Factors Influencing Prosecutorial Discretion in Criminal Sexual Conduct Cases

Susan Caringella-MacDonald

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FACTORS INFLUENCING PROSECUTORIAL DISCRETION IN CRIMINAL SEXUAL CONDUCT CASES

by

Susan Caringella-MacDonald

A Thesis
Submitted to the
Faculty of The Graduate College
in partial fulfillment
of the
Degree of Master of Arts
in Sociology

Western Michigan University
Kalamazoo, Michigan
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Susan Caringella-MacDonald
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INTRODUCTION AND STATEMENT OF THE PROBLEM

Introduction

The crime of rape has captured increasing national attention throughout the past two decades. Progressively, as Women's Liberation Movements have acquired greater recognition and momentum, there has been a corresponding growth in the public's awareness of this crime. As a general rise in consciousness regarding the plight of women in society has grown, so too has the more specific concern with the problem of sexual assaults.

One of the dimensions of the initial focus surrounding the crime of rape centered around the necessity of providing supportive structures to help abate the personal trauma experienced by sexual assault victims. Rape Crisis Centers and counseling services emerged in response to the pressing need for more sensitive and sympathetic treatment of rape victims.

A concomitant concern has been with the maltreatment of sexual assault victims throughout the criminal justice system. Titles of books and articles, such as Rape: The Victim Goes on Trial (Holmstrom and Burgess, 1973), Rape Victim: A Victim of Society and the Law (Mathiasen, 1974), Rape: Who's on Trial? (Mermey, 1974) and Twice Traumatized: The Rape, The Victim and The Court (Bohmer and Blumberg, 1975) are indicative of the type of concern for the rape victim in the literature.

This recent focus has brought to light many corollary problems associated with the manner in which rape victims have been treated.
The inclination of the police, prosecutors, juries, judges, and communities to impune the reputation, as well as stigmatize victims of rape has significantly contributed to making this crime one of the most notoriously under-reported offenses in this country (Federal Bureau of Investigation, 1973:15).

Criminal statistics indicate that, under-reported as this crime may be, the incidence of reported rape has steadily increased on a yearly basis. It is difficult to disentangle whether the actual number of rapes have increased, or if the number of rapes which are reported have risen to confound these criminal statistics. In either case, another significant problem remains: Attrition as one moves through the criminal justice stages. Attrition is the problem where many rapes which are reported do not result in arrest; many arrests do not lead to prosecution; and finally, many prosecutions do not terminate with conviction.

Given these considerations, it is surprising, not that rape has begun to receive nation-wide attention, but that this is a relatively recent development. This recent development, however, has stimulated response from the criminal justice community. Because of heightened public concern about the crime of rape, a greater sensitivity to the pressures placed on rape victims, and a growing awareness of the problems associated with the prosecution of rape offenders, many states have come to entertain the prospect of reform legislation. Thirty-six states across the country have enacted laws dealing with the crime of rape since 1975 (Schram, 1978 a:1). Among the states which have enacted new legislation attention has been directed toward
altering corroboration requirements, admissibility of the evidence concerning the past sexual activities of the victim, and standards pertaining to victim resistance.

Legislative change in the state of Michigan, which was enacted in November of 1974, has become a model for many other states considering reform of sexual assault statutes. In discussing this reform trend, Schram (1978 a:1) states:

Michigan's legislation represents the most comprehensive revision of rape laws attempted in the history of the state, and almost certainly in the country at large.

The Michigan's Women's Task Force on Rape (1973) was instrumental in the development and implementation of Public Act 266, referred to as the Criminal Sexual Conduct Code. The intent of P.A. 266 was to repeal, revise, consolidate, and codify past legislation dealing with the crime of rape.

The Michigan's Women's Task Force on Rape identified several major issues which they believed to be crucial to the development of reform legislation. One of the more salient themes of the Task Force centered upon the need to change prevailing attitudes about rape being a sexually motivated crime by recognizing that sexual assaults are crimes of violence. Brownmiller (1975: 376-404) also espouses this view and concurs with many of the following criticisms and recommendations as well. It was suggested that altering conceptions regarding the crime of rape would facilitate the treatment of this crime in a manner more consistent with and equitable to the treatment of other felonies processed through the criminal justice system.

The resistance and consent standards, both unique to rape
legislation, were the first topics to be addressed. The Task Force report suggests that traditional orientations to sexual crimes twists the normal attitude about criminal acts by placing unwarranted burdens on the victim while deflecting attention away from the perpetrator of the crime. Under the old statute prosecutors had to prove not only the use of force by an offender, but also the unwillingness of the victim. Cobb and Schauer (1974) state that this was construed to mean that the victim had to resist to the utmost throughout the criminal sexual offense. The Task Force notes that victims of other criminal acts, such as robbery, are not required to prove that they actually decided not to "share" their money with the offender. BenDor (1976) states that these aspects of the old legislation imposed the requirements of proof demanded of no other victim of a crime.

Similarly, the Task Force on Rape deemed the whole notion of victim precipitation to be ludicrous. Again the unique feature in rape prosecution of requiring the victim to prove that she/he did not, consciously or unconsciously, desire to be victimized was cited as contributing to the distortions regarding this crime. The analogy provided to portray the atrocity of blaming the victim was that at no time would a bank whose wealth was known or advertised be seen as precipitating a robbery.

The corroboration requirement, which often attends crimes of rape, was also taken into consideration. Both the Women's Task Force (1973) and Cobb and Schauer (1974) state that while Michigan did not formally stipulate this requirement, a de facto situation existed where few defendants were ever convicted without some corroborative
Another major issue discussed by the Task Force, and BenDor, was that of the victim's past sexual behavior in regard to trial proceedings. The authors suggest that permitting this information to arise in criminal justice proceedings is not only unfair, but also unjust in that "highly inflammatory" (BenDor, 1976:157) and questionably relevant matters will be permitted to impeach victim credibility. Here again, the emphasis on the victim diverts attention away from the perpetrator of the criminal offense, while simultaneously putting the victim on trial.

Another issue raised by the Task Force pertained to the equal protection clause of the Federal Constitution. The Task Force drew attention to the necessity of abandoning the "medieval" notion that women are the property of the men which they marry. Under the old legislation, it was impossible for a wife to bring rape charges against her legal husband. The Women's Task Force suggested that this was a denial of equal protection to married women under the U.S. Constitution.

Each of these criticisms were directed towards identifying the crucial areas in need of legislative reform. The Michigan's Women's Task Force on Rape called for reform in the following ways:

a) Relaxing the resistance requirement.
b) Abolishing the consent standard.
c) Abandoning the notion of victim precipitation associated with rape cases.
d) Specifying the lack of a *de jure* corroboration requirement, in order to help rid its *de facto* existence.

e) Curbing harassment on victims by forbidding irrelevant information of their past sexual behavior in criminal proceedings.

f) Applying equal protection to married, divorcing, and male persons in rape cases.

g) Establishing degrees of rape according to the seriousness of the offense.

h) Providing a structure of punishment which is consistent with the seriousness of the crime.

Most all of these elements have been incorporated into the relatively new Criminal Sexual Conduct Code in Michigan. The primary element which was not written into the new law as the Task Force had recommended was the full extension of equal rights to married women. Under P.A. 266 only those women legally separated or having filed for separate maintenance or divorce are permitted to file rape charges against their legal spouses.

The Criminal Sexual Conduct Code in Michigan provides for four differing degrees of criminal sexual conduct (CSC). These types of offenses are differentiated on the basis of seriousness of the criminal offense. The seriousness is indicated by considerations such as whether the crime involved sexual penetration or contact, the age and mental state of the victim, the relationship between the victim and the offender, the absence or presence of force, threat,
coercion, weapons, injury, and the number of "aiders and abettors". The penalty structure is similarly consistent with perception, based on these criteria, of the seriousness of the offense. This entire structuring of sexual offenses stands in stark contrast to the traditional delineations of merely forcible and statutory rape. The resultant reform legislation which has been enacted in the State of Michigan is provided in Appendix A.

Statement of the Problem

Due to the recency of legislative reforms in the realm of sexual crimes, there is a virtual absence of literature available on the implementation of such statutory enactments. Most attention has been devoted to the logic or rationale which informs legislative alterations rather than how these changes have been implemented.

Prosecuting attorneys are critical figures not only in the criminal justice system generally, but also in the implementation of any type of legislative enactment. Although prosecutors have been said to be the most powerful figures in the administration of justice (Cole, 1975:227) they have also received the least amount of attention in the literature (Grosman, 1969:106) (Neubauer, 1974:197). There is an even greater paucity of literature dealing with prosecuting attorneys in relation to the crime of rape. Systematic examination of factors influencing prosecutorial decision-making in rape cases is rare indeed.

A further deficiency in the literature is found when searching for the broader type of theoretical explanations of prosecutorial
discretion. While there does exist a body of literature which undertakes the objective of systematically looking for explanations of the exercise of police and judicial discretion, such is not the case with prosecutorial decision-making. If the scope is narrowed to the specific concern with prosecutorial discretion in rape prosecutions, the absence of theoretical frameworks is made readily apparent.

The intent of this research is to integrate these different dimensions which have been found to be lacking in the available literature. The objective of this project is to empirically assess the factors which influence prosecutorial discretion in rape prosecutions, under reform legislation, within the context of more recent theoretical paradigms in criminology. Specifically, this research is designed to investigate the variables which have an impact upon prosecutors decision-making in the implementation of the new Criminal Sexual Conduct Code in Michigan. A primary concern will be to examine the effects of legal and non-legal criteria as they relate to the prosecutors charging and plea-bargaining decisions. The secondary purpose of this research is to develop descriptive profiles of the characteristics of the cases processed under this new law.
CHAPTER ONE

THEORETICAL AND RESEARCH LITERATURE

Alternative Theoretical Paradigms of the Criminal Justice Process

The intent of this section is to examine the theoretical perspectives in criminology as they have been applied to the study of crime and the legal order. The more recent trend has been for theorists to question the conventional assumptions associated with more traditional explanations of the creation and enforcement of the criminal code in society.

Functionalism or consensus theory

Historically, one of the most dominant theoretical paradigms in sociology has been associated with functional interpretations of society. This perspective has been promoted by numerous sociological theorists such as Emile Durkheim and more recently Talcott Parsons. Chambliss (1976:4) has highlighted several of the assumptions of functionalism as applied to criminology:

1) The law represents the value consensus of the society.
2) The law represents those values and perspectives which are fundamental to social order.
3) The law represents those values and perspectives which it is in the public interest to protect.
4) The state as represented in the legal system is value-neutral.

5) In pluralistic societies the law represents the interests of the society at large by mediating between competing interest groups.

These assumptions suggest, according to the functional approach, that laws grow out of societal customs and a shared morality and that punishment serves to establish the moral boundaries of the community. Crime is seen as offending the morality of the community, but its mere presence is also a means by which the community reifies its own sense of morality. The explanation of crime with the functional or consensus theorists is that it is the result of improper socialization, i.e., certain members of society fail to internalize the prevailing morality. The lower classes, in particular, may commit more crimes because of less effective socialization mechanisms.

More recently the functional or consensus paradigm has been challenged from a number of quarters within criminology. The most salient and consistent criticism mounted against consensus theory is that the legal order is established by powerful groups within a society rather than by society's collective morality. The contention of the critics is that not only does the power structure in society define what is criminal, but it also influences the enforcement of laws to protect its vested interests.

This opposition to the functionalist perspectives in criminology is variously identified as critical, radical, or conflict criminology. Within this general classification are several different theoretical
emphases. The following three sections discuss these different types of approaches to the study of crime and the legal order, as well as some of the inherent similarities and differences between them.

**Labeling theory**

The essence of the labeling perspective on deviancy and crime can be found in Howard S. Becker's (1963:9) statement which asserts:

Deviancy is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an "offender". The deviant is one to whom that label has successfully been applied, deviant behavior is behavior that people so label.

This interpretation is diametrically opposed to the aforementioned assumptions regarding functional or consensus theory. Labeling theory directs attention to the political nature of constructing definitions of deviancy by the powerful people in society. Labeling theory posits that the socially powerful will do the labeling, and that the lower classes will be the labeled (Turk, 1977:209). This perspective further explains that individuals who are labeled as criminal have a propensity to react to the negative stigma imposed by the label by engaging in further criminal activity. In this sense, labeling persons as criminal is seen to be criminogenic.

Charles Wellford (1975:332-345) attacks labeling theory on the basis of his observation that by emphasizing the relative nature of crime or deviancy, labeling theorists tend to ignore the cross-cultural consistency in terms of what is identified as serious crimes. He also implies that there is not differential enforcement or administration of the legal codes in terms of upper and lower class
members of a society. Kratcoski and Walker (1978:36) in turn, criticize Wellford. They state that his conclusions are based on selective evidence, and that crimes committed by members of the upper-classes do receive differential treatment, both in terms of enforcement and sentencing.

A significant criticism of labeling theory, identified by Turk (1977:210) is that:

Instead of analyzing class structure in relation to the definitional and behavioral realities of deviance, labeling analysts have more or less assumed a two-class power model of those who are vulnerable to labeling versus those who are not.

Regardless of these important problematic considerations, labeling theory has contributed to the advancement of understanding in criminology. The value of this perspective lies in the implication that criminologists must explore the origin of legal codes as fostered by vested interests in society and abandon the more obsolete conception that laws necessarily reflect the community's collective values and morality. Perhaps the greatest contribution of labeling theory has been the crucial assumption that the power structure of a society bears an influence upon both the creation and enforcement of the legal code. By sensitizing criminology to the inherent discretionary nature of such a system, labeling theory has been instrumental in creating new theoretical and research directions in criminology.

**Marxist conflict theory**

Ralf Dahrendorf's (1969) well-known critique of functional theory in sociology, can in many ways be seen as an impetus for
conflict theory in criminology. Dahrendorf was primarily interested in off-setting the functional assumption about society by directing attention to conflict in society. He states (1969:227) that functional theory:

...represents a huge and allegedly all-embracing super-structure of concepts that do not describe, propositions that do not explain, and models from which nothing follows.

Dahrendorf's comment (1969:223) which is particularly germane for conflict theory, is that consensus implies the absence of "structurally generated conflict". This is not only the point of departure but also a major premise for conflict theorists in criminology.

The single most coherent conflict perspective in contemporary criminology is strongly influenced by Marxist theory about the nature of capitalism in Western civilization. Quinney (1974:18) has stated the basic premise of the Marxist-conflict model in criminology as applied to capitalistic systems such as the United States:

The legal system provides the mechanism for the forceful and violent control of the rest of the population. In the course of the battle, the agents of the law (police, prosecutors, judges, and so on) serve as the military force for the protection of the domestic order. Hence, the state and its accompanying legal system reflect and serve the needs of the ruling class. Legal order benefits the ruling class in the course of dominating the classes that are ruled.

