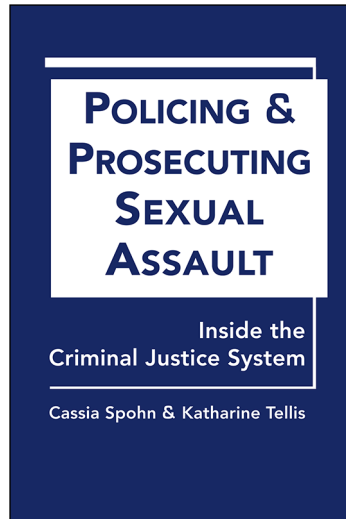


EXCERPTED FROM

**Policing and
Prosecuting
Sexual Assault:
Inside the
Criminal Justice System**

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Katharine Tellis**

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1

Sexual Assault and the Criminal Justice System

In 2008, the Los Angeles Police Department (LAPD) received a sexual assault report from a 13-year-old girl who was a runaway and who stayed with various friends, all of whom, including the alleged suspect, were gang members. One night the complainant and a female friend were invited to a party at the residence of one of the gang members. The complainant, who admitted to drinking more than 10 beers and smoking marijuana while at the party, told the investigating officer that one of the males at the party offered to let her sleep on the fold-out couch in his living room. She stated that she fell asleep and awoke to find the suspect on top of her. She said that the suspect touched her breasts, rubbed her buttocks, and penetrated her rectum. She stated that she told the suspect that it hurt and that she told him to stop.

The complainant's forensic medical exam revealed evidence of acute anal trauma, and the suspect, who lied about his gang affiliation and who had a criminal record, was identified by the victim through a photo lineup. When the suspect was interviewed by the police, he denied assaulting the teenager, saying that he went straight to bed after the party and that he shared a room with his father, who would confirm this. The suspect further alleged that the complainant had snuck into his house and slept in his living room without his knowledge. The suspect's father stated that the suspect returned home alone and that the complainant was not in the house when he (the suspect's father) went to bed. Moreover, the complainant told the investigating officer that her friend, a fresh complaint witness who also was a gang member, would not cooperate with law enforcement (a fresh complaint is one made voluntarily and reasonably promptly). Moreover, the detective told the district attorney that the complainant stayed with the suspect for two days after the alleged assault.

The LAPD did not arrest the suspect. Rather, the investigating officer presented the case file to the Los Angeles County District Attorney's (DA's) Office for a prearrest charge evaluation. Despite evidence that the victim had been sexually assaulted (in fact, the nurse who conducted the examination noted in her report that "sexual abuse [was] highly suspected"), the

district attorney screening the case refused to file charges, citing insufficient evidence. The investigating officer then cleared the case by exceptional means. On the charge evaluation worksheet, the district attorney noted: “Victim is a runaway who gives inconsistent and unlikely versions of *her adventures*. *No evidence* of any assault taking place. Defendant has a witness that corroborates his version” (emphasis added).

The fact that the prosecutor used the phrase “her adventures” to describe the complainant’s behavior on the night of the alleged sexual assault and stated that the complainant’s testimony was both inconsistent and unlikely indicates that the prosecutor was concerned about the complainant’s credibility. The prosecutor’s statement that there was “no evidence of any assault taking place” is clearly incorrect, as the forensic medical exam cited anal trauma, anal bleeding, and anal lacerations, all of which would be consistent with the complainant’s allegation that she was sodomized. Finally, the prosecutor failed to note that the so-called witness who could corroborate the defendant’s version of event was the defendant’s father.

