

**Attrition of Sex Offender Cases in Maine's
Criminal Justice System:
The Role of the Victim and the
Criminal Justice Community**

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INTRODUCTION AND BACKGROUND

During the Spring of 2000, the then Associate Commissioner for Adult Services in Maine's Department of Corrections (DOC) requested the Maine Statistical Analysis Center (SAC) investigate why so few sex offender suspects seemed to be convicted of a sexual offense. The DOC had been collecting data on cases brought to court and a preliminary analysis showed a "funnel" effect of fewer and fewer sex offense cases being sent to trial and then, fewer of those cases being convicted of the sex offense charge. Perhaps prosecutors did not want to go to trial if they could not get a conviction for a sex offense or because a conviction for a different or lesser crime was more likely?

The meetings between the SAC and the DOC led to the decision that describing the criminal justice process and its key decision-making points, especially as they related to sex offenses, would be useful for prosecutors and judges to know. SAC staff proposed a qualitative study where key decision-makers in Maine's criminal justice process, with particular reference to sex offenses, would be interviewed about their role and their assessment of how sex offender suspects are processed and why some suspects fail to make it to trial, much less conviction. The study was based on the research question, *what affects adult sex offender attrition rates (the rate at which cases are lost or dropped) at key decision points in the criminal justice process?*

SAC staff identified a sample of 64 criminal justice decision makers to learn why so few sex offender suspects seemed to be prosecuted and convicted of a sexual offense. With the assistance of a research advisory group, made up of representatives from law enforcement, prosecutors offices, defense attorneys, community-based and prosecutor-sponsored victim witness advocates, Corrections staff, and Department of Human Services staff, SAC investigators developed, pilot tested and conducted a series of interview questions that capitalized on the respondents' experience, opinions and conclusions about processing sex offender cases in Maine.

Briefing Paper Research Question

What role do the victim and criminal justice community play in the decision to prosecute an alleged adult sex offender?

Our interviews suggest that law enforcement professionals and prosecutors stressed evidence and confessions as important factors when deciding to prosecute or not. However, it also appeared that the victim's age, character, role, appearance, and personal history seemed to play a role as well in the decision to prosecute. This evidence emerged in response to questions that asked about the decision-makers' role in "persuading" the victim to prosecute or not.* In this briefing paper, we will address the question, *what role do the victim and criminal justice community play in the decision to prosecute an alleged adult sex offender?*

This paper focuses on the role of the victim and the criminal justice community in the decision to prosecute an alleged adult sex offender. Specifically, we examined the role of “persuasion”¹ - or the degree to which criminal justice decision-makers demonstrate concern for the victim’s well being, express a favorable or less favorable prediction of likely outcomes “down the road,” or reframe the victim’s experience from the personal and emotional to the procedural and bureaucratic.

REVIEW OF PREVIOUS RESEARCH

Attrition

Research about rape case attrition and the roles of police, prosecutors and jury represents a wide range of philosophical and ideological beliefs about what happens during a rape case investigation, why it happens and what should be done about it. Researchers have routinely attributed high or low rates of attrition to (a) the influence of the police who may or may not refer a case to the prosecutor, (b) the prosecutor who may or may not forward the case to trial and (c) the victim whose behavior, characteristics, and circumstances may make it either easier or more difficult to prosecute the case as a rape.

In general, felony case attrition has a long history in criminal justice. Garofalo (1991) observed that the phenomenon of felony case attrition (which was earlier referred to as drop-out, deterioration or mortality) was found in 1920s and 1930s surveys of city and state crime and in the Wickersham Commission Report (1931) which found differences between numbers of arrests and numbers of convictions - similar to the results found in latter day research (Walker, 1997).

“The single most important reason why most rapists are not punished is the failure of victims to report the crime to the police, or their later refusal to cooperate as a prosecution witness. Reported and prosecuted rape cases are disproportionately stranger rapes, cases in which the rapist inflicted additional injuries, and other factors associated with a ‘strong case’. “ (Bryden and Lengnick 1997, p. 1214).