Chambliss (1976) expands upon this notion by contrasting Marxist-conflict theory with functionalism as evidenced in the work of Durkheim. The working assumption for Chambliss, Quinney, and others associated with this perspective is that, "Acts are defined as criminal because it is in the interest of the ruling class to so
define them" (Chambliss, 1976:7).

Chambliss (1976:8-9) articulates a number of assumptions consistent with this theoretical paradigm. The creation and enforcement of the legal code in capitalistic societies is seen to encourage a false consciousness among the ruled. The ruled are "duped" into believing that their interests are the same as those of the ruling class, as exemplified in the criminal code. By emphasizing certain types of crimes, the rulers divert the attention of the lower classes to members of their own class, rather than to manner in which they are being exploited. The upper-class sector of society exercises control over the proletariat by focusing the definitions and enforcement of criminal acts upon the lower classes. That which is defined as criminal, as well as those who will be treated as criminal, is geared towards the types of behavior more likely to be committed by the lower classes.

Turk (1977:214-217) discusses the Marxist theme in critical or radical criminology and raises several other important assumptions associated with this perspective. Marxists, he suggests, are likely to reject the entire legal system in a capitalistic society as they see it as masking the true crime of exploitation of the masses by the ruling class. Marxists are also inclined to interpret crime by the oppressed as resistance or necessity created through the oppressive atmosphere established by the power-holders in society.

Aside from these specific assumptions, there is a central focus which delineates Marxist-conflict theorists from other perspectives. The conflict criminologists operating within this framework adopt the
Marxist belief that all social and political power is derived through the control of the means of production. Incorporated in this belief is the notion that this control is the essential criterion for the establishment of the social classes in a capitalistic society. Marxist-conflict criminologists thus view both law and crime as a function of class conflict based upon the control of property and the means of production. The contingent belief is that only through eradication of class struggle it is possible to rid society of conflict and crime.

Like labeling theory, the Marxist theme in criminology assumes that the legal system in a society is tied to the existing power structure. Both stress that discretion favors the people in power, even though Marxist theorists are more emphatic about the direction of this influence in capitalistic societies.

A fundamental difference between these two orientations lies in the Marxist conviction that power is exclusively associated with control of the means of production. As previously stated, labeling theory does not attend to the causes or explanations of power differentials, but merely assumes their existence.

Weberian-conflict theory

Recently Turk (1977:210) has attempted to distinguish between that which he identifies as Marxist and Weberian themes in critical criminology. He seems to dismiss the value of labeling theory at the outset, primarily because it often ends up with the simplistic implication that "Labeling and labelers are bad, while almost
any form of deviance and deviant is good". Prior comments concerning the contributions of labeling theory to critical criminology makes this conclusion somewhat questionable. In any event, Turk's distinction between Marxist and Weberian orientations merits further consideration.

Turk (1977:210-211) begins by highlighting areas of similarity between these two perspectives. The first juncture of agreement is the assumption that "Laws, law-breaking, and law enforcement originate in and contribute to the patterns of social conflict and of disproportionate power". The second shared assumption posits the direct relationship between economic exploitation, political repression and criminal activity. Thirdly, both the Marxists and Weberians concur on the need to fit research methodology to theoretical concerns, rather than subordinating theoretical needs to research methods.

Turk (1977:212) suggests that a major dissimilarity exists between Marxists and Weberians on the issue of scientific objectivity. The Marxist-conflict orientations dictate that research be conducted with the value-commitments of the theory borne in mind. Turk (1977:212) notes that they try to "infuse their research with a constant sensitivity to what is politically desirable". On the other hand, Weberians strive for value-neutrality in research based upon the assumption that political motivations can undermine the search for truth.

Turk (1977:213) identifies a second source of disagreement among the Marxists and Weberians. Basically, the difference involves assumptions about the nature of social organization. The Marxist
believes that an egalitarian society, i.e., one where there is equal control over the distribution of the resources in a society, is possible and would preclude the basis for a power structure in society. Stated somewhat differently, the Marxists assume that the elimination of capitalistism in society would result in the eradication of conflict and power differentials.

Unlike the Marxists, the Weberians contend that power differentials and some type of conflict is inevitable in any social system. They assume that both vertical and horizontal differentiation will co-exist in a society. The primary difference here lies in that the Weberians believe that the definitions of crime, as well as the enforcement systems, flow out of any authority structure within a society. They refuse to be restricted by the Marxist assumption that this is a feature exclusive to capitalistic social systems.

The advantage of the Weberian approach over the more restrictive model entertained by the Marxists is that it offers a more flexible strategy for studying discretionary aspects of a criminal justice system. This flexibility permits examining Marxist assumptions concerning class differentials in society as they influence the criminal justice system, while at the same time allowing for the possibility that other authority structures may influence the formulation and implementation of legal codes within a society.

The potential limitations of a strictly Marxist interpretation of the legal system in a capitalistic society can be evidenced through examination of the reform legislation in Michigan regarding Criminal Sexual Conduct. A major impetus for this legislation came
from the Women's Task Force on Rape in Michigan. This organization not only prompted alteration of the existing code, but additionally provided important guidelines for the reform legislation. While it is easy to recognize this organization as representing a political pressure group which came to influence the legal code, it is difficult to conceptualize them in strictly Marxist terms. Given that Marxists often argue that women in society represent an oppressed group, it is extremely difficult to see this organization as an arm of the existing capitalistic power structure. The Women's Task Force on Rape can more accurately be portrayed as a counter-vailing force to the existing power structure which had previously supported the more traditional laws concerning sexual assaults.

Labeling, Marxist, and Weberian theoretical perspectives, aside from their differences, all suggest that if the legal order is a construction of the power structure in society, it is likely that the enforcement of the laws will favor these power structures at the expense of people with less leverage in the system. The prevailing assumption is that those with less power will be discriminated against through the processes of the criminal justice system.

Research Literature Relevant to Conflict Theory

There have been a number of prominent studies which have explored the implications of conflict perspectives in the administration of criminal justice. The results of these empirical investigations are less than definitive. Some indicate the presence of extra-legal factors influencing the exercise of discretion within
the criminal justice system, while others have failed to find parallels. Most of the research has dealt with final disposition and sentencing results for indications of the influence of legal and extra-legal criteria in the processing of criminal cases.

**Empirical studies**

Bullock (1961) conducted a study to determine the effect of race on the length of criminal sentences. The sample included 2,655 prisoners who were incarcerated in the Texas state prison system. Bullock was specifically interested in seeing how race as an extra-legal criterion influenced sentencing. He found a significant relationship between the legal factor of type of crime and the length of sentence. There was also a relationship between pleading guilty to an offense and shorter sentences. The number of previous convictions did not significantly bear upon length of sentence. When these legal variables were controlled, race emerged as a strong determinant of the type of sentence a defendant would receive. It was further found that the longest sentence for black offenders occurred when the crime "carries him across racial lines" (Bullock, 1961:417).

Thornberry (1973) found comparable results. He studied 3,475 juveniles from Philadelphia who had all engaged in at least one prior delinquent act. He introduced the research problem by insisting that controlling for legal variables such as the seriousness of the offense and prior records are absolutely imperative when assessing the impact of race and socio-economic status (SES) on disposition severity. Thornberry (1973:262) concludes that at all three stages
involving the police, the intake hearings by the juvenile court's probation department, and hearings by the juvenile court itself, blacks and those from the lower strata in society are more likely to receive harsher dispositions.

Petersen and Friday (1975) further substantiate the premise of conflict theory in criminology. They examined factors which influenced the early release of inmates from prison in a "shock probation" program. Their sample consisted of 202 individuals who were granted shock probation in 1970, along with 373 who were eligible but not released during the same period. The latter were designed to serve as a control group. They examined the relationship between legal variables such as the type of offense, number of previous arrests, and probation recommendations, as well as extra-legal factors such as race, education, and residence. The conclusion reached was that the race of the offender was the most salient variable effecting the type of judicial decision rendered when the other factors were statistically taken into consideration.

Hepburn (1973) attempted to study police arresting practices in the light of labeling and conflict theory. His operational indicator of extra-legal criteria affecting arrest practices was the denial of an arrest warrant by the prosecutor. His logic was that prosecutorial denial of a warrant request by the police indicates the lack of evidential criteria to justify the arrest. His findings showed that arrests on the basis of insufficient evidence were characteristic of cases which involved the less powerful members of a community. For instance, he found that there were more warrant
denials for black than white offenders. While this suggests support for his contention that the police do employ extra-legal criteria in arrest practices, the data do not convincingly support his operating assumption that "there is no systematic non-legal bias in the decision to prosecute" (1973:58).

Pope (1976) assessed the impact of race, sex, and age on the decision to release arrested burglary offenders prior to trial. The control variables included were existence or absence of a prior record, drug history, and the defendant criminal status, i.e., under or not under supervision at the time of arrest. His findings indicated that the most significant variable in determining pretrial release was the existence of a prior record. In the absence of this factor, race emerged as an important variable influencing this judicial decision. The study also found that females and younger males were more likely to be released prior to trial proceedings.

Lizotte (1978) postulated that blacks and members of the lower socio-economic strata of society will suffer discriminatory sentencing. His study looked at 816 cases taken from the Chicago courts for the year 1971. The "exogenous" variables were occupation and race, while the "endogenous" variables included prior arrests, evidence, seriousness of the case, amount and status of bail, and the amount and type of experience of the defense attorney. Lizotte's findings indicate that race and occupation did play a significant role in sentencing disparity. He also found that the ability to make bail was the third significant factor, i.e., those failing to make bail received harsher sentences. These findings are consistent
with the predictions from conflict models in criminology.

Green (1960) examined 1,437 cases which resulted in a conviction during the 1956-57 period. This study took into consideration the conventional legal and non-legal variables as well as other factors in the criminal prosecution. The additional variables brought in were the sentencing judge, the prosecuting attorney, and the plea of the defendant. The findings of this study were contradictory to conflict theory. Green explains that, although there were differences in sentencing patterns based upon race, age, and sex of the offender, these were mitigated against when the nature of the offense, the seriousness of the defendant's past record, and the number of bills of indictment were taken into consideration. Prosecuting attorneys and pleas of defendants were not found to be significantly related to sentencing proclivities towards imposing non-imprisonment sentences for the less serious offenses. Moreover, with the more serious crimes sentencing severity of judges varied little.

A subsequent study by Green (1964) served to substantiate the earlier finding which tended to refute the conflict perspectives. In this study Green empirically explored the relationship between whether or not a crime involved an offender and victim of the same race in relation to the severity of sentencing. His sample included 118 robbery and 291 burglary cases drawn from the same 437 cases discussed above. His findings did not support the conclusion that racism effects sentencing in these cases. In other words, once again, when the legal types of factors were controlled, offenders received comparable sentences regardless of the race of the offender vis-à-vis
Burke and Turk (1975) conducted an investigation of factors influencing postarrest dispositions. The same kinds of variables observed in previous studies were included, e.g., race, SES, prior record, and so forth. The authors (1975:313) conclude that "The results of the analysis suggest that assertions of legal bias against the social disadvantaged require better evidence than has previously been offered in their support".

Chiricos and Waldo (1975) attempted to assess the effect of SES on sentencing and failed to find support for the conflict perspective. The data consisted of 10,488 cases taken from penal institutions in North Carolina, South Carolina, and Florida. They examined the length of sentences for seventeen different offenses. Controlling for the attributes of race and age they assessed the impact of SES on sentencing in all three states. They were also able to control for legal variables with the cases from Florida, but not North or South Carolina. The general conclusion from this study was that SES is unrelated to severity of sentencing.

Cohen and Kluegel (1978) suggest that the effects of race and SES on juvenile court disposition severity are negligible when one takes the legal criteria into account. This was true for both Denver and Memphis which were the locations for the study.

Lotz and Hewitt (1977) studied these relationships within the framework of five differing models of the criminal justice system. The range of independent variables was expanded to include marital status, work history, and the absence or presence of dependants.
Based upon their analysis the authors conclude that the model best suited to explain the effect of legally relevant or irrelevant factors on sentencing severity is the legalistic perspective. Lotz and Hewitt (1977) declare that: "...if legally irrelevant factors are important and there is considerable discrimination in sentencing, then crime control officials are covering their bias particularly well by putting into the defendant's record distorted information about offense-related variables".

Hagan (1974) reviewed twenty of the studies which had been conducted in the field in an effort to test conflict theory. A central feature of this study was the re-analysis of the data in those studies controlling for legal factors. Based upon the findings Hagan (1974: 379) concluded that:

Review of the data from twenty studies of judicial sentencing indicates that, while there may be evidence of differential sentencing, knowledge of extra-legal characteristics contributes relatively little to our ability to predict judicial dispositions. Only in rare instances did knowledge of extra-legal attributes of the offender increase our accuracy in predicting judicial disposition by more than five percent.

Hagan contends that the previous research interpretations which supported the opposite conclusion were more likely than not due to the misuse of statistical analysis, especially chi-square.

The review of the literature on conflict theory indicates the contradictory nature of the research findings. Before concluding this review of the empirical studies of conflict theory it is necessary to take note of some plausible explanations which might be operative in confounding the results of the studies which yield
the contradictions.

The point to be made clear is that it is difficult to compare research which has employed differential strategies pertaining to type or size of samples, types of offenses, independent variables, dependent variables, control variables, and finally statistical tests. This type of heterogeneity contributes to the confusion, making it difficult to draw general conclusions about conflict theory.

From a heuristic standpoint these studies are useful both individually and in combination. Each sheds some light on certain facets of the whole notion of conflict theory in criminology. The problematic nature of conflict theory is due, at least in part, to the fact that conflict theory is at an embryonic stage of development, in comparison to the longer tradition of the search for explanations of criminal behavior in society. Hopefully, subsequent research will systematically explore these issues and produce the basis for viable refinements.

Theoretical Perspectives on Prosecutorial Discretion

The significance of labeling, Marxist, and Weberian theory in criminology for the purposes of this study, is the light they shed on the relationship between power structures within a society and the exercise of discretion in the handling of criminal cases by the police, prosecutors, and the judicial system. The intent of the next section is to examine more closely specific considerations regarding the exercise of such discretion within the American system.
Davis (1976) has extensively explored the notion of discretionary justice. He believes that discretionary justice is an inevitable factor in any advanced society. Unlike the Marxists who would argue that it would be possible to eliminate discretion with the implementation of a classless society, Davis seems to accept the presence of discretion in criminal justice systems and goes in another direction. He (1976:1) suggests that the real problem rests with discretion which is employed in an inconsistent manner. Justice, for Davis, exists when the legal code of a society is uniformly and fairly administered or enforced. What concerns Davis (1976:10) is unnecessary discretion, as well as the lack of controls or checks on certain types of discretion, which can produce injustices.