This case illustrates both the problematic nature of some sexual assault cases reported to the police and the problematic response of the criminal justice system to these cases. Although it is not the classic “she said/he said” scenario, in which the victim claims that she was sexually assaulted and the suspect claims that the sexual contact was consensual, the case nonetheless does not match the stereotype of a “real rape” (Estrich, 1987), in which the victim is assaulted by a stranger wielding a gun, knife, or other type of weapon. The complainant and the suspect know one another, no weapons were involved, there are no witnesses who can (or are willing to) corroborate the complainant’s testimony, and the suspect denies any sexual contact with the complainant. In addition, the complainant does not match the stereotype of a “genuine victim” (LaFree, 1989); she is a runaway, she drank and used illegal drugs at the time of the alleged incident, and she associates with known gang members. On the other hand, the forensic medical examination revealed injuries to the complainant consistent with her allegation of forcible sodomy, and the suspect’s “alibi witness” was his father. Clearly, this is a case that would have been difficult—but not impossible—to prosecute successfully. The fact that the district attorney (DA) who reviewed the case file determined that there was insufficient evidence to file charges against the suspect, and that this determination was made before the results of the analysis of DNA evidence collected from the complainant during the medical exam were known, suggests not that the DA did not believe the complainant, but rather that the DA believed a jury would not believe the complainant and that therefore a conviction would be unlikely.

As we illustrate in the sections that follow, the decisions made by the police and prosecutor in this case are not atypical. In fact, there is compelling evidence that sexual assault remains a crime characterized by high

rates of case attrition, and that the locus of case attrition lies with the gatekeepers of the criminal justice system: police and prosecutors. Despite the rape-law reform movement, which attempted to shift the focus of a sexual assault case from the behavior of the victim to the behavior of the suspect, sexual assault remains a crime in which the credibility of the victim—especially, but not exclusively, in crimes involving nonstrangers—affects case outcomes. It remains a crime in which stereotypes of real rapes and genuine victims play a key role in determining whether the suspect will be arrested, charged, prosecuted, and convicted.

We explore these issues in this book, which details the findings of our mixed-methods study of police and prosecutorial decisionmaking in sexual assault cases reported to the LAPD and the Los Angeles County Sheriff's Department (LASD). The objectives of the book are to provide a comprehensive assessment of the extent of case attrition in sexual assault cases, to identify the factors that increase the likelihood of case attrition, and to highlight the decision rules that guide the handling of these cases. Our focus is on decisions made by the police and the prosecutor: the decision to unfound the report, the decision to make an arrest or to clear the case by exceptional means, and the decision to file charges.

Throughout the book we use the terms “sexual assault” and “rape” interchangeably to refer to sexual penetration by force and against the will of one person by another person. We define sexual penetration broadly: it includes not only penile-vaginal penetration, but also oral copulation, sodomy, and penetration with an object. By contrast, we use the term “sexual battery” to refer to touching the breasts or genitals of another person without that person's consent. (See Chapter 4 for a discussion of recent changes to the Federal Bureau of Investigation's definition of “forcible rape.”)

In this chapter, we present a broad overview of prior research on processing decisions concerning sexual assault cases. A more detailed discussion of past research is presented in subsequent chapters on unfounding (Chapter 5), the use of the exceptional clearance (Chapter 6), and intimate partner sexual assault (Chapter 7). We also present an overview of our study and a brief summary of each chapter.

Review of Prior Research

Victim's Decision to Report and to Cooperate

There is compelling evidence that sexual assault is a seriously underreported crime.

Tjaden and Thoennes (2006: 33), who analyzed the results of the National Violence Against Women Survey, found that only 19.1 percent of

women who were raped since their 18th birthday reported the crime; a similar survey in Canada found that only 6 percent of sexual assaults were reported to the police (Du Mont, Miller, and Myhr, 2003). Studies using data from the National Crime Victimization Survey (NCVS) also found that reporting rates for sexual assault were lower than those for other violent crimes and that offenses involving nonstrangers had especially low reporting rates (Hindelang and Gottfredson, 1976; Lizotte, 1985; for a more recent review see Fisher, Daigle, and Cullen, 2000). Reasons that victims gave for not reporting included: fear of retaliation from the rapist; feelings of shame and embarrassment; a belief that the rape was a minor incident and not a police matter; and a concern that police and prosecutors would question their veracity and credibility (Bachman, 1998).