How do case processing decisions compare between sex offenses and comparable felonies? Bryden and Lengnick (1997) cited a number of studies that showed that the patterns of attrition rates between rape and other major felonies were generally similar. They also observed that the victim played a role in determining the outcome of case processing. While several studies have concluded that the victim’s unwillingness to cooperate is a major reason for attrition in rape cases. However, Steffensmeier found that victim non-cooperation was the single most important reason for dismissals of all felonies except homicide (1988).

Rape attrition statistics are often used to support arguments about the alleged inherent hostility of the criminal justice system to rape victims (Bryden and Lengnick 1997). According to the Bureau of Justice Statistics (BJS), an estimated 500,000 women yearly become victims of rape or sexual assault (BJS 1995). However, in 1994, only 102,096 rapes were

¹ By “persuasion,” we mean (a) demonstrating or withholding concern for the victim’s well being, (b) speculating about possible case outcomes further along the criminal justice process, or (c) reframing the victim’s personal experience into the less personal criminal justice paradigm to emphasize either the potential for bureaucratic humiliation or bureaucratic procedural support (from Frohmann 1998).

1992 to 2000 (rapes not reported to police):

- 63% of completed rapes
- 65% of attempted rapes
- 74% of completed and attempted sexual assaults against females (Rennison, 2002)

“The closer the relationship between the female victim and the offender, the greater the likelihood that the police would not be told about the rape or the sexual assault.” (Rennison 2002, p. 3)

actually reported to criminal justice authorities and there were only 36,610 arrests for forcible rape (FBI 1994). According to the 1993 version of the Senate Judiciary Committee, 98% of rape victims do not get to see their attacker arrested, tried and imprisoned (Committee, 1993).²

Several additional studies repeatedly demonstrate high rates of attrition for rape cases (Gregory and Lees 1996; Frazier and Haney 1996; DuMont 2000). However, attrition statistics do not by themselves mean that there is a simple cause and effect explanation for the low numbers of arrests, prosecutions or convictions. According to Bryden and Lengnick (1997), there are several reasons for attrition, ranging from the victim’s own assessment of the tradeoffs and likelihood of conviction to the role played by criminal justice professionals and a jury in assessing the victim and her chances of winning the case.

Concern about attrition is in part a function of the possibility that some of it may be avoidable because it results from correctable shortcomings in the way the criminal justice system operates. Hence, attrition may be the result of intimidation by suspects, skepticism about the effectiveness of the system, or inconsiderate treatment of victims and witnesses by the system. These reasons are frequently cited for attrition although a thorough review of the research has also yielded another reason for attrition – specifically that the victim may voluntarily decide not to cooperate or pursue the case (Garofalo 1996).

Victim

What accounts for the difference? Several researchers have identified the victim’s characteristics – i.e., her behaviors, class, race, age, verbal ability, and so on – as indicators, which are assessed by prosecutors and police to determine the likelihood of getting a conviction.

Among reported rapes, approximately half or more depending upon jurisdiction are rejected for charging by prosecutors (Frazier and Haney 1996; Frohmann, 1991, 1997). Convictability drives the prosecutor to consider downstream possibilities when making the decision to prosecute or not – i.e., their best guess as to how a defense attorney or a jury will respond to not only the “facts” of the case but how the facts are conveyed by the victim who is also an evidence-bearing participant and witness to the crime (Frohmann 1997). Several studies have pointed out the importance prosecutors ascribe to the victim’s behaviors, background and character when making the decision to move forward with the case (Spohn et al 2001). These studies have shown that sexual assault case outcomes are affected by the victim’s age, occupation and education (Spears and Spohn 1997), by risk taking or “precipitous behavior” such as hitchhiking,

² In England and elsewhere, high attrition of rape and sexual assault cases were well documented during the 80s. These studies found that a large proportion of reported cases were labeled by the police as “no crimes” and hence, were either not documented as offenses or were dropped between report and committal (Chambers and Millar, 1983).