Davis argues that the greatest abuses of discretion ensue when decisions are informal and unreviewed. Unreviewed discretion exists when there is an absence of procedural structures or higher authorities to provide checks on discretionary judgments. While judicial decisions are governed by procedural checks, such is not always the case with the police or prosecutor. This is particularly evident with police or prosecutorial decisions to not enforce the laws in individual situations. Newman (1966:231), Miller (1970:294), Chambliss and Seidman (1971:397), and Jacoby (1977:1) are several other authors who have commented on the lack of restriction or review regarding prosecutorial discretion.

A fuller appreciation of the degree to which prosecutorial discretion in America is unreviewed can be gained by looking at twelve facets of uncontrolled discretion discussed by Davis (1976:65-67):
1) The absence of statutory guidelines for prosecutorial discretion.

2) Courts do not require a prosecutor to provide guiding standards through exercise of rule-making—and prosecutors rarely volunteer in this matter.

3) When a prosecutor learns of a crime he is not compelled to investigate.

4) He is not required to disclose his findings of fact to the victim, a superior, a court or the public.

5) He does not have to provide reasons when he makes decisions concerning the law or policy.

6) He does not have to compare cases, be consistent, or follow any precedents.

7) He can be selective in the enforcement of statutes.

8) He can choose to plea-negotiate a case regardless of the evidence for a serious crime.

9) If he is the top prosecutor of a governmental unit he is not subject to any review.

10) Normally, even if he acts capriciously or arbitrarily, he is not subject to judicial review.

11) He is not required to operate openly which enhances his immunity from the press and the public.
12) Victim of a crime normally has little legal recourse if the prosecutor decides not to prosecute the case.

These kinds of considerations help to explain a comment by Cole (1975:227) to the effect that "Although the criminal justice system is frequently divided into three subsystems—the police, courts, and corrections—the separation fails to take note of the most powerful figure in the administration of justice; the prosecuting attorney". In a similar vein, the Southern California Law Review (1969:137) notes that "Paradoxically, of all the individuals and agencies exercising discretion in the criminal process, the prosecutor has received the least attention in the literature". Both Grosman (1969:106) and Neubauer (1974:197) also draw attention to this neglected area of research in criminology. The significance of this is indicated by Karlen and Schultz (1972:113) when they state that it is the prosecutor alone who has the power to activate the judicial machinery.

Research literature on prosecutorial discretion

Most of the research literature on prosecutorial discretion is not based upon quantitative empirical investigations. Many of the worthwhile distinctions which have been made are based upon a familiarity with the criminal justice system through a variety of less quantified means, such as observation and recollection of past experience.

The research which does exist follows a variety of different investigative strategies. A number of authors have created typifica-
tion schemes pertaining to dimensions associated with prosecutorial discretion based upon knowledge of the criminal justice system and logical considerations. Other researchers have utilized observation techniques to gather information about prosecutorial processes. Often these impressions have been supplemented with information provided by sources such as court records. The more quantitative research generally involves some sort of statistical analysis of factors which influence prosecutorial discretion. Surveys, interviews, data from case files, and so forth, provide the data inputs for the statistical analysis.

Typification schemes

One of the most prominent categorization schemes which can be applied to prosecutorial discretion has been offered by Cole (1975: 237-240). He provides a three-fold system which includes the following categories of influence on prosecutorial discretion: (1) evidential; (2) pragmatic; and (3) organizational.

The term evidential is somewhat self-explanatory. Evidential elements relate to decisions based upon rules of evidence and due process requirements. The denial of an arrest warrant because of insufficient evidence or violation of due process rights would fall into the evidential category as discussed by Cole. These kinds of considerations can also influence the decision to plea bargain.

Pragmatic criteria influencing prosecutorial discretion take into account a different set of judgments. A prosecutor may deny an arrest warrant or opt for plea bargaining if he feels a trial would
be excessively traumatic for the victim. A prosecutor may decide that justice would be better served if a defendant is given psychiatric treatment rather than prosecuted through the courts. Essentially, pragmatic considerations stem from the prosecutor's attempt to individualize justice.

Organizational elements effecting prosecutorial discretion concern the relationship between the office of the prosecutor and other agencies of the criminal justice system. Because of court congestion a prosecutor may decide not to proceed with less serious charges. Given the limited resources of his office a prosecutor may decide to nolle one charge against a defendant, in exchange for a guilty plea on another charge which is pending. Organizational concerns such as the relationships between the prosecutor and the police, the defense attorneys, the judges, and the community are all factors which belong in this category of influence.

David Sudnow (1965:237) offers another useful category scheme. He argues prosecutors and defense attorneys come to share definitions of what constitutes "normal crimes" and that these perceptions influence the types of plea bargains that will obtain between them. Normal crimes are those in which the characteristics of the offender, the victim, and the circumstances attending the crime are similar or typical. Sudnow (1965:243) offers an example of a "normal" burglary where the offender is black, a recidivist, steals from lower class establishments, operates independently, and generally does not cause property damage.

What Sudnow (1965:245) is indicating is that prosecutors and
defense attorneys, through the course of their interaction with each other, develop "unstated recipes for reducing original charges to lesser offenses". These formulas are much more likely to become factors with normal crimes than for offenses which deviate substantially from typical patterns.

Mather (1974) describes a category scheme pertaining to how public defenders come to classify cases and treat them accordingly. While his emphasis is on defense attorneys, his system is equally applicable to prosecuting attorneys. The basic considerations behind these categories involve the seriousness of a crime and the probability of a conviction.

"Dead bang" cases are those for which there exist a sufficient amount of evidence for attorneys to conclude that the case has a high conviction probability. "Reasonable doubt" cases contain evidential problems which render a high probability judgment of acquittal and low probability of conviction. "Serious" cases are those for which a state prison sentence is likely, while "light" cases are those which would likely result in probation as opposed to incarceration.

What is interesting about these distinctions is how combinations influence the likelihood of plea bargaining or going to trial. A case which combines a high probability of conviction with a serious offense is not likely to be plea bargained by a prosecuting attorney who would prefer going to trial. Where there is reasonable doubt with a light offense the defense attorney is likely to prefer going to trial since the probability of probation is high and the chances of acquittal are good. A prosecuting attorney, on the other hand, often
wants to plea bargain such less serious cases with questionable trial outcomes because of limited resources. Both the prosecutor and defense attorney are likely to favor plea bargaining with light offenses which have a high conviction probability. The defense attorney views plea bargaining as a viable alternative given the evidence, while the prosecutor may not want to waste resources on lighter offenses. With serious offenses involving a low conviction probability the interests of the two attorneys are likely to merge resulting in a plea bargain. From the perspective of the prosecuting attorney it is important not to ignore serious offenses even when conviction probabilities are not high. By the same token, a defense attorney may not want to risk a trial judgment given the severity of sentencing which might possibly result.

Jacoby (1977) provides a somewhat different kind of typification system. She distinguishes four alternative policies or objectives which can come to reflect a particular prosecutor's office. Her contention is that, after all external factors have been taken into account the prosecutorial policy which characterizes a given office becomes the single most important factor to be considered in an examination of the discretionary activities of prosecutors.

An office characterized by "legal sufficiency" will decide to prosecute simply on the basis of sufficient evidence. Those offices which reflect "system efficiency" place an emphasis on the quick disposition of cases. This kind of policy fosters the extensive use of plea bargaining and alternatives to prosecution in order to most efficiently dispose of cases. Another policy orientation, "defendant rehabilitation", stresses treatment as opposed to punishment of
offenders. With this type of policy the prosecutor is likely to seek alternatives, whenever possible, to taking the case to court. The final policy theme which is said to determine prosecutorial discretion is "trial sufficiency". This approach favors avoiding criminal prosecution unless it is believed that the case is strong enough to sustain a conviction at trial. This type of office is likely to charge as high as the evidence permits and retain this charge through the trial without engaging in plea bargaining.

Observational studies

Newman (1966) and Miller (1970) represent two classic studies of prosecutorial discretion based upon observations and case examples. Both studies provide comprehensive discussions of offices of prosecutors in the three states of Kansas, Michigan and Wisconsin. They differ in that Newman focused on plea bargaining while Miller investigated variables which influence charging decisions.

The findings of Newman and Miller are remarkably similar. Both intimate that limited resources force prosecutors to employ discretion in an effort to manage caseloads. Criteria employed to this end included consideration of the type and amount of evidence available, conviction probabilities assigned to cases, the seriousness of the offense and victim credibility.

What Cole (1975) identified as pragmatic elements in prosecutorial discretion were also evident with the studies by Newman and Miller. It was discovered that prosecutors consider whether or not criminal prosecution would result in "undue harm" to a defendant because of severe maximum or minimum sentences given certain characteristics of
the offender. For instance, young offenders and those without a prior record were generally treated more leniently. Prosecutors were also found to seek alternatives such as restitution, and psychiatric or other types of treatment for rehabilitation purposes.

Differential treatment of cases was also influenced by subcultural considerations. For example, assaults involving blacks in a neighborhood with high violence were treated as less serious than similar offenses in areas in which violence was a less frequent occurrence.

Political or organizational (Cole:1975) elements were seen to influence prosecutorial discretion in a number of different ways. The reputation of the victim and/or defendant could influence a case. Community values and pressures were also seen as exerting an influence on decisions to prosecute or plea bargain. And finally, prosecutors were inclined to demonstrate greater leniency if a suspect cooperated with police or agreed to testify against co-conspirators.

Even though the nature of the data employed by Newman and Miller were less than definitive, these two studies have heuristic value. Many of the factors they found to influence prosecutorial discretion have been incorporated in subsequent studies by other authors.

Another prominent study was conducted by Neubauer (1974). His research was based upon data collected from interviews, personal observations, and examination of court records in a medium size county in Illinois. His findings were quite compatible with those of Newman and Miller.

Neubauer (1974) cites the seriousness of the crime, the past record of the defendant, and the strength of the evidence in cases...
as the primary elements shaping prosecutorial discretion. Other factors which were seen as exerting an influence included an evaluation of the competency of particular defense attorneys, assessments concerning the police officers involved in a case, perceptions regarding the policies of particular judges, as well as characteristics of the offender and victim.

Kaplan (1965) investigated the variables which determined whether federal prosecutions in California would be initiated or declined. He found certain commonalities in terms of influences on the prosecutorial charging decisions. These shared criteria included perceptions concerning the guilt of the accused, conviction probabilities, the desire to maintain a good reputation by sustaining convictions, along with judgments regarding whether or not prosecution, given the severity of sanctions with certain offenses and defendant characteristics, would serve the objective of justice.

A study by Grosman (1969) is valuable in that it provides data which permit making comparisons between prosecution practices in the United States and Canada. Grosman interviewed Canadian prosecutors operating in York County Ontario. His results indicate that administrative demands, the strength of cases and the relationship of the prosecutor to the defense attorney influenced prosecutorial discretion. Grosman also found that many Canadian prosecutors will relax prosecution in the interests of serving justice. His general conclusion is that variables influencing prosecution in Canada are quite similar to those found in the United States.
Quantitative research

The Southern California Law Review (1969) conducted a survey which provided frequency data on variables which had an impact on charging decisions by prosecutors. They found that the standard of proof required by different prosecutors for the filing of a criminal complaint varied. Twenty percent stated that they would file even if the case would probably not go beyond the preliminary hearing. Thirty percent indicated that they would file if they thought the case would get beyond the preliminary hearing but probably lose at trial. The remaining 50% said that they would initiate prosecution only if the case was likely to result in a conviction at trial.

Prosecutors were also asked whether or not they would file given certain violations of the defendant's constitutional rights. Twenty-nine percent stated that they would file only if they thought there had been no violations, 50% replied that they would file even if a conceivable violation existed, and 21% said that they would initiate prosecution even if there were clear indications that constitutional rights had been violated.

This research also explored the impact of extra-legal factors on decisions. It was discovered that the existence of prior convictions were given more weight in the determination to file than any of the personal characteristics of the defendant such as occupation, race, sex, or age.

Jones' (1977) study tried to assess the role of extra-legal considerations on the decision to plea bargain. Fifty-two percent of the prosecutors interviewed stated that the characteristics of the
defense attorney were the single most salient factor influencing their decision to plea bargain. Other extra-legal elements she found to have an effect on the decision to plea bargain were factors such as the amount of publicity given a case and defendant characteristics, with 21% citing the former and 10% indicating the latter. Jones (1977: 198) concludes by suggesting that "...the data indicate the prosecutorial decisions are based primarily on extra-legal rather than legal standards".

Hagan (1974) examined the effect of extra-legal variables, when controlling for legal factors, on the prosecutors decision to dismiss a case, as well as on sentencing severity. This study is particularly germane for the research at hand as it examines prosecutorial discretion within the context of conflict theory.

The study was comprised of 1,018 cases randomly drawn from files in a medium sized Canadian city. Hagan's study is unique in that it examines variables influencing prosecutorial discretion with the sophisticated analysis techniques of multiple regression and path analysis. The dependent variable was operationalized, in rank order of severity, as charges dismissed by prosecutor, absolute discharge at sentence, conditional discharge or fine at sentence, probation, and finally prison. When analyzing the combined cases which were dismissed and those which were sentenced, Hagan found that extra-legal variables, such as race and socio-economic status, had no impact upon the type of final disposition, i.e., whether the case would be dismissed or sentenced. The effects of these variables were said to be mediated through the legal criteria of previous criminal
history, seriousness of the offense, and number of charges against the accused.

Summary

It is quite apparent that the three types of literature reviewed share many elements in common. For example, Cole's (1975) classification schema of evidential, pragmatic, and organizational elements can readily be applied to the factors which others have cited as effecting prosecutorial discretion. For instance, Miller's (1970) conception of causing "undue harm" to an offender by initiating prosecution can easily be viewed as pertinent to the pragmatic considerations. Most of the studies presented in this section identified the prosecutors appraisal of the strength of the case as an influence on the exercise of discretion. This can, similarly, be put under the heading of evidential elements influencing prosecutors decision-making.