Victims who report the crime to the police may nonetheless decide later that they do not want to cooperate in the investigation of the crime or the prosecution of the suspect. They may withdraw their allegations against the suspect, fail to show up for a precharging interview, or ask that the case be discontinued. The extent to which this happens is largely unknown; moreover, there is very little research on the factors that influence the victim's decision to "decline prosecution." A study of outcomes of sexual assault cases in San Diego (Tellis and Spohn, 2008) found that victims refused to cooperate with the police in 36 percent of the cases; the rate was even higher (42.7 percent) for victims who reported a felony sexual assault to the police in Tucson, Arizona (Spohn, Rodriguez, and Koss, 2008). Holmstrom and Burgess (1978: 58–59) found that a fourth of the victims in their study changed their minds about cooperating with police and prosecutors, with most of them becoming "less willing to press charges because of their increasing concern about what court would entail" or because they were worried about retaliation from the suspect or his family and friends if they pursued the case.

Regarding the factors that influence the victim's decision, research has shown that cooperation is more likely if the crime is more serious (Kerstetter, 1990) or the victim suffered collateral injuries (Spohn, Rodriguez, and Koss, 2008), if the victim was assaulted by a stranger rather than an acquaintance or dating partner (Tellis and Spohn, 2008), or if there were witnesses or forensic evidence that could corroborate the victim's testimony (Kerstetter, 1990; Spohn, Rodriguez, and Koss, 2008); cooperation was less likely if the victim was under the influence of alcohol or drugs or had a history of drug use (Spohn, Rodriguez, and Koss, 2008; Tellis and Spohn, 2008).

These findings suggest that victims of sexual assaults that do not conform to stereotypes of real rapes involving genuine victims may receive either overt or subtle messages from police regarding the difficulties that will be encountered in prosecuting the case (Kerstetter and Van Winkle, 1990). As Kerstetter (1990: 309) noted, a police officer who believes that a

case is unlikely to be solved may attempt to convince the victim that it is not in her interest to pursue the case; the officer “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.” Given the importance of victim cooperation for subsequent case-processing decisions (discussed later), these findings are an obvious cause of concern.

Victims of sexual assault who report the crime to the police and are willing to cooperate with police and prosecutors as the case moves forward may confront criminal justice officials who are skeptical of their allegations and who question their credibility (see Estrich, 1987). The process begins with the police, who decide whether a crime has occurred, the amount of investigative resources to devote to identifying the suspect, whether to make an arrest of an identified suspect and, if so, the charges to file, and whether to refer the case to the prosecutor. These “gatekeeping” (Kerstetter, 1990) decisions, which largely determine the fate of the case, do not necessarily produce the outcome—arrest and successful prosecution—that the victim expected. As Taylor (1987: 89) pointed out:

Police determine how rape victims and cases are treated by the criminal justice system. . . . After giving a valid rape report and fully cooperating with the police, a woman may find herself in the unexpected and bewildering predicament of having come to the police for aid . . . only to have the door slammed firmly in her face.

Police Unfounding Decision

One of the most important, and highly criticized, decisions made by the police is the decision to “unfound” the charges. If the police officer investigating the crime believes the victim’s account of what happened and determines that the incident constitutes a crime, the case becomes one of the “crimes known to the police” that will be included in the jurisdiction’s crime statistics. If, on the other hand, the officer does not believe the victim’s story and therefore concludes that a crime did not occur, the case is unfounded.

Technically, cases can be unfounded only if the police determine that a crime did not occur. In reality, however, police may use the unfounding decision to clear—or “erase” (Konradi, 2007)—cases in which they are convinced that a crime occurred but also believe that the likelihood of arrest and prosecution is low. According to Martin (2006: 53), police departments are evaluated in terms of clearance rates, which “encourages officers to unfound ambiguous or difficult cases, including those where a victim is reluctant, emotional, uncooperative, or compromised in some way (e.g., had smoked marijuana, was a prostitute, had a former sexual relationship with

the rapist).” Other scholars (see McCahill, Meyer, and Fischman, 1979) similarly argued that police may label a case unfounded for illegitimate reasons, including the fact that they do not like the woman (e.g., if she is poor, African American or Hispanic, a prostitute, or has a criminal record), they believe that the victim in some way precipitated the attack, or they believe that her case will not stand up at trial.