“In the real world, client-related characteristics and evidentiary factors may be inextricably intertwined.” (DuMont, 2000; p. 11)

drinking or drug-taking (Spears and Spohn 1997), and by the reputation or moral character of the victim (Frohmann 1991; Spears and Spohn 1997). In addition, sexual assault outcomes are influenced by the relationship between victim and suspect. In general, stranger rapes are investigated more thoroughly and are less likely to be unfounded by the police (Kerstetter 1990).

Spohn Beichner and Davis assert that:

the reluctance of victims to proceed with a case [could] be attributed to a combination of factors: a belief that prosecution of the subject is not in her own interest; a belief that prosecution of the subject is not worth either the time and the effort required or the humiliation of testifying about her victimization; and a belief, either arrived at independently or communicated by police and prosecutors, that her character and behavior at the time of the incident make conviction unlikely. The victims in these cases, in other words, may have made a rational decision that pursuing the case would be too traumatic and/or would be a waste of time given the low odds of conviction.” (Spohn et al, 2001; p. 23)

METHOD

SAC staff organized a research team to design, implement, and analyze an attrition study of sex offenders in Maine. To be accurate in the use of criminal procedural language and to ensure relevant and substantive questions about Maine’s criminal justice processing of sex offender suspects, the research team convened an Advisory Group composed of representatives from law enforcement (State, local, and sheriffs), prosecutors (District Attorneys and Assistant District Attorneys), defense attorneys, advocates (community based and victim witness), Maine Department of Corrections (MDOC) staff, and Maine Department of Human Services (DHS, the state child welfare agency) staff. With assistance from the Advisory Group, the research team developed a series of survey questions about the criminal justice process in relation to sex offender cases. The questions were not focused on specific cases – instead, they were designed to tap into the respondents’ experience, opinions, and conclusions about sex offender case processing in Maine.

We interviewed 64 criminal justice “decision-makers” to answer the research question, *what role do the victim and criminal justice community play in the decision to prosecute an alleged adult sex offender?* We identified procedural decision points based on a flow diagram adapted by Maine’s Department of Corrections from the Department of Justice’s Bureau of Justice Statistics. Because the advisory group represented the same professions as the people to be interviewed, they were able to provide “face validity” for the interview questions. The research team designed questions that were both (a) common to all of the respondent

professional groups and (b) unique to each respondent professional group. This enabled the research team to analyze the data across prosecutorial districts and by individual professional groupings.

Sample

Maine is divided into eight prosecutorial districts, which we chose to use as our sampling sites, based on the state's population distribution and density and the locations and logistics of conducting interviews with criminal justice professionals representing all areas of the state.

We selected a sample, developed with equal representation from each professional group and prosecutorial district resulting in the identification of 64 respondents who were interviewed over the span of five months. Because our primary interest was in collecting information on the processing of alleged adult sex offenders through the criminal justice system, we did not include anyone in the sample who did not have experience with sex offense crimes.

The questions were pilot-tested with members of the Advisory Group and with a sub-sample of locally based law enforcement and attorney general staff. The questions were revised based on a collaborative analysis by both the research team and the Advisory Group.

Interviews were conducted in pairs with one asking and the other transcribing verbatim, the respondents' answers on a laptop computer. Research team members were randomly assigned and rotated to minimize potential bias.

Method of Analysis

The interview responses were analyzed using QSR- N5 (the latest version of NUD*IST, or Non-numerical Unstructured Data Indexing Searching and Theorizing) qualitative software. For the purpose of this paper, we identified and clustered responses that best approximated the respondents' viewpoint about the role of the victim in decisions to prosecute. Therefore, the analysis was based on responses to questions having to do with (a) persuading victims to prosecute or not, (b) identifying factors that might lead to prosecuting or a conviction, (c) conducting a sex offense investigation versus another type of felony case and (d) identifying victim behaviors, characteristics and context associated with the decision to continue processing a sex offender case.