The more empirically oriented studies portray information quite comparable to those which were more descriptive in emphasis. The factors discussed in the former case can further be related to the typification schemes as well. For example, the Southern California Law Review (1969) study could be seen to be assessing either evidential elements, the typical or "normal" nature of a crime, or whether the case was "dead bang", "serious", and so forth when discussing the seriousness of the case and its conviction probability.

A specific concern, which merits attention at this point, is related to the nature of the literature on prosecutorial discretion at present. Having reviewed the research literature available on
this topic, as well as on conflict theory, it becomes quite apparent that there exists a need for empirical investigation which integrates the two. As Hagan (1974) had stated in regard to theory and the study of criminal prosecutions and sentencing:

A sociological concern with the process of criminal sentencing is well established. Similarly well-demonstrated is a sociological interest in the process of criminal prosecution. Surprisingly, however, the two concerns have not been linked systematically in empirical research.

As can be deduced from this literature review, most empirical studies dealing with conflict theory emphasize criminal sentencing, and most prosecution literature has not yet been effected by the "new criminology".

This research project is an attempt to examine not only the types of variables which influence both the charging and plea bargaining decisions, but to do so within the context of a theoretical framework.

Research Literature on Rape

In the past several decades a great deal of research literature has been devoted to various dimensions associated with the crime of rape as well as other kinds of sexual assault. Prior to 1960 the emphasis was placed upon studying psychological characteristics of rapists. During the 1960's the scope of this literature was broadened to include studies pertaining to characteristics of the offender, victim, and circumstances surrounding the crime.

Additionally, more attention was directed toward the rights of the accused during this time. From the late 1960's to the present
the literature has reflected another shift toward consideration of the rights and treatment of rape victims by the criminal justice system. Increasingly the literature has dealt with preventative techniques and supportive structures for rape victims. More recently, there has developed a concern with legislative reform. This emphasis is an outgrowth of pressures created by the Women's Liberation Movements which focused on the abuses experienced by rape victims by the police, prosecutors, and courts. A distinctive aspect of this trend has been a comparison of how victims of rapes are treated as compared to cases involving other kinds of serious crimes.

Because of the nature of this research project it will be necessary to deal selectively with the voluminous literature on rape. Special attention will be devoted to profiles regarding characteristics of sexual assault cases as a means for facilitating comparisons with the results of this study. The other literature of relevance concerns investigations which examine the types of variables which influence discretionary judgments made by agencies handling rape cases. Within this context special attention will be directed to studies which explore prosecutorial discretion in rape cases.

**Descriptive profiles of offender/victim characteristics**

The classic study which deals with characteristics of offenders and victims in rape cases was conducted by Amir (1971). The data for his study were collected from police files in Philadelphia for 1958 and 1960. As this research is cited in almost all the rape literature dealing with this topic, the findings of other major studies will be
presented along with each of the categories employed by Amir.

Racial characteristics of offenders and victims

Amir (1971) found that blacks were disproportionately both offenders and victims given the number of blacks residing in Philadelphia at the time of his study. Blacks constituted over 80% of the victims and offenders contained in the police files. MacDonald (1975:51, 76) and Schram (1978:9, 16) found a similar pattern where minorities were overrepresented in rape crimes. Chappell and Singer (1977:264) found that offenders from minority groups were overrepresented in rape offenses, while Peters (1977:349) and Hindelong and Davis (1977:91) found this to be true of rape victims. A later study by Nelson and Amir (1977:279) found a more proportionate representation of race concerning victims.

Interracial rape

Amir (1971:44) states that based upon his data the majority of rapes in Philadelphia during the period his study covered were intraracial as opposed to interracial. Specifically, he found that 93% were intraracial while only 7% were interracial. Chappell (1977:16) found a similar distribution with 82% of the cases he studied being intraracial and 18% crossing over racial lines. The findings of Agopian, Chappell, and Geis (1977:131) reflected this pattern but to a lesser degree. Fifty-nine percent of the cases they examined were intraracial and 35% were interracial. The remaining cases were between American Indian offenders and Chicano victims. MacDonald
(1975:51) and Nelson and Amir (1977:281) did not obtain these kinds of results.

Age of offenders and victims

Amir (1971:51) collected data concerning the age of offenders. Forty-percent of the offenders were in the 15–19 age category, while 26% were between the ages of 20 and 24. Schram (1978:9) found that approximately 47% of her cases involved defendants between the ages of 15 and 24. Chappell and Singer (1977:259) and MacDonald (1975:54) came up with data which approximate the figure provided by Schram.

Amir (1971:52) provides information concerning the ages of victims in his study. The highest number of victims, 25%, were between the ages of 15 and 19. The next highest age interval which contained 20% of the cases was between the ages of 10 and 14. Schram's (1978:17) data indicated that 32% of the victims were under 18 while Peters (1977:249) found 42% of his victims to be under 18. Nelson and Amir (1977:282) and MacDonald (1975:77) employed the category of 15–24. MacDonald found that slightly more than 50% of the victims were in this age category, whereas Nelson and Amir discovered 64% to in this age bracket.

Examining the relationship between the age of the offender and victim, Amir (1971:56) established that 64% of all the rape cases involved people within a five year age difference. Findings by Chappell (1977:17) were quite similar in that 67% of the offenders and victims were either both minors or adults.
Amir (1971:57) also looked at the ages of offenders and victims within racial categories. Among blacks he found that victims tended to either be much older or younger than the offenders in 17% of the cases. With white offenders and victims 23% of the victims were much younger, while in 15% of the cases the victims were much older. Hindelang and Davis (1977:91) came across a different pattern with the most frequent age category of black victims being under 20 and the most frequent category for white victims being between the ages of 20 and 24.

Marital status of offenders and victims

There is very little data on this characteristic of offenders and victims in the literature on rape. Amir (1971:61-62) did find that most of the victims were in what he identified as a dependant category, i.e., below the age of marriage, while most of the defendants were above the age of marriage but still single. MacDonald (1975:54-55), cites a survey of convicted rapists in the Colorado State Penitentiary which found that 43% of the offenders were single, 40% married, and the rest divorced, separated, and so forth.

SES of offenders

Amir (1971:70), utilizing employment and occupation as indicators of SES, indicates that 90% of all offenders come from the lower strata of society. Typically, offenders were skilled laborers, unemployed or retired. A study by Chappell (1977:17) revealed that 38% of the offenders studied were unemployed while 49% were employed in "non-
professional" occupations.

Prior record of offenders

Amir (1971:112) discovered that 49% of the offenders included in his sample had some type of criminal record. Fifty percent had one previous arrest, 30% had two prior arrests, and the remaining 20% had three or more arrests. Nine percent of the offenders had prior records indicating that they had committed forcible rape in the past.

MacDonald (1975:56), in his analysis of data on convicted rapists, found that 85% had prior arrest records and 12% had been convicted of forcible rape in the past. Chappell's (1977:17) data suggest that approximately 20% of offenders processed by prosecutors had previously been arrested for rape offenses and another 20% had prior arrests for other sex related crimes.

Multiple-rape offenders

MacDonald (1975:160) found that approximately 19% of the rapists he studied had perpetrated the crime with a partner(s). The research by Schram (1978:10) reported that nearly 25% of the cases she studied involved two or more offenders. Hindelang and Davis (1977:94) state that 80% of the attempted rapes were by single perpetrators, but that with completed rapes that figure was reduced to 60%. Both Chappell (1977:15) and Peters (1977:349) found that approximately 35% of the cases they investigated involved multiple perpetrators. The highest percentage of cases involving two or more offenders was reported by Amir (1971:200). The total percentage of multiple-offender cases
was 43%, with 16% of that amount involving two perpetrators and 27% including three or more offenders.

Relationship of offender to victim

The percentage of cases where a victim was raped by a complete stranger range considerably among the aforementioned studies in the research literature on rape. The reported figures on this include: Amir (1971:234) 42%; Chappell (1977:13) 53%; Schram (1978:70) 57%; MacDonald (1975:77) 60%; Chappell and Singer (1977:258) 71%; and Hingelang and Davis (1977:95) 80%.

The percentage of cases involving an offender who the victim knew to some extent, ranging from a casual acquaintance to friend of the family, accounted for most of the remaining percentages in all of these studies. The percentage of cases where the victim was raped by a relative were quite low. The percentages on this dimension were: Amir (1971:234) 2.5%; Chappell and Singer (1977:258) 3%; Schram (1978:70) 3.9%; MacDonald (1975:78) 6%; and Chappell (1977:13) 11%.

Characteristics of the criminal offense

Aside from comparing the results of this study with the research literature dealing with characteristics of the offender and victim, comparisons will be made concerning additional circumstances attending the crime as reported in the literature on rape. This section summarizes the findings from the more prominent research studies on these dimensions.
Alcohol

Several studies have indicated percentages regarding whether or not alcohol played any role in rape cases. Amir (1971:98) found that 66% of the cases did not involve any drinking by either the offender or victim. In 21% of the cases both the offender and victim had been drinking, while in the remaining cases 10% of the victims and 3% of the offenders had some amount of alcohol.

The study by Chappell (1977:14) also presented data on the presence of alcohol in the rape cases he examined. He reports that 36% of the offenders and 9% of the victims had been drinking to some extent. In 24% of the cases both the offender and victim had been drinking before the crime was committed.

Location of the crime

The research by Amir (1971:145) provides information concerning whether the rape occurred at the victim's residence, indoors or outside of the offender's place of residence, or in an automobile. In 56% of the cases reported by Amir the crime took place where the victim lived, 15% in an automobile, and 11% in or near to the defendant's residence. The remaining offenses occurred in what Amir identified as "open-spaces".

The findings by Schram (1978:72) indicate a somewhat different pattern, especially with the percentage of crimes committed at the residence of the victim. The average percentages for the five cities included in her sample were: 30% at the victim's home; 16% in the...
offender's car; 13% at the residence of the offender; 11% at a residence other than that of the victim or defendant; 10% on the street; 6% in a place of business; 4% in a park; and 4% in the victim's car or at a motel/hotel. The remaining cases are so low that it would be appropriate just to indicate them as being in the category of other.

Hindelang and Davis (1977:94) were not as exhaustive as Schram but they do provide some interesting findings for the cases reported. Fifty percent of the rapes studied occurred outdoors in places such as parks, fields, or streets. An additional 14% of the crimes were committed outdoors but in close proximity to the victim's residence. Twenty percent of the cases they investigated had the victim's residence as the location of the offense.

The research by MacDonald (1975:33) did not distinguish the residences of the victim and offender but did determine that 55% of the crimes were committed at one of these two locations. He found that 26% of the cases involved automobiles, 16% were outdoors, and 4% of the offenses occurred inside unspecified locations.

Chappell (1977:13) found yet another pattern associated with the location of rape offenses. His data indicate that 33% of the rapes studied occurred in motor vehicles. Twenty-four percent of the crimes were committed at the home of the victim, whereas only 8% happened at the residence of the offender. Of the remaining offenses 27% were perpetrated outdoors and 9% were assigned to the category of other.

Time and season of rapes

There is not very much information on the time of day or night
most frequently associated with rapes, and the data on the season of the year in which the highest number of rapes occur are contradictory. This is unfortunate since from a preventative perspective this kind of information would be extremely valuable.

Amir (1971:88) found that in Philadelphia during the time period covered by his study, the summer months from June through September represent the season with the greatest percentage of rapes. Chappell and Singer (1977:250) failed to find data to support this pattern as indicated by Amir. Their data from New York City and Los Angeles, suggest that rapes were evenly distributed throughout all of the seasons. The lack of variability in Los Angeles could be due to the greater consistency in climate, but such would not be the case for New York City.

Research on the time of day or night when the highest percentage of rapes occur is more consistent. Amir (1971:84) reports that nearly 50% of all the rapes he studied occurred between 8:00 P.M. and 2:00 A.M. The next most frequent time period was between 2:00 A.M. and 8:00 A.M. when 20% of the rapes were committed. Other researchers such as Schram (1978:67), Hindelang and Davis (1977:94), and MacDonald (1975:30) generally sustain the findings of Amir.

Weapons

The presence or absence of weapons in rape cases is relevant not only as an indicator of potential physical harm but additionally because rape cases which involved weapons are viewed as more serious offenses by prosecutors than those in which a weapon was not employed.
The research literature dealing with the presence or absence of weapons in the perpetuation of rapes is quite varied.

Chappell (1977:14) found that in the cases he investigated 21% involved firearms, 25% sharp instruments such as knives, and 16% other kinds of weapons such as blunt instruments. In 38% of the instances no weapons were used.

The data from the research conducted by Schram (1978:11) indicate that in 47% of the cases no weapons were involved. Firearms accounted for 21% of the weapons which were present, 16% utilized knives, and the rest employed other kinds of weapons.

Hindelang and Davis (1977:96) report that in 50% of the cases there were no weapons, in approximately 33% of the cases a weapon was clearly evident, and in the rest of the cases victims were uncertain about whether or not the offender had a weapon. Chappell and Singer (1977:261) found indications of weapons being present in around 33% of the cases with knives being the most frequently employed. MacDonald (1975:63) was able to determine that about 25% of the crimes he examined involved weapons such as guns, knives or blunt instruments.

Victim injury

The presence or absence of a weapon is not necessarily indicative of whether or not a victim sustained physical injuries during the crime. Amir (1971:155) indicates that in 57% of the cases the victim was brutally beaten or choked, roughness was present in approximately 28% of the crimes, while only in 15% of the instances was there an
absence of physical force.

Chappell (1977:14) provides additional data on victim injury. Hospitalization was required in 9% of the cases and nearly 23% of the victims needed medical treatment for sustained injuries. Minor injuries which did not necessitate medical treatment occurred in about 36% of the cases, while around 33% of the victims did not receive any physical injuries.

The findings of Schram (1977:19), which were based upon a sample of five large cities, were different than those of Amir and Chappell. She found that in 68% of the cases the victim did not receive any injuries. Slight bruises were evident in approximately 23% of the cases with the rest involving more serious injuries. Interestingly, there was no evidence of gunshot wounds and in only 2% of the cases were there knife wounds. This suggests that most of the injuries are not based upon the presence of a firearm or knife.

The results of the study by Hindelang and Davis (1977:97) comes the closest to finding the magnitude of injuries indicated by Amir. Hindelang and Davis found that in nearly 50% of the cases the victims received sufficiently serious injuries to warrant medical attention.

**Attrition rates in rape cases**

The problem of attrition in rape cases has been indicated by the District of Columbia Task Force on Rape (1975:353). They state that:

When less than one of every four persons arrested for rape is convicted of that offense, when more than half are not even prosecuted, something appears to be wrong with the system. That conclusion is buttressed by the facts that (1) rape is probably one of the most under-
reported of all serious offenses and (2) not all rape cases are closed by arrest.