There is very limited research on police unfounding decisions in sexual assault cases and most of the research that does exist is dated (Kerstetter, 1990; LaFree, 1989; McCahill, Meyer, and Fischman, 1979; for more recent research see Bouffard, 2000; Tellis and Spohn, 2008). An early study by the Law Enforcement Assistance Administration (1977), in which police officers were asked to identify the factors that affected their decisions, found that the two most important predictors of whether cases would be founded or unfounded were proof of penetration and the suspect’s use of physical force. A later study (Kerstetter, 1990) examined sexual assaults reported to the police in Chicago in 1981. Kerstetter differentiated between cases in which the identity of the suspect was not known and those in which the victim and the suspect were acquainted in some way. In the “identity” cases, the most important predictors of the police founding decision were the complainant’s willingness to prosecute, whether the victim physically resisted the attack, whether a weapon was used, and whether the suspect was in custody. In contrast, in cases in which the victim and suspect were acquainted, the police were more likely to label the case a crime if the suspect was in custody, if the victim suffered collateral injury, and if there was no discrediting information, such as a pattern of alcohol or drug use, a history of mental illness, or a record of false complaints, about the victim. These findings led Kerstetter (1990) to conclude that the police unfounding decision was affected by a combination of legally relevant instrumental factors and legally irrelevant victim characteristics.

Decision to Arrest and Other Decisions Made by the Police

Studies examining the police decision to make an arrest (Alderden and Ullman, 2012a, 2012b; Bachman, 1998; Bouffard, 2000; Du Mont and Myhr, 2000; Feder, 1998; Horney and Spohn, 1996; LaFree, 1981; Robinson and Chandek, 2000) also highlight the importance of both evidentiary factors and victim characteristics. Legal factors that have been found to increase the likelihood of arrest in sexual assault cases include the presence of a witness, the suspect’s use of a weapon, and the victim’s willingness to cooperate (Alderden and Ullman, 2012b; Bouffard, 2000; Kerstetter, 1990; LaFree, 1981). LaFree’s (1981) analysis of sexual assaults reported to the police in a large metropolitan jurisdiction in the Midwest revealed that the arrest decision was influenced by a combination of legal and extralegal factors: the victim’s

ability to identify the suspect, the victim's willingness to prosecute, whether the victim had engaged in any type of misconduct at the time of the incident, the promptness of the victim's report, whether the victim was assaulted by an acquaintance rather than a stranger, and the suspect's use of a weapon. On the other hand, the arrest decision was not affected by the victim's race, whether the victim resisted, the location of the incident, whether there was a witness who could corroborate the victim's allegations, or whether the victim was injured. These findings led LaFree (1981: 592) to conclude that, at least in this jurisdiction, the emphasis on the role played by "the victim's attributes and the interpersonal context of the crime" was "greatly overstated."

Several more recent studies call this conclusion into question. For example, Alderden and Ullman (2012b) found that the likelihood of arrest decreased by 57 percent in cases where victims refused to undergo a forensic medical exam, that male officers were more likely than female officers to make an arrest, and that the odds of arrest increased in cases involving acquaintances, relatives, and intimate partners. Although Bouffard (2000) found that crimes involving African American suspects and white victims were not more likely than other crimes to result in arrest, he did find that arrest was more likely if the victim and suspect had a prior relationship, if the victim agreed to undergo a sexual assault exam, and if the credibility/seriousness score of the crime (which measured whether other crimes were committed during the sexual offense, whether a weapon was used, and whether the crime occurred outdoors) was high. He concluded that the "positive effect of the credibility scale might indicate increased police effort devoted to investigating the offense, because they believed the claim was true or was otherwise 'worthy' of investigation" (Bouffard, 2000: 537). Evidence of the role played by victim characteristics also surfaced in a study where police officers evaluated vignettes in which the beverage consumption (beer or cola) of the victim and suspect was systematically varied (Schuller and Stewart, 2000). The authors of this study found that whereas officers' perceptions of the suspect's level of intoxication had no effect on their evaluation of the suspect's credibility, blame, or guilt, perceptions of the victim's intoxication did affect their assessment of the case. In fact, "the more intoxicated the respondents perceived the victim to be, the less blame they attributed to the alleged perpetrator and the more likely they were to believe that the perpetrator honestly believed that the complainant was willing to engage in intercourse" (Schuller and Stewart, 2000: 547).