RESULTS

Specifically, we look at the role of "persuasion", which we have defined as the degree to which criminal justice decision-makers show concern for the victim's well-being, present an optimistic or pessimistic prediction of likely outcomes in the criminal justice process and reframe the victim's personal experience into just another variable to be handled by the bureaucracy (adapted from Frohmann 1998).

“Yes. If [it’s] a stranger, we encourage; other than that, it is the victim’s choice.”
 - Law Enforcement respondent

Accordingly, we asked all respondents, “Do you have a role in persuading the victim to go forward...?” Most respondents replied that they did. Of those who acknowledged having a role in persuading, most felt that they persuaded through providing options or explaining the process. We did not ask nor could we observe how that persuasion conversation occurred, so we cannot describe the degree to which the absence or presence of evidence and/or the victim’s behavior, circumstances and characteristics may have interacted to influence the “direction” of the persuading conversation.

Of those who asserted that they had a different role than that of persuading the victim to go forward in the criminal justice system, most represented the Community Victim Witness Advocate group of respondents who defined their involvement as more support than persuasion.

“Rely on victim more; [The] key to [the] crime is the victim”.
 -respondent

We asked Prosecutors, Assistant District Attorneys, and child protective workers, “Do you conduct a sex offense investigation differently than other investigations/prosecutions?” Most of the respondents said yes emphasizing the importance of sensitivity during the initial interview with the victim. In addition, some of the respondents pointed out the nature of a sexual assault case pre-supposes a heightened focus on the victim and hence, more involvement. “An investigation is an investigation,” according to the minority of respondents who did not think that sex offenses were investigated differently.

We also asked District Attorneys and Assistant District Attorneys, *What role does the victim play in whether or not a sex crime is prosecuted? Who would be a “good” victim?* Their responses generally fell into three large categories: (1) ability to clearly communicate, (2) willingness to cooperate with prosecutors and their staff and (3) ability to be appropriately emotional and objective.

All respondents were asked, *What factors of a sex crime are most likely to result in prosecution?* Most of the respondents (n = 42) cited the evidence,

| Themes: Factors most likely leading to prosecution* | | |
|---|------------------------------------|---|
| Evidence (42) | Victim (15) | Legal/Procedural (3) |
| Physical evidence | Willing to put up w/ the CJ system | Quality and thoroughness of investigation |
| Amount of evidence | Consistent victim story | Repeat offender |
| Medical evidence | Credible victim | Confession; defendant’s own statements |
| DNA | Acceptable lifestyle | |
| Use of weapon | Quality of testimony | |
| Bodily injury/degree of battering | Maturity level and age | |
| Ability to prove beyond a reasonable doubt; facts | Able to identify stranger | |
| Clear coercion | Articulate victim | |
| Felony level w/ intimidation or violence | Cooperative victim | |

*(N=60)

the victim’s role and the suspect’s criminal history as the most important factors. Evidence appears to represent the “gold standard” of factors. The best evidence appears to be signs of injury, use of a weapon, obvious signs of battering and other physical, medical and corroborating support for the victim’s story. Besides evidence and the victim’s role, respondents also identified the suspect’s actual confession and the past (and documented) history of the suspect.

All respondents were also asked, *Which factors are least likely to result in prosecution?* The vast majority of responses to this question focused on the role of the victim (n = 42). It appears from the responses to this question that the fewer the instrumental sources – i.e., evidence, a suspect, a cooperative victim – and the greater the potential burden on limited resources, the more concern there is about the quality and reliability of the victim’s account.

| Themes: Factors least likely to result in prosecution* | | |
|---|--|--|
| Evidence (13) | Victim (42) | Legal/Procedural/Other (3) |
| No or weak evidence (victim bathed) | Too young | When law enforcement engages in victim blaming |
| No physical abuse or trauma | Inconsistent statements; confused | You are not confident that it happened |
| No witnesses | Unwilling to prosecute; change of heart | One-time kind of touching |
| | Victim recants; retracts; | |
| | Lack of credibility; | |
| | Timid and does not come across well in court | |
| | Unacceptable lifestyle | |
| | Consensual sex between underage victim and adult | |
| | Repeat allegations by victim | |
| | Apparent fabrication by victim | |
| | Acquaintance rape (spouse, date, partners) | |
| | Mental illness or developmental disability | |
| | Issue of consent | |