Williams (1978) compared prosecution and conviction rates of rape offenses with other serious crimes such as murder, manslaughter, robbery, aggravated assault, and burglary. The prosecution rate for rapes was the second lowest of all these crimes. Ninety-seven percent of murder and manslaughter charges, 88% of robbery and burglary, 75% of forcible rape, and 70% of aggravated assault charges were prosecuted. The comparison of conviction rates is even more alarming. Fifty-one percent of murder and manslaughter cases, 48% of burglary offenses, 36% of robbery charges, 26% of cases involving aggravated assault resulted in convictions. The conviction rate for forcible rape was the lowest at 20%.

A study conducted by the Institute for Law and Social Research in 1977 provides further information on the attrition rates associated with the crime of rape. The study provides data on the dispositions of rape cases from arrest through trial in the District of Columbia, Los Angeles, Indianapolis and Detroit. It is worthwhile noting that the patterns for these four cities do vary on a number of dimensions. A summary of the findings is as follows:

A) Cases Dropped by Prosecutor

1) District of Columbia 30%
2) Los Angeles 23%
3) Indianapolis 33%
4) Detroit 35%
B) Cases Plea-Bargained

1) District of Columbia 34%
2) Los Angeles 32%
3) Indianapolis 43%
4) Detroit 46%

C) Trial Convictions

1) District of Columbia 27%
2) Los Angeles 33%
3) Indianapolis 43%
4) Detroit 46%

D) Acquitted

1) District of Columbia 6%
2) Los Angeles 11%
3) Indianapolis 2%
4) Detroit 14%

Taking dropped charges, plea bargaining and acquittals together it is possible to get some indication of the disposition of cases favoring the defendant. The figure for the District of Columbia suggests that 36% of those arrested were released while 34% plead guilty to a lesser offense. In the Los Angeles situation 34% were released and 32% plead guilty to a lesser offense. With Indianapolis 35% were released and 43% plead guilty to a lesser offense. And finally, the data for Detroit indicated that 39% of the accused were released while 46% plead guilty to a reduced charge.

Schram (1978:49) provides more data concerning the attrition rates associated with the crime of rape. Court records obtained from
Seattle and Kansas City were the source of information. The findings indicate that of the 635 rape complaints which were registered with the police only 167 suspects were ever identified. Of those suspects who were identified only 27% ended up being charged with rape or attempted rape. Approximately 71% of offenders charged with rape or attempted rape were presented to felony court. The dispositions of the cases bound over to felony courts resulted in around 38% dismissals/acquittals, with a small percentage being judged either incompetent to stand trial or not guilty for psychiatric reasons. This means that about 62% of the cases which were presented to the felony courts resulted in a conviction because the defendant plead guilty or was found guilty. Half of these cases were found to be or plead guilty to charges other than rape or attempted rape. Another way of summarizing these findings is to observe that of the 635 original complaints only 20, or 3% resulted in a conviction. This data prompted Schram (1978:57) to conclude:

It is clear that an overwhelming percentage of rapes go unpunished. Even if one subtracts those cases which are considered by the police to be "unfounded", the conviction rate remains dismally low.

**Factors influencing prosecutorial discretion in rape cases**

There simply is not much research literature which assesses the reasons behind prosecutorial discretion. Williams (1978:1) has explained this by stating that:

Relatively little is known about the prosecution of rape cases, because of the general lack of knowledge about the operations of the prosecutor's office and the courts.
The three studies in the research literature on rape which do address this topic include a project by the Institute for Law and Social Policy (INSLAW) reported in 1977, the research directed by Chappell (1977), and a study by Williams (1978). Clearly, there is a great need for more research on prosecutorial discretion in rape cases given the powerful role played by the prosecutor in the criminal justice system.

The INSLAW (1977) study represents an effort to compare rape prosecutions in Detroit, District of Columbia, Indianapolis, Los Angeles and New Orleans. Information as to why prosecutors in Detroit and Indianapolis rejected cases at the screening was not available. During the period covered by the study the office of the prosecutor in the District of Columbia employed the following categories to explain rejection of cases at the screening: (1) witness problems accounted for 40% of the denials; (2) evidential criteria were cited as reasons behind 29% of the rejected cases; and 31% of the justifications were classified as other. The situation in Los Angeles was different in that the reasons and percentages for rejecting cases were: (1) lacked of prosecutorial merit, 37%; (2) insufficient evidence, 32%; (3) problems with witnesses, 24%; and (4) other, 7%.

Data from New Orleans presented yet another pattern concerning reasons given for rejecting a case at the screening: (1) decision to prosecute other cases, 42%; (2) problems with witnesses, 29%; (3) insufficient evidence, 24%; and (4) other, 5%.

The available data suggest that problems with witnesses and insufficient evidence account for approximately 55% of the cases.
rejected in Los Angeles and New Orleans, while these two factors accounted for 69% of the reasons based on data for the District of Columbia. The large percentage figures for the reason that cases lacked of prosecutorial merit in Los Angeles and the decision to prosecute for other charges in New Orleans is also very interesting.

The data from the INSLAW study on reasons given for nolled or dismissed cases are fragmentary since information was available only for Detroit and Los Angeles. The Detroit prosecutor cited problems with witnesses as the reason for having nolled or dismissed 66% of his cases. Not unexpectedly, given that the largest percentage of cases rejected were done so on the basis of lacking of prosecutorial merit, the prosecutor in Los Angeles used this same reason most frequently for having nolled or dismissed charges against the accused. In Los Angeles the factor of insufficient evidence was the next most frequently cited reason, while in Detroit this justification was infrequently given.

The research by Williams (1978:27) offers more data concerning reasons given for prosecutorial discretion. The main reasons for rejecting a case at the screening included (1) insufficient evidence, 38%; (2) witness credibility, 21%; (3) the complainant either did not show or decided to sign off, 18%; (4) lacked of prosecutorial merit, 9%; (5) an element of the offense was missing, 6%; and (6) anticipation that the offender might have a good defense was cited in 5% of the cases.

The reasons Williams (1978:29) found for nolled or dismissed cases were somewhat at variance with those identified in the INSLAW
(1977) study. Twenty-five percent of the cases which were dismissed or nolled cited problems with the complaining witness who either did not show, signed off, or could not be located. Witness credibility was indicated as a problem in 13% of the cases which were nolled or dismissed, while insufficient evidence was the reason cited in 9% of the nolled or dismissed cases.

Chappell (1977:18) offers some information concerning factors which influence the filing of charges. A rank-ordering of factors which increased the likelihood that a prosecutor would file include the use of physical force, proof of penetration, promptness of reporting the rape, extent of suspect identification, injury to the victim, circumstances of the initial contact, the victim/offender relationship, use of a weapon, and victim resistance.

The matter of plea bargaining in rape cases has also drawn some attention. Schram (1978:52) observes that plea bargaining is the means of resolving the vast majority of all crimes including rape. More specifically, concerning plea bargaining in rape cases, Schram (1978:52) notes that:

Plea bargaining has been the subject of significant criticism, particularly in relation to rape cases. It is often suggested that rape cases are reduced too routinely. Bargaining is allegedly symptomatic of parochial attitudes toward women or exaggerated fears of losing at trial. Victims, and even the police, complain that they are not consulted about plea bargains and are only informed of an agreement after the fact.

Schram (1978:53) goes on to give an indication of the effects of plea bargaining on the disposition of cases. A fairly large percentage of prosecutors (42%) said that they generally recommended
reduced sentences in return for a guilty plea. Prosecutors also indicated a willingness to dismiss counts (22%), or to dismiss a rape charge in exchange for a guilty plea to another felony (25%).

Notably absent from the quantitative research literature on prosecutorial discretion is data as to the reasons prosecutors cite for entering into plea bargaining. Since plea bargaining is such a frequent means for resolving cases with all major crimes, this neglect is all the more alarming.

Rape and conflict theory

The integration of any type of theoretical model with dispositions of rape cases is sorely lacking in the literature. Curtis (1976:151) substantiates this by stating that "There is little theoretical understanding of rape".

The basic exception to this is found in the major study conducted by Wolfgang and Riedel in 1973. They examined the effects of rape on the imposition of the death penalty in rape cases within the context of the conflict perspectives. Their sample was taken from 12 of the 18 states which allow for imposition of the death penalty for rape cases. Six states were excluded as it was believed that an insufficient number of persons were executed in these states to justify inclusion.

They began with the working assumption that black offenders would be executed to a much greater degree than their white counterparts for rape crimes. They derive this from the National Prisoner Statistics (1971:290) which indicate that "...405 of the 455 persons
executed for rape since 1930 were black". The time period referred to was 1930 through 1968.

The variables examined included victim and offender characteristics, such as race, age, marital status, and previous record. They also included the variables of the circumstances of the offense and of the trial in their analyses.

The conclusion they (1973:132) reach is that race, over and above all other variables, accounts for the disproportionate imposition of the death penalty for black rape offenders.

Implications of Literature Review

Essentially three areas of neglect emerge upon reviewing the literature relevant to the theoretical models, prosecutorial discretion, and the crime of rape. All three deal with the absence of integration of these different dimensions.

The first apparent gap lies in the lack of integration regarding empirical studies of conflict theories in relation to prosecutorial discretion. While there exist numerous studies which deal with the effects of legal and extra-legal variables on police and particularly judicial decision making, such is not the case in terms of prosecutorial discretion. The overriding emphasis in the research, when conflict perspectives are applied to the study of the criminal justice system, is upon disposition and sentencing disparities. Studies which examine the effects of legal and extra-legal variables on the exercise of prosecutorial discretion are virtually absent in the literature. If discrimination or bias is said to exist in the
processing of criminal cases in regards to police arresting and judicial sentencing practices, it would be logical to assume that these factors could be operative in prosecution practices as well. Yet, studies designed with this type of objective in mind are sorely lacking in the research literature.

The second problematic area arises as the literature on prosecutorial discretion does not relate specifically to the crime of rape. Studies of the frequency and percentage distributions of the different types of characteristics associated with the crime of rape are abundant. Descriptions of the manner in which rape victims have been traditionally treated in the criminal justice system are also plentiful. However, systematic assessments of the factors which influence the exercise of discretion in the processing of rape offenses, particularly in regards to prosecutors, are yet to be found in the research literature. This is a serious consideration as the increasing national attention and concern which have begun to attend this crime in the last decade has stimulated much legislative reform activity. The type of implementation of reforms enacted in various states is contingent upon the manner in which prosecutors function to carry out their roles and duties. The intent of the legislature can be written into law, but it is up to the prosecutor, among other criminal justice personnel, to carry out the intent of the law. For this reason, it is paramount to attempt to understand the factors which influence prosecutorial discretion in rape prosecutions. Reforms may be rendered either ineffective or meaningful depending upon the type of implementation, and it is the factors which influence prosecutorial discretion...
which will determine in good part, the type of implementation.

The third problem ensues as a result of the lack of theoretical perspectives applied to the study of rape crimes. In order to truly understand the problems associated with the much espoused maltreatment of this crime through the criminal justice process, one must go beyond simplistic descriptions of the separate facets of the problem. Criminal justice agencies do not operate in a vacuum, but within the context of the larger social structure. It is thus necessary to examine the problems which have been identified within some type of larger theoretical framework in order to promote and enhance comprehension and then possibly even resolution.
CHAPTER II

RESEARCH METHODOLOGY

Data for this study were obtained from the office of the Kalamazoo County Prosecutor in the State of Michigan. The data include all Criminal Sexual Conduct (CSC) crimes reported to that office over a three year period beginning in January of 1975 and continuing through December of 1977.

Although the reform legislation pertaining to sexual offenses in the State of Michigan went into effect in November of 1974, a number of factors precluded the inclusion of data for this two month period. A central problem was that the Screening Unit Intake form, utilized to make a preliminary identification of CSC cases, was not fully implemented until January of 1975. The absence of this form meant it would have been necessary to sift through the complete archival police records to obtain any information about sexual assaults during the last two months of 1974. Another consideration was that prosecutor's estimates indicated that they processed only three or four cases during the time period in question. Because of difficulties in obtaining information through the police records, and the small number of cases involved, it was decided that deletion of those cases was warranted.

The decision not to examine cases on file for 1978 was based upon the realization that a sufficient number of 1977 cases were still pending, i.e., had yet to culminate in final disposition or sentence,
when data collection was begun in the Fall of 1978. Many of the final dispositions and sentences for these 1977 cases with missing data were ascertained by re-examining the files at the end of the data collection process months later. It was surmised that the 1978 cases would have included many more pending cases, given their recency in the criminal justice process, and hence, a greater amount of missing data. The 1978 cases were not included as it was believed that inclusion of these cases would have resulted in enough missing data to present a serious obstacle to systematic analysis.

Coding

Five codebooks were devised for the purpose of data collection. Codebooks one through four were constructed according to the normal sequence of events in the criminal justice process commencing with warrant requests and going through final sentencing. The fifth codebook dealt with the non-legal variables concerning characteristics pertaining to the defendant, victim and each criminal act. The first codebook includes data taken from the Warrant Request and Disposition form employed in Kalamazoo County. This form is brought to the prosecutor's office from the various law enforcement officials throughout the county. Submission of this form is the mechanism by which the police request the prosecutor to authorize an arrest warrant for a specified suspect. "John Doe" warrants are not generally authorized in Kalamazoo County. If the arrest warrant is

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Copies of the Codebooks are available upon written request.
authorized it must then be signed by a judge before it can be issued. To a large extent, the requirement of having a judge sign the arrest warrant is merely a formality in this county since it is extremely rare for a judge to refuse to sign/issue a warrant after it has been authorized by the prosecutor.

By utilizing the Warrant Request and Disposition form as a point of departure it was possible to include all CSC cases brought to the prosecutor's office during the stipulated time period. The first codebook was designed to contain information regarding whether the warrant was authorized or denied, along with all other possible variables which might have influenced prosecutorial discretion at this initial stage in the criminal justice process. As there was no further source of information available regarding the cases where a warrant was denied, it was necessary to limit the inclusion of variables influencing a denial to those dimensions included in the first codebook.

In the cases where a warrant was authorized numerous supplementary forms were available which provided further types of information. The information supplied by these additional forms is described in the discussions of the second through fifth codebooks below.