A somewhat different approach was taken by Frazier and Haney (1996), who examined case attrition in 569 sexual assaults reported during 1991 to a Midwestern metropolitan police department. They focused on whether a suspect was identified by the police, whether an identified suspect was questioned by the police, and whether the suspect was referred to

the prosecuting attorney for charging. They found that suspects were identified in 273 (48 percent) of the cases, that the police questioned suspects in 187 (68 percent) of these cases, and that 68 percent of the suspects who were questioned were referred to the prosecutor (p. 617). Their analysis of the factors that affected these outcomes revealed that identified suspects were more likely to be questioned by the police if they were strangers to the victim, if there was evidence of penetration, if the victim was injured, and if there was a witness to the crime. The only variables that affected whether the case would be referred to the prosecutor for charging were whether the victim was injured and whether the suspect verbally threatened the victim. Similar to Kerstetter, they concluded that “evidentiary and credibility factors as well as offense severity are associated with cases proceeding to the prosecuting attorney’s office” (Frazier and Haney, 1996: 624).

Prosecutors’ Charging Decisions

All of the decisionmakers in the American criminal justice system have a significant amount of unchecked discretionary power, but the one who stands apart from the rest is the prosecutor. The prosecutor decides who will be charged, what charge will be filed, who will be offered a plea bargain, and the type of bargain that will be offered. The prosecutor also may recommend the sentence the offender should receive. As Supreme Court Justice Robert H. Jackson noted in 1940, “the prosecutor has more control over life, liberty, and reputation than any other person in America” (Davis, 1969: 190).

None of the discretionary decisions made by the prosecutor is more critical than the initial decision to prosecute or not, which has been characterized as “the gateway to justice” (Kerstetter, 1990: 182). Prosecutors have wide discretion at this stage in the process; there are no legislative or judicial guidelines on charging, and a decision not to file charges ordinarily is immune from review. As the Supreme Court noted in *Bordenkircher v. Hayes* (434 U.S. 357, 364), “So long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.”

Research on prosecutors’ charging decisions in sexual assault cases reveals that these decisions are strongly influenced by legally relevant factors such as the seriousness of the crime, the offender’s prior criminal record, and the strength of the evidence in the case (Alderden and Ullman, 2012b; Kingsnorth, MacIntosh, and Wentworth, 1999; Spohn and Holleran, 2001; Spohn and Spears, 1996). A number of studies, however, also document the influence of victim characteristics, including the victim’s age, occupation, and education (McCahill, Meyer, and Fischman, 1979), “risk-taking”

behavior such as hitchhiking, drinking, or using drugs (LaFree, 1981; McCahill, Meyer, and Fischman, 1979; Spohn, Beichner, and Davis-Frenzel, 2001; Spohn and Holleran, 2001; Spohn and Spears, 1996), and the character or reputation of the victim (Feldman-Summers and Lindner, 1976; Field and Bienen, 1980; McCahill, Meyer, and Fischman, 1979; Reskin and Visher, 1986; Spohn, Beichner, and Davis-Frenzel, 2001).