*(N=58)

When Respondents were then asked, *Which factors of a sex crime are most likely to result in a conviction*, forty-three of the sixty-two respondents who answered this question indicated that the presence and strength of the evidence was the most important factor for conviction. This was followed by the role of the victim and then confession by the suspect.

| Themes: Factors most likely to result in a conviction | | |
|--|--|-----------------------------------|
| Evidence (43) | Victim (16) | Legal/Procedural/Other (3) |
| DNA and/or medical evidence | Credibility | Timeliness of reporting |
| Indications of violence and injury | Degree of victim shame, fear and guilt | |
| Consistent disclosures | Fear of not being believed | |
| Defendant caught in the act; eyewitness | Level of self-esteem | |
| Stranger rape; forcible | Account of incident | |
| Corroboration | Strength of testimony; strong witness | |
| The act is clear | Acceptable lifestyle; no substance abuse | |
| | Believability | |
| | Age | |

(N = 62)

All respondents were asked, *What factors of a sex crime are least likely to result in a conviction?* Victims were once again identified as the key factor followed by the legal process and the suspect/victim relationship.

| Themes: Factors least likely to result in a conviction* | | |
|--|--|--|
| Suspect/victim (6) | Legal process/evidence (29) | Victim (25) |
| A young child's word against a credible adult | Weak or no evidence; no corroborating evidence | Can be cross-examined? Poor performance |
| Conflicting testimony | No medical evidence | Inconsistent statements |
| Suspect has no prior criminal record; well-spoken middle class suspect | Delayed disclosure; time lag from incident to report | Recantation |
| Who the defendant is | Conviction is difficult to predict; straightforward cases get the best conviction rate | Lack of corroboration; Single complaint w/out corroboration |
| | No confession | Credibility |
| | Bad reporting, bad policing and bad prosecution; not having all the facts | Unacceptable lifestyle; substance/alcohol abuse |
| | One person's word against the other | Victim not always completely honest |
| | | Prior allegations by victim |
| | | Victim's history; mental illness; mental retardation |
| | | Reluctance to provide all info, testify or follow-through |
| | | Poor communication skills |
| | | Victim is in the wrong place at the wrong time and doing the wrong thing |
| | | Victims who appear to be minimally traumatized |
| | | Acquaintance; he said/she said |
| | | One on one crime w/ victim's statement only |

*(N = 60)

In effect, the factors most likely to result in a conviction are evidence, whereas the factors least likely to result in a conviction have to do with the victim.

Finally, District Attorneys and Assistant District Attorneys were asked, *What factors (elements) do you consider in deciding to prosecute a case?* “Convictability” or the likelihood of winning the case was the most prevalent response. According to these respondents, the best chance for a conviction occurred when there was a combination of good, strong evidence, a “good” victim – i.e., one who is articulate, vulnerable, injured, and motivated to prosecute, and if there’s a confession from a suspect who is preferably a stranger, with a documented and relevant criminal history.

CONCLUSIONS

We found that most respondents felt that they had a role in persuading the victim to go forward with the case. Most of the prosecutors and assistant district attorneys responded affirmatively when asked whether or not they conducted a sex offense case differently than other investigations, especially with respect to the importance of sensitivity during the initial interview with the victim. All respondents generally defined the “good” victim as one who clearly communicates, is willing to cooperate and is able to act appropriately emotional and objective (simultaneously). The existence of evidence was identified most frequently as the factor most likely to lead to prosecution, followed by positive victim characteristics and legal-procedural factors.