The second codebook is devoted to data dealing with pre-trial procedures. These procedures, which come into play after a suspect has been arrested, include arraignment in a District Court, a preliminary hearing/examination, the filing of formal charges, and arraignment in a Circuit Court. At the District Court Arraignment
or Initial Appearance a suspect is formally notified of the charge(s) for which he/she is being held, advised of his/her constitutional rights, and provided the opportunity of making bail (Cole, 1975:61). The function of the preliminary hearing is to determine if the evidence suggests that a crime has been committed and whether there is probable cause or reasonable grounds to believe that the suspect committed the crime for which he/she stands accused. If this is established the suspect is bound over to Circuit Court and the prosecutor's information, or formal charges against the defendant, are filed with the court. At the next stage of the Circuit Court Arraignment the defendant is informed of the "nature and cause of the accusation" (Karlen and Schultz, 1972:127), read his/her constitutional rights once again, and asked to enter an official plea to the court. A further determination is made here as to whether the suspect is indigent, and thus requires a court-appointed attorney, as well as whether he/she is competent to stand trial (Cole, 1975:63).

Data regarding these pre-trial proceedings were obtained from several differing forms: the Preliminary Examination Witness List; the Standard Motion Request form; the Prosecutor's Information; the Felony Case Status Report; the Waiver of Arraignment and Election to Stand Mute form; the Felony Progress Chart; and the Polygraph Report from the police department.

The third codebook related to the system of Justice by Consent (Rosett and Cressey, 1976) or plea bargaining. The data compiled from this codebook deal with the variables of not only existence but also
extent of plea bargaining, i.e., charge reduction and dismissals/nolles. Data pertinent to plea-bargaining were taken primarily from the Disposition And/Or Plea Negotiation form, along with the Guilty Plea Checklist and the Petition and Order for Nolle Prosequi. This codebook further took into account reasons stipulated by the prosecutor for entering into plea-bargaining.

Final dispositions, sentencing, and appeal were the subjects of the fourth codebook. It was beyond the scope of this study to attempt to ascertain which types of variables influenced these decisions. Therefore, data such as composition of juries, pre-sentence investigation reports and profiles of judges were neither sought nor coded. Hence, the variables relevant to this codebook represented only factual information in terms of the type of final disposition and sentence received in a particular instance, as well as the reasons given in the case of an appeal. The main source of information relevant to these outcomes were taken from the Felony Progress Chart and the Computer Intake Sheets for PROMIS (Prosecutor's Management and Information System).

Characteristics of the offense, the victim and the defendant were recorded on the fifth and final codebook. Because there were no specific forms available which included these data, it was extremely difficult to systematically collect information on such characteristics. Observations on these variables were taken primarily from involved police reports and lengthy complainant statements made to the police. Additionally, the fifth codebook gathered data from the forms employed
in the office to determine Career Criminal scores.

Throughout all five codebooks an attempt was made to include all variables which could plausibly have had an influence upon prosecutorial decision-making. Unfortunately, there were a number of significant variables which, of necessity, had to be excluded. Data pertaining to variables such as defendant and victim income, education, and occupation, as indicators of socio-economic status, had to be overlooked for lack of availability. Similarly, the marital status of the victim and the location of the initial encounter between the defendant and victim were also left out due to the lack of information.

Operationalization of the Dependent Variables

The principle dependent variable incorporated into this study concerns prosecutorial discretion as it relates to the implementation of the recent Criminal Sexual Conduct Code enacted by Michigan's state legislature. Prosecutorial discretion, in this study, was manifested through the decisions regarding whether to authorize or deny an arrest warrant, to engage in plea bargaining, and to dismiss or nolle the charges against the accused.

Ostensibly, each of these decisions appear to represent a dichotomous choice by the prosecutor. A nominal level of measurement on the dependent variable, however, would have been detrimental to the study. The most which could have been ascertained, if prosecutorial discretion had been viewed as a set of dichotomous choices, would have been a simple distinction between cases in which warrants were authorized or denied, in which plea bargaining was evident or was not,
between cases where charges were dropped or retained, and between cases where the adjudicated charges were either adjusted or comparable to those requested.

Because a great deal of information would be lost by treating the dependent variable in a dichotomous manner, a strategy was conceived whereby it would be possible to quantitatively measure the magnitude of prosecutorial discretion. In order to accomplish this objective it was necessary to develop a weighted scale which would reflect the magnitude of discretion exercised in any given case.

To this extent, it was first necessary to construct a rank ordering of charges based upon the severity of the criminal offense. This was the desired objective as it was believed that the amount of discretion exercised by prosecutors altering of charges at any stage was directly related to the seriousness of any given charge. For example, a CSC 1 is more serious than either a CSC 3 or CSC 4. But obviously, plea bargaining a CSC 1 down to a CSC 4 represents a greater amount of discretion than changing a CSC 1 down to a CSC 3. The aim was to operationalize these types of discretionary actions in a fashion such that the difference due to alterations in charges (by prosecutors) would be represented as an interval-ratio scale. Thus, the magnitude of prosecutorial discretion exercised at any stage could be assessed, and the factors which influenced this statistically analyzed. The final weighted scale would then portray the seriousness associated with each and every charge encountered at every stage of the study, and alterations reflecting the extent of prosecutorial discretion could simply be treated as positive or negative differences.
The first inclination was to utilize length of sentence actually imposed for the different offenses as the criteria for determining the severity of the criminal offense. Several problems militated against the adoption of this approach. The lack of consistent or reliable sentences within any one crime category rendered this technique virtually useless. In conjunction with this problem was the fact that of the 44 cases where sentencing information was available, there were too few cases within any one crime category to be able to make an assessment regarding even average length of recommended incarceration. Moreover, the approach was untenable as there were several offenses for which there was a total absence of sentencing data.

Because of these limitations it was necessary to utilize another system for the construction of a weighted scale. In contrast to the problems associated with actual or average sentences, it was relatively simple to implement a rank ordering of offense severity by examining the maximum sentences as stipulated in the state statutes. Such a criterion can be assumed to reflect legislative interpretations regarding seriousness of different criminal offenses.

Once the rank order of all offenses encountered in the data was established by legislative maximums, it was necessary to devise a means for assigning numerical weight to each category of maximums. The baseline for the assignment of scale values was determined by first looking at the most severe maximum sentence of life imprisonment. To more accurately interpret the meaning of a life sentence from the standpoint of years in prison, the average age of defendants

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included in the research project was calculated.

The mean age of defendants was calculated to be 27 years. In order to construct a realistic estimate of the time which could be served under a life term, this mean age was subtracted from 65; the life expectancy of a male born in 1950 (Delury, 1979:956). The figure of 65 was the closest approximation to that which would be representative of the defendants included in the three year study, as the actuarial tables are calculated on a decennial basis. Thus, taking the difference between the mean age of the defendant and their average life expectancy, a maximum life sentence at the time of the study would imply the equivalent of a 38 year term.

This most severe sentence was accorded the highest scale weight and subsequently served as the basis for calculating all other scale weights. The procedure used to determine all scale values was to divided the maximum sentence for each lesser offense by the most severe maximum operationalized as 38 years. Applying this criteria to those offenses carrying a maximum of life, resulted in a weighted scale value of one. To clarify, dividing the ultimate maximum of 38 years into the 38 year maximum associated with crimes carrying this penalty, yields a quotient of unity. This number 1, was then multiplied by 1,000 as were all other later quotients, in order to avoid dealing with decimal numbers at any stage in the scale.

The next highest statutory maximum for an offense was found to be 15 years. By dividing 15 years by the 38 year figure it was possible to obtain a ratio of the proportionate distance between a life and
15 year maximum. The resulting quotient of .395 was then multiplied by 1,000, and subsequently dealt with as 395.

The same general logic was employed to calculate a weighted scale value for the next highest maximum sentence which was 10 years. Ten years was divided by 38 years and multiplied by 1,000 yielding a scale value of 263. Once again, this same strategy was used to arrive at a weighted scale value for the remaining maximums of five years, four years, two years, one year, and finally of the 90 day confinement period.

In most instances there was no evidence from data available in the prosecutor's files to justify making a distinction based upon offenses carrying the same statutory maximums. Prosecutorial altering of charges within the same category of stipulated maximums was not considered to be a significant exercise of discretion. However, there were several instances where it was deemed to be advantageous to create such a distinction. The following discussion describes the underlying reasons for making these distinctions along with the methods employed to break the tied ranks.

Each of the offenses originating from the same category which were separated and assigned differential values dealt with alternate types of CSC crimes. It was believed that treating these different "tied" CSC offenses in a comparable fashion would detract from the objective of the study.

CSC in the second and third degree both carry a maximum sentence of 15 years. It was assumed that CSC in the third degree was a more
serious offense than CSC in the second degree because it concerns sexual penetration rather than sexual contact. When looking over the transformation of charges it became apparent that CSC 3 was in fact a more severe offense than CSC 2. When plea bargaining did occur with these charges CSC 3 was "reduced" to a CSC 2, whereas the opposite was never the case. A cursory glance at sentencing practices with these two offenses substantiated this position even further.

Bearing this in mind, it was felt necessary to determine some basis for reflecting the differences between CSC 2 and CSC 3. As previously stated, the magnitude of the seriousness between CSC 3 and CSC 2 lies in the contrast between penetration and contact. The basis for a criteria to mirror this difference was found in the differing maximum penalties associated with assault with intent to commit criminal sexual penetration and assault with intent to commit criminal sexual contact. The legislated maximum in the former case is 10 years, and 5 years for the latter crime. Compared to the maximum of 15 years for either CSC 2 or 3, one finds a proportional difference when criminal sexual contact and penetration sentencing maximums are brought into consideration. To arrive at the distinction between CSC 3 and CSC 2 this proportional difference was applied to the difference between maximum sentences of 10 and 15 years, and 5 and 15 years respectively. Lest the reader be confused, the 10 year maximum, associated with assault with intent to commit criminal sexual penetration, is 2/3 of the 15 year maximum, associated with CSC 3. The 5 year maximum, associated with assault with intent to commit criminal sexual contact, is 1/3 of the 15 year maximum, associated with CSC 2. The scale weight
associated with a five year sentence was 131. Two-thirds of 131 (the 5 year maximum sentence weight) was 88, while 1/3 of 131 was 44. These scores of 88 and 44 were then added to 263, the score associated with a ten year maximum sentence. The reason for adding these values to the score associated with the next maximum in rank order, rather than adding them to 395, the score for the 15 year maximum, was to avoid inflating the weighted scores associated with CSC 3 and CSC 2 beyond the deserved weighted values based upon the statutory maximums. The final weighted scores were 351, for CSC 3, and 307 for CSC 2.

This same problem ensues, but to a greater extent, when attempting to reflect differences between attempted CSC 1, 2 and 3. Nearly all attempted crimes carry a statutory 5 year maximum penalty, with the proviso that the maximum sentence for the original, in contrast to the attempted, crime is at least 5 years. The maximums for crimes with lesser penalties are 1/2 of the maximum associated with the actual crime. Attempted CSC in the fourth degree was thus not tied in scale weight with attempted CSC 1, 2, and 3. In other words, attempted CSC 1, 2, and 3 had a 5 year maximum, while for attempted CSC 4 the maximum was 1 year or one-half of the 2 year maximum associated with CSC 4.

Attempted CSC in the first degree was left with its scale weight of 131 as it is a more serious offense than either CSC 3 on CSC 2. The same factors of 2/3 and 1/3 were applied to attempted CSC 3 and CSC 2 respectively, consistently following the logic of the delineations made in regard to CSC 3 and CSC 2 proper. The difference to which these factors were applied with CSC 3 and CSC 2 was the 5 year
difference between the maximums associated with these crimes and the maximum sentence which fell next in the rank ordered scale. The factors were similarly applied with the attempted CSC 3 and 2 to the 1 year difference between their 5 year maximum, and the 4 year maximum next on the scale. A one year difference has a scale value of 26, 2/3 of this is equal to 17, and 1/3 of 26 is 9. These values were added to the 4 year weighted score of 105, resulting in a value of 122 for attempted CSC 3 and 114 for attempted CSC 2.

The value associated with assault with intent to commit criminal sexual penetration was also altered. Since the records never provided any indication as to whether this crime was assault to intent to commit criminal sexual penetration in the first or third degree, it was necessary to average the values for attempted CSC 1 and attempted CSC 3 in addition to adding a factor for the assault charge. The assault addition was based upon the average scale score for assault and battery and aggravated assault. This was done because the types of assault were also not stipulated in the prosecutor's files. It was believed that averaging these values would be more sound than assuming the cases were consistently either criminal sexual penetration in the first or third degrees, or assault and battery or aggravated assault.

The same methodology could have been applied to assault with intent to commit criminal sexual conduct in the second degree, however there were no cases in the data set from this study for which this charge was requested, authorized or adjudicated.

The final weighted dependent variable scale follows on the next four pages. It was employed to construct discrepancy measures.
intended to be indicative of the magnitude of prosecutorial discretion. Scale scores were assigned to each charge requested by the police, to each charge authorized by the prosecutor, and to each adjudicated charge. In the cases where multiple charges were requested, authorized, or adjudicated, the scale weights were simply added together to reflect the joint severity of a given case. The difference between the requested and authorized charges constituted the first dependent variable as evidence of discretion. The discrepancy between authorized and adjudicated charges made up the second dependent variable, and the variance between the requested and adjudicated charges composed yet a third dependent variable. This third measure of prosecutorial discretion serves as a type of overall or average discrepancy score.

