, unless there is independent evidence of the incident, it is not unreasonable to unfound a complaint when the complainant decides not to prosecute.

Recognizing this possibility, detectives sometimes use the possibility of the complainant deciding not to prosecute to manipulate the situation for their own purposes. If the detective decides that he would like to unfound the case in order to avoid carrying it on his record as an unsolved crime, he may attempt to convince the complainant that it is not in her interest to pursue the case. The detective may vividly portray to the complainant the personal costs involved by emphasizing such things as the repeated trips to court, the inevitable delays at court, and the humiliating cross-examination by defense counsel. Conversely, if the detective wishes to pursue the case but the complainant seems ambivalent, the detective may attempt to strengthen her resolve by talking about the need for her cooperation to prevent an attack on another woman.

The discriminant analysis of complainant willingness to prosecute may, in fact, be disclosing the circumstances under which *detectives* tend to be inclined or disinclined to pursue a complaint. Thus, in the detective's view, the use of a weapon both makes the crime more serious and provides evidence to contradict any claim that the incident was consensual. Similarly, the existence of a witness potentially strengthens the evidence both as to the identity of the assailant and the nature of the incident.

The complainant's conformity or lack of conformity to sex-role norms may be a significant factor as the detective's inclination or disinclination to pursue the complaint. This may result from either detective's moral judgment or the detective's prediction about the effect of the complainant's behavior on subsequent official actors, namely the prosecutor, judge, or jurors.

This is not to argue that complainants never decide independently whether to pursue their case. Undoubtedly, some complainants are beyond the power of detectives' persuasion. Likewise, in some cases, the detectives do not even attempt to affect the complainants' decision. Nevertheless, the results of the discriminant analysis are consistent with the qualitative data in suggesting that the complainant's willingness to prosecute represents more than a simple statement of complainant volition.

C. INFLUENCE OF GENDER-BASED CONFLICT THEORY VARIABLES

The influence of sex-role norms in the analysis of the complainant's willingness to prosecute focuses our attention on the impact of gender-based conflict theory variables. The analysis of apprehensions in consent cases disclosed the influence of another variable, namely the sexual property value of the complainant. This variable correlated highly with the function that discriminated between those cases in which the accused was apprehended and those in which he was not.

In consent cases, the police, by definition, have some information about the identity of the accused. Thus, the police have more discretion over the apprehension of the suspect in these cases than in identity cases. In this context, the role that the sexual property variable plays in the function becomes significant because it suggests that the official response to attacks against women varies by virtue of their relationship to their respective husbands or fathers.

These two functions, the complainant's willingness to prosecute in identity cases and the apprehension decision in consent cases, are the only analyses that disclose the statistical significance of gender-based conflict theory variables. In one formal decision, the 1979 felony filing decision in consent cases, the sex-role norms variable was close to statistical significance at the .01 level. Thus, the Chicago data examined here provide only limited support for these hypotheses. Indeed, the data suggest that to the extent that these considerations do operate, they tend to influence the secondary, more informal decisions rather than the two primary formal decisions—the police founding decision and the prosecutorial felony filing decision. These findings are consistent with LaFree's finding of a statistically significant but weak relationship between complainant misconduct and the decision to arrest.¹²²

Resistance by and injury to the complainant has been treated in

¹²² LaFree does not distinguish between identity and consent cases. LaFree, *supra* note 118, at 588.

some of the literature as reflecting gender-based conflict.¹²³ The Chicago data suggest that when the parties are strangers, resistance is the test which distinguishes between classification of the case by police as a rape or as a lesser crime.¹²⁴ When the parties are acquainted, whether the complainant is injured in the incident determines whether the crime will be classified as more or less serious.

These findings, while making a certain intuitive sense, do not provide a totally satisfying explanation of the criminal justice agency response in cases of sexual assault against women. The pain of some victims is too intense and their anger too palpable to be dismissed. Comments by experienced police officers and other close observers of the criminal justice process (e.g., veteran news reporters) provide support for some of the complaints of victims and their advocates.

Two explanations come to mind. First, the findings here are the result of the quantification of multifaceted human experiences, which distorts while it affords perspective. The effect of some variables may be dismissed in the process as statistically insignificant, even though their impact in specific cases may have been real and devastating. Second, a more systemic problem needs to be acknowledged. The study undertook to examine official decision-making in sexual assault cases. The quantified data do not pretend to capture subtle and sometimes not so subtle gradations of human relationships and interaction. Nor does the data reflect the differences between an official's attitude that is supportive and one that is cynically dismissive, but such differences are likely to be painfully experienced by a recently traumatized victim.

These comments are not intended to criticize all officials or even all cynical official attitudes. The cynicism often reflects costly lessons learned in responding to a daily caseload of human tragedy. Rather the remarks are intended to caution the reader that these findings, while strong and generally consistent with those of earlier empirically based studies, need to be understood as reflecting only a part, albeit a very important part, of official response to sexual assaults against women.

To conclude this examination of official decision-making in sexual assault cases, we now return to a consideration of the theoretical perspectives with which we began.

Traditional legal theory, or "formalism" according to some

¹²³ Comment, *supra* note 119; Galton, *Police Processing of Rape Complaints: A Case Study*, 4 AM. J. CRIM. LAW 15, 24-26 (1975-76).

¹²⁴ This is consistent with Illinois law at the time.

scholars, has responded to the question of what determines official reaction to social deviance by answering that such action is governed by legislative and judicial mandates in the form of statutes and court interpretation of such statutes. On the other hand, a major strand of criminological research and theory has suggested that the underlying seriousness of the deviant act is the significant dimension that accounts for official behavior. The data under consideration here provide evidence that such factors do play a role in official decision-making.

Gender-based conflict theorists found both these explanations inadequate in rendering comprehensible criminal justice agency response to sexual assault against women. They suggested instead that official decision-making in these cases could best be understood as the way male-dominated institutions attempt to preserve men's social dominance over women. They hypothesized that official action could be explained in terms of two considerations. The first granted some women greater sexual property value than others. Under this consideration, young unemancipated women and married women received greater official protection by virtue of their worth to their fathers or husbands. The second consideration reflected conformance with sex-role norms. Women who did not conform to these norms will be granted less official protection if they are sexually assaulted.

The Chicago data examined here provide some support for these hypotheses, particularly in consent cases. This support is perhaps most observable in the shift between identity cases, where resistance appears to be the test in the founding decision and status-conflict variables have the clearest influence, and consent cases, where the founding decision test is an injury to the complainant and the influence of gender-conflict variables is more discernible. Taken together, gender-conflict variables appear to be likely to influence the secondary, more informal decisions (the willingness to prosecute and apprehension decisions) rather than the primary decisions (the police founding decision and the prosecutorial felony filing decision).

The Chicago data suggest that instead of being mutually exclusive, each of these theories — formalism, incident seriousness, gender conflict — accounts for part of the phenomena. Nonetheless, all three existing theories give insufficient attention to the overall context of official decision-making, which is defined largely by the requirements of the administrative and legal processes—the factors we have called instrumental and evidentiary. It is these latter factors

that predominate in determining the official reaction to sexual assault complaints and define and control access at the gateway to justice.