Factors that were *least* likely to lead to prosecution were the role of the victim, mentioned more than three times more often than evidence and legal-procedural factors. Respondents identified the presence and strength of evidence as the factor most likely to lead to a conviction. Victim characteristics and behaviors were the most frequently mentioned factors that would least likely lead to a conviction. When prosecutors were asked about the factors they considered when deciding on prosecuting a sex offender case, they responded most frequently with “convictability” or the likelihood of winning the case.

These results are not inconsistent with previous research that revealed that prosecutors look at a combination of factors including the victim’s characteristics, behaviors, circumstances, willingness to cooperate, moral stature plus the availability of evidence, the suspect and the seriousness of the incident itself - e.g., injury and use of weapon (Bryden and Lengnick 1997; Myers and Koski 2002).

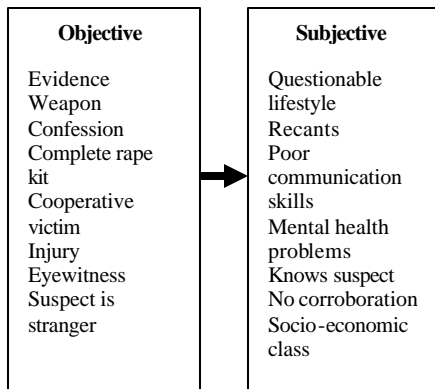
Our findings also support Kerstetter and van Winkle’s (1990) results, which found that evidentiary, bureaucratic and systemic concerns were the most influential in determining official attempts to influence the victim/complainant’s decision.

We recommended further research into identifying the relative weight of victim and situational variables in influencing decisions to prosecute sex offender cases through a simulation that applies both subjective and objective factors considered by prosecutors and law enforcement. In addition, we identified program and policy implications including the importance of public education for all “players” in the criminal justice system – e.g., judge, jury, prosecutors, law enforcement, health care workers and so on. We also recommended a collaborative team approach to reduce redundant interviews, increase perspectives and skill sets available to the victim and increase the range of responses to minimize cultural bias and other forms of perceptual shorthand among team members.

Continuum of Responses

There appears to be a continuum of responses by both police and prosecutors that conditions their decision to move a rape case along the criminal justice process. A case is more likely to be prosecuted if there is a preponderance of objective data or evidence that clearly demonstrates the manifestations of a sexual assault – e.g., injury, the use of a weapon, an eyewitness, the perpetrator’s confession, the suspect is a stranger, complete medical evidence, the suspect is known to the criminal justice system and the victim’s willingness and ability to assist with the prosecutor’s case. As the elements of the case move from the objective to the subjective, the role of the victim becomes increasingly pronounced. And, as reliance on the victim’s account of the incident increases, there is a corresponding increase in the skepticism of the police and prosecutor as they assess the victim’s credibility, which she demonstrates in part, by her behavior, her communication skills, her circumstances and her motivation to pursue the case. To the degree that the victim unknowingly violates the pre-conceived notions, operating assumptions, mental model, or perceptual shorthand of the police or prosecutor, that becomes the basis for the prosecutor’s assessment of the case’s “downstream possibility” or potential for winning.

———— CONTINUUM ————



Hence we would recommend additional research that designs a model of the investigatory process where (subjective) victim variables such as class, education, history, communications skills, cooperativeness and so on are weighted along with the (objective) concrete variables of evidence, injury, perpetrator background, previous relationship with victim and so on. The model or simulation would then be manipulated so that each variable or element is added, removed, clustered or otherwise altered to identify the thresholds where prosecutors and police investigators begin to experience ambiguity about the victim’s case and its chances downstream.