Relationship, Race, and Stereotypes of Rape

A consistent theme found in research on sexual assault case outcomes is the role played by legally irrelevant factors, especially the relationship between the victim and offender, the racial composition of the suspect-victim dyad, and stereotypes regarding “real rapes” and “genuine victims.” Consistent with Black’s (1976) relational distance theory, a number of studies conclude that reports of sexual assaults by strangers are more likely than reports of sexual assaults by acquaintances or intimate partners to be investigated thoroughly (McCahill, Meyer, and Fischman, 1979). Stranger assaults also are less likely to be unfounded by the police (Kerstetter, 1990) or rejected by the prosecutor (Battelle Memorial Institute, 1977; Loh, 1980; Spohn, Beichner, and Davis-Frenzel, 2001); they are more likely to result in police and prosecutor agreement on the severity of charges to be filed (Holleran, Beichner, and Spohn, 2008). Some research, on the other hand, concludes that prosecutors’ charging decisions in sexual assault cases are not directly affected by the victim-suspect relationship. Rather, different predictors affect charging decisions in stranger and acquaintance cases (Kingsnorth, MacIntosh, and Wentworth, 1999; Spohn and Holleran, 2001).

Adding to the already complicated dynamics particular to the suspect-victim relationship is the role played by the race of the victim and the race of the suspect. The sexual stratification hypothesis (LaFree, 1989) posits that reactions to crimes will vary depending upon the race of the suspect and the race of the victim. More to the point, the hypothesis is that sexual assaults involving white women assaulted by African American men will be treated more harshly—and thus will be more likely to result in the filing of charges by prosecutors—than those involving other racial combinations. Some scholars argue that the effect of race is unambiguous and omnipresent (Brownmiller, 1975; Kennedy, 1997; Spohn, 1994), whereas others conceive of it in context-specific circumstances that emerge both directly and indirectly (Bouffard, 2000; LaFree, 1980, 1989; Kingsnorth, MacIntosh, and Wentworth, 1998). In other words, extant research indicates that the effect of race on charging decisions is mitigated by both the relationship between the victim and offender and by victim characteristics such as “blame and believability” and “moral character” (Holleran, Beichner, and Spohn, 2008; Horney and Spohn, 1996; Kalven and Zeisel, 1966; Kerstetter, 1990; Spears

and Spohn, 1997; Spohn and Holleran, 2001; Spohn and Spears, 1996; Stanko, 1988; Whately, 1996).

A number of scholars contend that the response of the criminal justice system to the crime of rape is predicated on stereotypes about rape and rape victims (Estrich, 1987). LaFree (1989), for example, asserts that nontraditional women and women who engage in some type of “risk-taking” behavior are less likely to be viewed as genuine victims who are deserving of protection under the law. Frohmann (1991) similarly maintains that the victim’s allegations will be discredited if they conflict with decisionmakers’ “repertoire of knowledge” about the characteristics of sexual assault incidents and the behavior of sexual assault victims, and Estrich (1987) contends that aggravated rapes are taken more seriously and are treated more harshly than are simple rapes.¹ The authors of a comprehensive review of research on the treatment of acquaintance rape in the criminal justice system (Bryden and Lengnick 1997: 1326) reached a similar conclusion, noting that “the prosecution’s heavy burden of proof has played an important role in the justice system’s treatment of acquaintance rape cases, but so have public biases against *certain classes* of alleged rape victims” (emphasis added).

Unanswered Questions

The research reviewed here suggests that definitive answers to questions concerning the outcomes of sexual assault cases and case-processing decisions remain elusive. We know very little about the patterns and causes of case attrition in sexual assault cases, and studies of police and prosecutorial decisionmaking in these types of cases reach somewhat different conclusions. These studies indicate that while legal factors—particularly the seriousness of the crime and the strength of evidence in the case—play an important role in processing decisions concerning sexual assault cases, victim characteristics—especially the relationship between the victim and the offender—may also influence these decisions. Some studies conclude that the effect of stereotypes concerning real rapes and genuine victims may not be as pronounced as previous research has suggested, and others state that the influence of victim characteristics may be conditioned by the nature of the case. Considered together, the results of these studies suggest that we need additional research designed to untangle the effects of evidence factors and victim characteristics on processing decisions concerning sexual assault cases.