<table>
<thead>
<tr>
<th>CHARGES</th>
<th>STATUTORY MAXIMUM</th>
<th>ASSIGNED WEIGHT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. CSC 1</td>
<td>Life</td>
<td>1000</td>
</tr>
<tr>
<td>Armed Robbery</td>
<td>Life</td>
<td>1000</td>
</tr>
<tr>
<td>UDAA</td>
<td>5 yrs.</td>
<td>131</td>
</tr>
<tr>
<td>2. CSC 1</td>
<td>Life</td>
<td>1000</td>
</tr>
<tr>
<td>Armed Robbery</td>
<td>Life</td>
<td>1000</td>
</tr>
<tr>
<td>3. CSC 1</td>
<td>Life</td>
<td>1000</td>
</tr>
<tr>
<td>CSC 1</td>
<td>Life</td>
<td>1000</td>
</tr>
<tr>
<td>4. CSC 1</td>
<td>Life</td>
<td>1000</td>
</tr>
<tr>
<td>CSC 3</td>
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<td>351</td>
</tr>
<tr>
<td>5. CSC 1</td>
<td>Life</td>
<td>100</td>
</tr>
<tr>
<td>CSC 2</td>
<td>15 yrs.</td>
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</tr>
<tr>
<td>6. CSC 2</td>
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</tr>
<tr>
<td>Armed Robbery</td>
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<td>1000</td>
</tr>
<tr>
<td>7. CSC 1</td>
<td>Life</td>
<td>1000</td>
</tr>
<tr>
<td>Larceny in a Building</td>
<td>4 yrs.</td>
<td>105</td>
</tr>
<tr>
<td>UDAA</td>
<td>5 yrs.</td>
<td>131</td>
</tr>
<tr>
<td>CHARGES</td>
<td>STATUTORY MAXIMUM</td>
<td>ASSIGNED WEIGHT</td>
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<tr>
<td>----------------------------------------------</td>
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</tr>
<tr>
<td>8. CSC 1 Possession of a Firearm</td>
<td>Life</td>
<td>1000</td>
</tr>
<tr>
<td>8. CSC 1 Felonious Assault</td>
<td>4 yrs.</td>
<td>105</td>
</tr>
<tr>
<td>9. CSC 1 Assault with Intent CSP</td>
<td>Life</td>
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<td>9. CSC 1 Assault with Intent CSP</td>
<td>10 yrs.</td>
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</tr>
<tr>
<td>10. CSC 1 UDAA</td>
<td>Life</td>
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</tr>
<tr>
<td>10. CSC 1 UDAA</td>
<td>5 yrs.</td>
<td>131</td>
</tr>
<tr>
<td>11. CSC 1 Attempted Unarmed Robbery</td>
<td>Life</td>
<td>1000</td>
</tr>
<tr>
<td>11. CSC 1 Attempted Unarmed Robbery</td>
<td>5 yrs.</td>
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<td>12. CSC 1 Possession of a Firearm</td>
<td>Life</td>
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<td>12. CSC 1 Possession of a Firearm</td>
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<td>13. CSC 1 Larceny in a Building</td>
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<tr>
<td>13. CSC 1 Larceny in a Building</td>
<td>4 yrs.</td>
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<td>14. CSC 1 Felonious Assault</td>
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<td>14. CSC 1 Felonious Assault</td>
<td>4 yrs.</td>
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<tr>
<td>15. CSC 1 Accosting a Child for Immoral Purposes</td>
<td>Life</td>
<td>1000</td>
</tr>
<tr>
<td>15. CSC 1 Accosting a Child for Immoral Purposes</td>
<td>1 yr.</td>
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<tr>
<td>16. CSC 1 Assault and Battery</td>
<td>Life</td>
<td>1000</td>
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<tr>
<td>16. CSC 1 Assault and Battery</td>
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<td>17. CSC 1</td>
<td>Life</td>
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</tr>
<tr>
<td>18. Armed Robbery</td>
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<td>1000</td>
</tr>
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<td>19. CSC 3</td>
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</tr>
<tr>
<td>19. CSC 3</td>
<td>15 yrs.</td>
<td>351</td>
</tr>
<tr>
<td>20. CSC 2</td>
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</tr>
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<td>20. CSC 2</td>
<td>Larceny from a Person</td>
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<td>20. CSC 2</td>
<td>Possession of a Firearm</td>
<td>4 yrs.</td>
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<td>21. CSC 2</td>
<td>15 yrs.</td>
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</tr>
<tr>
<td>21. CSC 2</td>
<td>15 yrs.</td>
<td>307</td>
</tr>
<tr>
<td>22. CSC 2</td>
<td>15 yrs.</td>
<td>307</td>
</tr>
<tr>
<td>22. CSC 2</td>
<td>15 yrs.</td>
<td>307</td>
</tr>
<tr>
<td>23. CSC 2</td>
<td>15 yrs.</td>
<td>307</td>
</tr>
<tr>
<td>23. CSC 2</td>
<td>Breaking &amp; Entering</td>
<td>10 yrs.</td>
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<table>
<thead>
<tr>
<th>CHARGES</th>
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<th>ASSIGNED WEIGHT</th>
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<td>24. CSC 2</td>
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<tr>
<td>Larceny from a Person</td>
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<td>25. CSC 3</td>
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<td>Felonious Assault</td>
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<td>26. CSC 2</td>
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<tr>
<td>Assault with Intent to Commit CSP</td>
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</tr>
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<td>27. CSC 2</td>
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<tr>
<td>UDAA</td>
<td>5 yrs.</td>
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<td>28. CSC 2</td>
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The Independent Variables

The coding strategy employed in this study was designed to prevent the premature loss of data. All information contained in the prosecutor's files that was conceivably relevant to this investigation was coded. After the data were coded, several decisions had to be rendered concerning the deletion of variables and the collapsing of several variable categories.

Variable deletion

The necessity for variable deletion was predicated upon the statistical problem of built-in correlations when the number of variables exceed the number of cases. For purposes of analysis this consideration was applied separately in relation to the number of cases for the denied and authorized arrest warrants.

From the outset there was not a statistical problem of built-in correlations with the 78 denied cases since the total number of variables was only 35. However, for reasons which will be discussed, after deletion the final analysis for denied cases included ten independent and one dependent variable.

With the authorized cases the matter of built-in correlations was present because there were 226 coded variables for 67 cases. Of the 226 coded variables 214 could be classified as independent variables while 12 were related to the development of the dependent variables. The final statistical analysis incorporated 34 independent variables. The construction of the weighted scale for the dependent variables,
discussed in the previous section, resulted in the inclusion of three separate dependent variables in the final statistical analysis to facilitate separate examination of the factors influencing prosecutors charging, plea bargaining and overall discretionary decisions.

Deletion of independent variables for both denied and authorized cases shared three criteria: (1) irrelevancy; (2) redundancy; and (3) frequency data. Additionally, cross-tabulations run against prosecutorial discretion were employed to delete a number of independent variables associated with authorized cases.

Irrelevancy

The initial coding of several variables was based upon a prima facie judgement which later turned out to be misleading. An illustration would be the category of priority prosecution contained in the first codebook. This seemed to be potentially promising until it was found out that the prosecutor generally acts within two days on the denial or authorization of an arrest warrant. Given the brevity of time allotted for this action it was concluded that there was insufficient variation to justify inclusion of this variable. Similarly, the variables which pertained to the dates of warrant requests and dispositions, which were initially designed to permit determination of time discrepancy, were also excluded from the analysis.

The criterion of irrelevancy was reflected in the decision to eliminate information concerning the specific attorney from the prosecutor's office assigned to a case. The original interest in this
dimension was based upon the possibility that the successful prosecution of cases might be contingent upon the differential capabilities of attorneys. Subsequently, it was discovered that the prosecutor in Kalamazoo County employs a rotation system to increase the effectiveness of prosecution. By rotating attorneys at the various stages of prosecution there is an opportunity to achieve more inputs concerning the prosecution of a case. What this means is that there is a relatively even distribution of attorneys from the prosecutor's office assigned to cases, as well as different stages of cases.

Redundancy

After coding had been completed, inspection of the data indicated a number of instances where a variable category could be eliminated simply because it was redundant with another category. For instance, it was not necessary to retain both the complaint and circuit court identification numbers. Either one was sufficient to establish the identity of a case for analysis purposes in the cases where an arrest warrant was authorized. Similarly, since in Kalamazoo County, each Circuit Court judge is assigned a specific courtroom, there was no need to make a special distinction between courtroom and presiding judge. A further illustration is provided by the variables of Circuit Court Arraignment and sentencing judge. The judge presiding at the Circuit Court Arraignment and at sentencing will be the same, barring extenuating circumstances. In this case the Circuit Court arraignment judge was retained over the sentencing judge, as the latter contained
more missing information.

Frequency data

In both denied and authorized cases preliminary frequency data were very useful in determining which independent variables had sufficiently small numbers of instances due to missing data to justify eliminating them for the purposes of further statistical analysis. Frequency data indicated that it was extremely rare for the police, upon further investigation, to re-submit a requested charge which had been previously denied. This variable was thus deleted.

Frequency analysis also indicated an insufficient number of cases to justify the inclusion of other independent variables such as whether a case involved more than one victim, whether the defendant agreed to testify against others, the reasons for endorsing witnesses, the defendant's income and number of children, and so forth.

Cross-tabulation

The final technique for variable deletion utilized with cases involving the authorization of an arrest warrant was based upon preliminary analysis where 124 independent variables were run against each of the dependent variables relevant to prosecutorial discretion. An illustration reflecting this strategy was the deletion of the sex of the police officer. The results of a cross-tabulation revealed a lack of statistical significance between the sex of a police officer and prosecutorial discretion.
It should be indicated that under some conditions an independent variable of theoretical importance was retained even if a criteria such as the failure to attain statistical significance on a cross-tabulation would have led to its elimination. For instance, both conflict theory and previous research findings intimate the importance of race on prosecutorial discretion. Thus, the race of the defendant was retained even though the chi-square value on this variable was not statistically significant. It was anticipated that the significance of this variable might emerge when other variables were systematically controlled. Similarly, there were no data to support the contention that the appointment of a public defender was a statistically significant variable. Yet, given the research literature which implies its importance, this variable was retained for further analysis.

**Collapsing the variable categories**

Once the final list of variables had been determined attention was directed towards collapsing some of these variable categories to make them more amenable to further statistical analysis. Even though it was necessary to collapse both independent and dependent variables, the greatest effort was devoted to working with the independent variables. The only adjustment made for the dependent variables was for the purpose of preliminary cross-tabulations. Rather than trying to run the cross-tabulations against the absolute magnitude of prosecutorial discretion determined by utilizing the weighted-scale, which would have made interpretations extremely difficult, it was decided
that an indication of an increase, decrease, or no change in charges was sufficient at this stage of analysis.

Criteria employed for collapsing the selected independent variables included a variety of considerations ranging from theoretical categories obtained from prior literature to information provided by preliminary frequency data. Regardless of the particular strategy employed, there was the consistent objective of trying to make the variables more amenable to statistical analysis and meaningful interpretation.

Warrant denials

The first codebook includes information as to the reason the prosecuting attorneys gave in cases where warrants were denied. The back of the Warrant Request and Disposal form provided thirty-three possible reasons for warrant denials. Only nine of these categories were actually used in the CSC cases included in this study. While it was possible to incorporate these nine categories in the analysis, this was rejected in favor of a conceptually superior alternative.

This strategy was based upon distinctions made by Cole (1975:235-40) pertaining to criteria influencing prosecutorial discretion. The basis for Cole's distinctions between evidential, pragmatic, and organization factors influencing prosecutorial discretion was discussed in the previous chapter. By employing these criteria it was possible to collapse the reasons for denying an arrest warrant into four categories. These categories included the three discussed by Cole along with an other classification to cover reasons which could not be entered
into his scheme. The following is how the reasons given for warrant denials were classified:

1. Evidential
   a) Testimony and circumstances insufficient to establish a necessary element of the crime.
   b) Insufficient proof of identity.
   c) The defense could effectively argue that the assault element of a sexual offense was self-defense.
   d) The Complainant had not been interviewed.
   e) Question of victim credibility; requires a polygraph.

2. Pragmatic
   a) Complainant failed to appear for interview as requested.
   b) Prosecution not desired by complainant.
   c) Civil remedies available.

3. Organizational
   a) Other charges pending against defendant.
   b) Charge included in the first charge.

4. Other
   a) All responses which were given to be "other", i.e., were different from the above, with no further information provided.
Reasons for plea bargaining

To collapse the large number of possible reasons for entering into plea negotiations the same category system employed for warrant denials was used. What follows represents classification of the actual reasons listed for plea bargaining encountered in the study:

1. Evidential
   a) Victim confused.
   b) Complainant facing perjury charges.
   c) Weak case.
   d) Victim lied.
   e) Victim a willing participant.
   f) Investigative problems when examining complainant.
   g) Victim blocked out or cannot recall incident.
   h) Age of victim and jury sympathy.
   i) Key witness failed to positively identify defendant.
   j) Comparable case found not guilty by jury in one hour.
   k) Victim has lived with defendant for a number of years.
   l) No violence.
   m) Victim has poor demeanor for case.
   n) Defendant has history of mental problems which could be used as defense.
   o) Victim admitted lying.
   p) Defendant and victim polygraphs left reasonable doubt.
   q) Age of victim and witness.
   r) Only personal injury is mental anguish.
s) Case getting old.
t) Strong insanity defense.
u) Possible problem with statement concerning involuntary dimension.
v) Case did not survive preliminary because of no intent.
w) Victim refused to testify.
x) Victim had past sexual conduct with defendant.
y) Victim has mental problems.
z) Could not prove force or coercion.

2. Pragmatic
a) Defendant has no prior record.
b) Nothing to be gained by placing two sex related offenses on the defendant's criminal record at the same time.
c) Sufficient sentence latitude.
d) Mother of victim wanted to drop charges.
e) Avoid traumatic court experience for victim.
f) Youthful offender.
g) Defendant had no prior record and this might yield a felony conviction.
h) Family opts for psychiatric help for defendant, not jail.
i) Defendant needs psychiatric help.
j) Family and victim reluctant to press charges.
k) Witness/victim did not show.
3. Organizational

a) Defendant in jail—lose on six month prison rule since we put him there.

b) Would gain more credibility with courts by voluntary nolle than to go to trial and lose.

c) Defendant will plea to other charge(s).

d) Defendant will plea to reduced charge(s).

e) Defendant sentenced to 10-20 years on previous charge.

f) Judge asked prosecutor to get rid of some of the charges against the defendant.

g) Defendant agrees to total cooperation.

h) Dismissed because defendant was sentenced on other charges in another county.

i) Cases dismissed--lack of venue.

j) Defendant will plea to other CSC charges pending against him.

k) Court would not accept first plea bargained charge--had to reduce the charge further.

In some cases, it would appear that a particular reason for plea-bargaining could conceivably be placed into another category given the brief description which is offered. In those instances it was necessary to examine the context of the reason provided by additional information about the case to make a final judgement.
Marital status of offender

After examining the frequency distribution concerning the marital status of the defendant it was found that the categories of single or married were used almost exclusively. This eliminated the necessity of retaining the entire geometric code for marital status which had included such categories as divorced and single, divorced and remarried, widowed, and so forth. Thus, the final analysis utilized the dichotomous distinction between being single and married. The additional categories contained in the original geometric code were assigned to one of these two categories.

Criminal history of offender

The geometric code which had been originally employed to deal with this dimension proved to be exceedingly cumbersome to work with. Accordingly, all the information on the past criminal history of the defendant was consolidated into these three categories:

a) No prior record.

b) Requested information not submitted or if submitted not available for inspection for coding.

c) Prior record established.