This study supports several of Bryden and Lengnick’s (1997) observations, which included among others, that the single most important reason why most rapists are not punished is the failure of victims to report the crime to the police, or their later refusal to cooperate as a prosecution

witness. Reported and prosecuted cases were disproportionately stranger rapes, cases in which the rapist inflicted additional injuries, and cases where other factors associated with a strong likelihood of conviction existed (Bryden and Lengnick 1997, p. 1214). There is still more research on the reasons for this “failure” of victims to report and their “unwillingness” to cooperate, which is beyond the scope of this paper. However, it is not too much of a stretch to imagine that victims too are aware of, or may have experienced the assessments of law enforcement personnel and prosecutors and hence, feel obliged to play out the self-fulfilling prophecy of “I know they won’t believe me so why bother.” Is there anything that can be done to minimize the tendency to discount victim accounts of a rape incident while at the same time, assisting police and prosecutors with the successful investigation and prosecution of a sexual assault case? Here are some proposals:

(1) Use public education to describe and explain the feelings, trauma, and associated problems of being a victim of sexual assault. Public education is a tool for preparing both current and future jury members, prosecutors, and police officials about the issues and controversies associated with investigating and prosecuting sex offenders. Public education is a long-term and preventive approach to sensitizing adults and especially youth about the unconscious and conscious assumptions that are used to justify decisions that sometimes run counter the victim’s best interests and that sometimes allows the suspect to escape the full accountability of the law.

(2) Explore the effectiveness of procedural changes to minimize duplicative interviews of victims by under-trained police and multiple prosecutors. Perhaps victim witness advocates (VWAs) could be trained to conduct forensic interviews? Based on responses by some of the respondents who are involved with a team approach to working with sexual assault victims, we see the possibility of creating teams that become the unit of response rather than any one individual. This means that each member of the team is cross-trained so that any one member can provide comprehensive support; and that any one member of the team is able to manage the victim through the criminal justice process. We define the team as the Prosecutor and or his/her designate (usually an Assistant District Attorney), the prosecutor’s victim witness advocate, the community victim witness advocate, the hospital’s SANE nurse, a representative of the Department of Human Services (child or adult protective worker), and a law enforcement officer from the appropriate jurisdiction.

We anticipate that a team approach will (a) reduce the number of repetitive victim interviews; (b) include a wider range of disciplines, experience and perspectives (including the victim’s) to the discussion of “downstream possibilities” so that whatever the final decision is about charging or prosecuting, all parties will feel that they had a legitimate part in the deliberations; and (c) acknowledge the potential influence of

personal experience, cultural bias, and other forms of “perceptual shorthand” so that representing the range of perceptions on the team and then meeting to achieve a consensus among all the team members will contribute to the reduction of individual biases.

Do Maine’s prosecutors, police, juries and victim advocates experience a similar ambiguity about a rape case where the role of victim involves the effects of (a) experiencing a trauma with its attending emotional and psychological effects and (b) acting as an advocate for her own veracity by explaining herself as a “piece of evidence” to be evaluated by strangers throughout a process that emphasizes facts, corroboration and adherence to unwritten protocols of communication and behaviors that she may unwittingly violate? The ambiguity surrounding the assessment and decision to prosecute a rape case is in part, a result of the duality of the crime that compels the victim to be both a *witness* and the *evidence* of a traumatic and personal crime. This back-and-forth switching of roles creates a situation where the victim is believed or not believed on the basis of her ability to explain herself as evidence. Perhaps this is what one of the ADA participants in Frohmann’s study meant when he observed that, “There is a difference between believing a woman was assaulted and being able to get a conviction in court.” (Frohmann, 1991; p.224)

BIBLIOGRAPHY

Bachman R. *The Factors Related to Rape Reporting Behavior and Arrest*. Criminal Justice and Behavior, March, 1998 25, 8 – 30.

Bryden, DP and S. Lengnick. *Rape in the Criminal Justice System*, The Journal of Criminal Law and Criminology, 1997, 87, 1194 – 1388.

Bureau of Justice Statistics, US Dept. of Justice. (1997). *Criminal Victimization in the United States, 1994* (NCJ-162126), Washington, DC: Government Printing Office.

Campbell, R. and CR Johnson. *Police Officers Perceptions of Rape*. Journal of Interpersonal Violence, April 1997, 12, 255

Chambers, G. and A. Millar, *Integrating Sexual Assault*, Scottish Office Central Research Unit Study, Edinburgh: HMSO, 1983. (Cited in Gregory and Lees, 1996).