Although research on all stages of case processing is required, there is a particular need for research on police decisionmaking, especially the decision to unfound the charges and, in cases in which a suspect has been identified, the decision to clear a case with an arrest or by exceptional means

(e.g., Addington and Rennison, 2008). Despite its importance, we know very little about either the prevalence of unfounding or the factors that affect unfounding in sexual assault cases; similarly, there is little research investigating whether unfounded reports are in reality false or baseless, as required by the *Uniform Crime Reporting Handbook* (Federal Bureau of Investigation, 2004). Understanding and evaluating the response of the criminal justice system to sexual violence is critically important, as is identifying system-generated barriers to reporting and to cooperating with police and prosecutors.

Sexual Assault Case Processing in Los Angeles

This mixed-methods study, which was funded by the National Institute of Justice, entailed the collection of quantitative and qualitative data on sex crimes reported to the Los Angeles Police Department (LAPD) and the Los Angeles County Sheriff's Department (LASD). From each agency, we obtained data on all sex crimes² involving female victims over the age of 12 that were reported from January 2005 through December 2009. For those cases that resulted in the arrest of an adult suspect, we obtained data on the outcome of the case from the Los Angeles County District Attorney's Office. We used these longitudinal data to document the broad patterns of case attrition for sexual assaults reported during this time period.

From each agency we also obtained the complete case files for sexual assaults that were reported in 2008; the LAPD and the LASD redacted all information that could be used to identify the victims, suspects, witnesses, or law enforcement officials assigned to investigate the case and then provided us with a copy of the redacted file. From the LASD we obtained case files for all reports that met our selection criteria (N = 543). Due to the large number of cases reported to the LAPD in 2008, we selected a stratified random sample of cases (N = 401). Because we wanted to ensure an adequate number of cases from each of the LAPD's 19 divisions,³ as well as an adequate number of cases from each case clearance category (cleared by arrest, cleared by exceptional means, investigation continuing, and unfounded), the sample was stratified by LAPD division and, within each division, by the type of case clearance.⁴ We then created a weighted sample that divided the percentage of each stratum (that is, each case closure type for each division) in the population of cases by the percentage of each stratum in the sample.⁵ We used the unweighted data when focusing on a particular type of case closure (e.g., unfounded cases or cases that were cleared by exceptional means). We used the weighted data when discussing 2008 case outcomes and when providing descriptive statistics for these cases.

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

Our third source of data comes from interviews with (1) LAPD and LASD detectives who had experience investigating sexual assaults, (2) deputy district attorneys from the Victim Impact Program, and (3) sexual assault survivors. We interviewed 52 detectives from the LAPD, 24 detectives from the LASD, and 30 attorneys from the Los Angeles County DA's Office. We also partnered with three Los Angeles agencies—the Domestic Abuse Center, the Valley Trauma Center, and the UCLA Rape Treatment Center—and interviewed 17 sexual assault survivors about their experiences with the criminal justice system. The authors of this book conducted all of the interviews and recorded responses in a text file.

Overview of the Book

In the chapters that follow, we present the findings of our study and discuss the policy implications of our findings. Chapter 2 discusses the policies and practices that guide police and prosecutorial decisionmaking in sexual assault cases in Los Angeles. The chapter includes qualitative data from our interviews with detectives and with deputy district attorneys, who were asked to discuss these policies and practices. Chapter 3 provides a detailed discussion of the qualitative data from our interviews with sexual assault detectives, district attorneys who reviewed sexual assault cases, and sexual assault survivors. We explore the themes that emerged from these interviews and explain how the perceptions and attitudes of police and prosecutors

shape the response of the criminal justice system to the crime of sexual assault.