DuMont, J. *So Few Convictions: The Role of Client-Related Characteristics in the Legal Processing of Sexual Assaults*. Violence Against Women, Oct, 2000, 6, 28pp

Frazier, P.A. and B. Haney, *Sexual Assault Cases in the Legal System: Police, Prosecutor and Victim Perspectives*, Law and Human Behavior, 1996, 20, 607-628.

Frohmann, L. *Convictability and Discordant Locales: Reproducing Race, Class and Gender Ideologies in Prosecutorial Decision-making*. Law and Society Review, 1997, 31, 531-555

Frohmann, Lisa. *Discrediting Victims' Allegations of Sexual Assault: Prosecutorial Accounts of Case Rejections*. Social Problems, 1991, 38, 213 – 226.

Garofalo, J. *Police, Prosecutors and Felony Case Attrition*. Journal of Criminal Justice, 1991, 19, 439 – 449.

Gregory J. and S. Lees. *Attrition in Rape and Sexual Assault Cases*. The British Journal of Criminology, Winter1996, 36, 1- 17.

Kerstetter, W.A. and B. van Winkle. *A Study of the Complainant's Decision to Prosecute in Rape Cases*. Criminal Justice and Behavior, Sept 1990, 17, 16 p

Kerstetter, W.A. *Gateway to Justice: Police and Prosecutor Response to Sexual Assaults Against Women*, The Journal of Law and Criminology, 1990, 81, 267

Koss, M. *Blame, Shame and Community: Justice Responses to Violence Against Women*. <http://www.mincava.umn.edu/papers/koss.asp>, Minnesota Center Against Violence and Youth, May 2001.

Maxwell, Joseph A. *Qualitative Research Design; An Interactive Approach*, Applied Social Research Methods Series, Volume 41, New York: Sage Publications, Inc., 1996.

Myers, R. and DD Koski. *Unique Concerns of Victims of Sex Crimes in Presenting Their Stories in Criminal Justice Proceedings*. Sex Offender Law Report, Feb/March 2002, 3, 19

Rennison, CM. *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992 – 2000*, Bureau of Justice Statistics, US Dept. of Justice, August, 2002, (NCJ 194530), Washington, DC: Government Printing Office

Spears, J. and C. Spohn. *Prosecutors' Charging Decisions in Sexual Assault Cases*, Justice Quarterly, 1997, 14, 501-524.

Spohn, C., Beichner, D. and E. Davis-Frenzel. *Prosecutorial Justifications for Sexual Assault Case Rejection: Guarding the "Gateway to Justice."* Social Problems, May2001, 48, 30 p

Steffensmeier, D., Ulmer, J. and J. Kramer, *The Interaction of Race, Gender and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male*, Criminology, 1998, 36, 763-798.

Thomas, G.C. *Realism About Rape Law: A Comment on 'Redefining Rape'* Buffalo Criminal Law Review, 2000, 3, 527 – 555.

Ullian, L. Thomas, R., Sheehy, A. and M. LaPierre. *Maine Adult Sex Offender Attrition Study: The Role of Law Enforcement*. Presentation at the 2000 Justice Research Statistics Association Annual Meeting, April 2000.

Walker (Editor), *Records of the Wickersham Commission on Law Observance and Enforcement*, University Publications of America, 1997 (<http://www.lexisnexis.com/academic/guides/jurisprudence/wickersham.htm>)

APPENDIX

Questions addressing the role of the victim in decisions to prosecute the alleged offender

- Do you have a role in persuading the victim to go forward or drop the case?
- Which factors of a sex crime are most likely to result in prosecution?
Least likely?
- Which factors of a sex crime are most likely to result in conviction?
Least likely?
- What factors do you consider in deciding whether to prosecute a case (DA and ADAs only)?
- Do you conduct a sex offense investigation/prosecution differently than other investigations/prosecutions
- What role does the victim play on whether a sex crime case is prosecuted? Who will be a good victim?