In Chapter 4 our focus shifts to case outcomes and the predictors of case outcomes in sexual assault cases. This chapter provides descriptive data on the outcomes of cases reported to the LAPD and the LASD from 2005 to 2009. We demonstrate that the locus of case attrition is the decision to arrest or not and that each agency uses (or misuses) the exceptional clearance to “solve” a substantial number of sexual assault cases. We also present more detailed descriptive data on the cases reported to each law enforcement agency in 2008. Finally, we use the data from 2008 to analyze decisions to arrest and prosecute, with a focus on identifying the factors that predict these outcomes.

The next three chapters focus on unbounding sexual assault reports (Chapter 5), the overuse (misuse) of the exceptional clearance by both law enforcement agencies (Chapter 6), and the nature and outcomes of intimate partner sexual assault (Chapter 7). In Chapter 5 we use data from the LAPD to analyze the decision to unbound the report, and we identify the predictors of unbounding. We also address the question of whether the cases that were unbounded were actually false reports and the factors that motivated victims to file false reports.

The focus of Chapter 6 is the exceptional clearance, which is one of two methods for solving, or clearing, cases, according to the Federal Bureau of Investigations (FBI’s) Uniform Crime Reporting (UCR) guidelines. We discuss historical evidence regarding the use of the exceptional clearance, as well as the limited research on this issue. We use the LAPD and LASD data to demonstrate that each agency clears a substantial number of cases by exceptional means, and we argue that in many of these cases, the agencies are using the exceptional clearance inappropriately. We provide qualitative data on cases cleared by exceptional means and on officials’ use of this case clearance category. We conclude the chapter with a discussion of the implications (for victims, for suspects, and for the criminal justice system) of the overuse of the exceptional clearance.

In Chapter 7 we examine intimate partner sexual assault. We analyze detailed quantitative and qualitative data on intimate partner sexual assault, as well as data from our interviews that focus on this topic. We provide a description of the victims and suspects in these cases, as well as the contexts and circumstances under which these assaults occur. We also discuss case attrition in these types of cases and compare and contrast outcomes in nonintimate and intimate sexual assaults.

In Chapter 8, we summarize our findings and their implications and we present a series of policy recommendations designed to reduce attrition in sexual assault cases and improve the treatment of sexual assault victims. We identify the policies and practices that contribute to high rates of case

attrition and we discuss policy implications for (1) the LA County District Attorney's Office, (2) the LAPD and LASD (and other law enforcement agencies), and (3) the FBI and the Uniform Crime Reporting Program.

Notes

1. According to Estrich (1987; see also Kalven and Zeisel, 1966), an aggravated rape is one involving multiple suspects, a suspect who is a stranger to the victim, a suspect who used a weapon, or collateral injury to the victim. A simple rape is a rape with none of these aggravating circumstances.

2. We obtained outcome data on the following sex crimes: rape, attempted rape, sexual penetration with a foreign object, oral copulation, sodomy, unlawful sex, and sexual battery.

3. Although the LAPD currently has 21 divisions in four bureaus, in 2008 there were only 19 divisions.

4. Our goal was to select 6 cases from each case closure type from each of the 19 divisions that existed in 2008. This would have produced a sample of 456 cases. Because each division did not necessarily have 6 cases from each case closure type in 2008, the final sample included only 401 cases.

5. To illustrate, in 2008 there were 15 cases from the Central Division that were cleared by arrest (0.7 percent of all of the 2008 cases); our sample contained 5 cases from the Central Division that were cleared by arrest (1.2 percent of all of the cases in the sample). Thus, Central Division cases that were cleared by arrest were over-represented in the sample of cases. Dividing the proportion of cases in the population (0.7 percent) by the proportion of cases in the sample (1.2 percent) yielded a weight of .58 for the cases in this stratum. In contrast, Rampart Division cases that were cleared by arrest were underrepresented in our sample. There were 35 cases (1.7 percent) in the population but only 5 cases (1.2 percent) in the sample. Dividing the proportion of cases in the population (1.7 percent) by the proportion of cases in the sample (1.2 percent) produced a weight of 1.42 for the cases in this stratum.