The existence of plea bargaining

The codebooks allowed for a range of responses relevant to this variable beyond a simple yes or no. For instance, it was possible to
have a situation where plea bargaining took place but the defendant withdrew his plea. Another possible response was the prosecutor offered to plea bargain but the defendant refused. After adjustment the yes or no responses were retained but all other combinations were collapsed into the other category. The main justification for this change was derived from examining the frequency distributions pertaining to this variable.

Final disposition of case

Parsimonious considerations influenced the altered set of categories for the final disposition of a case. These categories were:

a) Guilty by plea or conviction.
b) Dismissed or nolled.
c) Guilty as charged by jury verdict.
d) Not guilty by jury verdict.
e) Guilty of a lesser charge by jury verdict.
f) Case never got beyond prosecutor's information or preliminary hearing; jury trial set but case dismissed; and complainant dropped charges.
g) Remanded to District Court; case pending in Circuit Court; case pending in District Court; and case pending awaiting defendant to become competent to stand trial.
h) Not guilty by reason of insanity by judge.
Defense attorneys

The rather long list of defense attorneys were categorized on the basis of experience as determined by the number of prior CSC cases they handled in Kalamazoo County during the three year time-span covered by this investigation. This was accomplished by examining the frequency distribution of defense attorneys in the study, and assigning them to one of the five groups provided below:

a) No experience (handled only one case in this study).
b) One previous case (handled two cases in this study).
c) Two to three previous cases.
d) Four to five previous cases.
e) Six through nine previous cases (there were no defense attorneys who handled more than nine of the cases examined in this study).

Number of witnesses

Based upon the frequency distribution the number of witnesses were classified according to the following categories for the purpose of running cross-tabulations. Later when the number of witnesses were included for interval-ratio tests of significance the original distribution was used:

a) 0-5
b) 6-10
c) 11-15
d) 16-20
e) 21 or more
Conviction probability

For the purpose of running cross-tabulations the interval-ratio data on estimates pertaining to the likelihood of conviction made by the prosecutors were collapsed on the basis of the frequency distribution. The original distribution was retained when the more sophisticated statistical techniques were employed.

a) 1-3
b) 4-6
c) 7-9
d) 10-12

Bail

The amount of bail set, which constituted an interval-ratio scale, had to be collapsed for the preliminary cross-tabulations as well. The cut-off points indicated below were established by looking at the frequency distribution and deciding how to minimize loss of data. For the more complex statistical tests of significance the original unaltered distribution was utilized. The collapsed categories were as follows:

a) $00,000 - $ 4,999
b) $ 5,000 - $ 9,999
c) $10,000 - $14,999
d) $15,000 - $19,999
e) $20,000 - $24,999
f) $25,000 - Or More
The career criminal score

Certain offenders are selected out for special Career Criminal prosecution in Kalamazoo County. These offenders generally have serious past records, are being charged with armed robbery, delivery of heroine, or CSC 1 or CSC 3 when no familial relationships are involved.

Career criminal cases are handled by the more experienced attorneys and are prosecuted to the maximum extent of the law. This means that these cases are moved more quickly through the criminal justice processes and given special prosecutorial attention at each stage. Darman and Lacy (1977:90) observe that under the Habitual Criminal Act it is also possible for career criminals to receive more severe sentences and more restrictive pre-trial conditions.

Even in situations involving CSC 2 or 4, offenders may be treated as career criminals based upon scores compiled by the office of the prosecutor on a career criminal intake scoring form. The prosecutor can treat anyone receiving a score of 100 points or more as a career criminal. The category system indicated below makes it possible to take into consideration the magnitude of the career criminal score rather than just using the 100 point cut-off. Career criminal scores encountered in this research were classified according to the following scheme:

a) 0-4
b) 25-49
c) 50-74
d) 75-99

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Sentence

All sentences relevant to the cases included in this study were collapsed into ten categories for the purpose of running preliminary cross-tabulations. Inspection of the frequencies was the primary criterion influencing construction of the categories. The following classifications are delineated on the basis of maximum sentences:

a) Life
b) 12-30 years; 15-30 years; 10-20 years (20-30 year maximum).
c) 8-15 years; 10-15 years; 5-15 years; 7-15 years (15 year maximum).
d) 7-10 years; 5-10 years (10 year maximum).
e) 2-5 years; 3-5 years; 18 months to 5 years; 2 years before and consequent to sentence for other charge (4-5 year maximum).
f) 1 year; 20-24 months; 16-24 months (1-2 year maximum).
g) 45 days; 20 days (less than one year maximum).
h) 3 years probation; 2 years probation (probationary sentences).
i) 2 years probation and psychiatric counseling; 45 days in jail and psychiatric counseling (psychiatric counseling as additional sentencing stipulation).
j) 3 years probation with 60 days in jail; 5 years probation with 60 days in jail; 1 year probation with 5 months in jail; 3 years probation with 6 months in jail; 2 years probation with 6 months in jail (probation with less than one year of jail).

Age of the defendant

In order to facilitate profile comparisons between patterns associated with the age of defendant in this study and prior research it was necessary to construct a parallel code. Since the previous literature favored using five year age brackets, a similar strategy was employed here for collapsing the age distribution of defendants. The resulting categories were as follows:

a) 10-14
b) 15-19
c) 20-24
d) 25-29
e) 30-34
f) 35-39
g) 40-44
h) 45 Or Older

The reason for starting with the 10-14 category was dictated by the finding that there were no cases involving defendants who were under 12 years of age. The justification of ending with the 45 or older category was based upon the observation that very few defendants were
older than 45.

This collapsed code was employed with simple cross-tabulations, as well as with cross-tabulations with controls. The complete age distribution was used with the stepwise regression analysis.

Age of the victim

Consideration of the previous literature and the desire to have comparable categories pertaining to the age of the victim necessitated collapsing this variable in a manner similar to the strategy used with the age of the defendant. One difference was that because there were young victims it was necessary to begin with the 0-4 year age category. The category system ends with 45 years or older because of the small number of cases where the victim was over 45. This category system was utilized for the running of the cross-tabulations in the same fashion as was indicated for the age of the defendant. Likewise, the stepwise regression analysis employed the original unaltered age distribution concerning the age of the victim.

Because the Michigan Criminal Sexual Conduct Code allows for four degrees of severity, and since one of the criteria attached to these degrees is the age of the victim, it was necessary to produce another means for collapsing the age of the victim. This was done for the purpose of running contingency tables relevant to the severity of the charges by age category, to help interpret the stepwise regression analysis of the age of the victim as it related to prosecutorial discretion.
Time of the offense

Once again, to facilitate profile comparisons regarding the time of day or night when offenses occurred, it was necessary to alter the original code. Military time was employed and then divided into six equal time-units. The resultant collapsed categories were:

**A.M.**
- a) 0-400
- b) 401-800
- c) 801-1200

**P.M.**
- d) 1201-1600
- e) 1601-1800
- f) 1801-2400

Victim/offender relationship

Chappell and Fogarty (1977:15) observed that "The offender-victim relationship can be measured on a scale according to degrees of social distance, anonymity, or intimacy, and runs from stranger to family relative". Review of the rape literature disclosed that such a scale was employed by many investigators. Drawing upon these considerations a revised code was utilized to reflect these dimensions associated with the relationship between the offender and victim. What follows represents the collapsed categories used in this study:

- a) Stranger
  1) Never had contact with defendant.
2) Lived in same dormitory but did not know each other.

3) Victim unacquainted with offender who posed as friend of victim's father.

b) New Acquaintance/Met in Public Setting

1) Victim accepted a ride home from a bar with defendant.

2) Met in bar.

3) Defendant picked-up victim hitch-hiking.

c) Some Prior Familiarity

1) Casual friend/acquaintance.

2) Acquainted and lived in same apartment building.

3) Defendant a former boyfriend of victim's sister.

4) Defendant was a sibling's friend and victim was member in same household with sibling.

d) Persons Entrusted with Care of Victim/Victim Acquainted with Person Entrusted

1) Defendant was elementary school teacher of victim.

2) Defendant was babysitting for victim.

3) Defendant was friend of person babysitting for victim.

4) Defendant was former spouse of person who hired babysitter for victim.

5) Defendant was son of person hiring babysitter, victim was friend of babysitter's.

e) Roommates, Former Spouse, Former Boyfriend

1) Defendant was boyfriend of victim.

2) Defendant was former boyfriend of victim.
3) Defendant and victim cohabitated as boyfriend and girlfriend.

4) Cell-mates in prison.

5) Defendant was victim's separate spouse.

6) Defendant was victim's former spouse.

f) Related but not in Nuclear Family Structure
   1) Defendant was female victim's uncle.
   2) Defendant was female victim's cousin.
   3) Defendant was male victim's uncle.

g) Related and member of Nuclear Family/Living in Same Household.
   1) Defendant was brother of female victim.
   2) Defendant was father of female victim.
   3) Defendant was father of male victim.
   4) Defendant was brother of male victim.
   5) Defendant was step-father of female victim.
   6) Defendant was living with mother of victim.

The particulars listed for each category are not exhaustive of possibilities but instead reflect the actual situations encountered in the data gathered for this study.
CHAPTER III

DATA ANALYSIS

Consistent with the purpose of this study, the objective of the statistical analysis was to discern the types of variables which exerted an influence on prosecutorial discretion. Special attention was devoted to assessing the impact of legal and extra-legal characteristics of the cases as they pertain to this dependent variable.

Essentially, the types of statistical analysis employed with these data include: (1) frequency and percentage distributions, (2) contingency table analysis, and (3) stepwise regression analysis. The ensuing discussion indicates the purpose behind each type of analysis along with the rationale for selecting particular statistical techniques to attain that objective.

Univariate Analysis

The initial analysis in this study consisted of obtaining frequency and percentage distributions on all of the variables included within this project. The resulting information was first utilized to make decisions regarding variable deletion and the collapsing of categories as discussed in the previous chapter.

These data were also seen as important for the construction of descriptive profiles which can be compared to findings in the research literature, where similar data were reported. The descriptive profiles will include characteristics of the offender and victim, circumstances
attending the crime, and attrition rates of CSC cases through the 
criminal justice process.

Missing Data and Non-Applicable Responses

Before any additional analysis could be conducted it was necessary 
to delete two types of data from all variable responses. All missing 
data or lack of information on a particular variable were excluded from 
all subsequent statistical analysis. Codes indicating non-applicable 
responses were similarly dropped from further analysis.

There were numerous situations involving the matter of non-applica-
table responses. An illustration can be seen in reasons the prosecutor 
provided for engaging in plea negotiation. If plea bargaining never 
materialized the reasons offered by the prosecutor would be irrelevant 
or non-applicable.

The necessity of eliminating cases with missing data or non-applica-
table responses for a given variable rests upon the desire to avoid 
confounding the results of the statistical tests.

Levels of Measurement

The choice of particular statistical techniques greatly depends 
upon the level of measurement for specific variables. The four levels 
of measurement traditionally mentioned include nominal, ordinal, in-
terval, and ratio.

Nominal variables are those which merely classify phenomena 
according to some criteria. Illustrative of this type of variable,
given the nature of this research, are factors such as race, sex, whether or not a weapon was employed, victim injury, and so forth. Ordinal scales require the rank ordering of a variable. With few exceptions, there was a virtual absence of ordinal data incorporated into the statistical analysis.

Interval levels of measurement represent a step beyond ordinal data since the assumption of equal-appearing intervals between the ordered categories is necessary. The most sophisticated type of measurement is reflected by ratio data which not only exhibit equal-appearing intervals but additionally contain an absolute zero point.

Although interval and ratio scales are distinguished from one another initially, they are seldom treated as distinct. Blalock (1972: 18) explains this when he comments that:

In practically all instances...this distinction between interval and ratio scales is purely academic, however, as it is extremely difficult to find a legitimate interval scale which is not also a ratio scale. This is due to the fact that if the size of the unit is established, it is practically always possible to conceive of zero units...

Bearing this consideration in mind no distinction was made between interval and ratio scale criteria. Accordingly, scales which possessed equal-appearing intervals will be identified as interval-ratio variables hence forth. Examples of these types of variables from this study would be items such as the number of witnesses, amount of bail, and the number of previous convictions for offenders.
Bivariate Analysis

For the purpose of contingency table analysis the dependent variable of prosecutorial discretion was trichotomized according to the type of discretion exercised. The decision to collapse the data on the dependent variable in this manner was based upon the realization that if the 124 independent variables had been run against prosecutorial discretion treated as an interval-ratio scale the resulting complexity of information would have been extremely difficult to interpret at this stage of analysis.

The decision to treat the dependent variables in this fashion for the cross-tabulations yielded three separate indicators of prosecutorial discretion. The first category was delineated on the criteria of charge reduction which corresponded to all positive numbers taken from the weighted scale. The second category contained all cases where the charge had been increased by the prosecutor which reflected all negative numbers taken from the weighted scale. The third category represented cases where there was no change in charges as indicated by a zero on the dependent variable scale.

The contingency tables for prosecutorial discretion involving cases where an arrest warrant was authorized included the 124 independent variables run against the three dependent variables as categorized above. This was done for the two major steps at which discretion could be exercised, which include (1) the decision regarding the authorization of an arrest warrant, given the requested charge from the police, and (2) discretion exercised between the authorization of an arrest warrant...
and final adjudicated charge. The 124 independent variables were also run against the overall discretion measure as indicated by the third dependent variable, i.e., the change from requested to adjudicated charge.

Cross-tabulations were also run to analyze the relationship between the 10 independent variables available for those cases which were denied and prosecutorial discretion. The true score values on the first dependent variable, representing the magnitude of discretion exercised in denying a warrant, were employed here. This was possible because of the relatively restricted range and distribution of these scores.

In addition to running the independent variables against the dependent variable of prosecutorial discretion, cross-tabulations were run between the independent variables to gather the necessary information required to compile the descriptive profiles mentioned earlier, as well as to assist with interpretations of later statistical results. Approximately 250 cross-tabs were run on the independent variables relevant to the authorized cases and approximately 18 were run on the independent variables pertaining to the denied cases.

Statistical techniques and bivariate analysis

In order to facilitate comparisons regarding simple and bivariate cross-tabulations, as well as cross-tabulations with controls, the decision was made to deal only with nominal statistics. This decision was based upon the fact that the dependent variables employed in these cross-tabulations were nominal, as were the majority of the independent
variables. Since there were very few independent variables which were ordinal, and several others which were interval-ratio, it was deemed most appropriate to deal with nominal statistics for the purpose of contingency table analysis. Later, with the stepwise regression analysis, the true values of the ordinal and interval-ratio variables were utilized.

Given these considerations, it was then necessary to select among a number of statistical measures designed for nominal data. Those which were considered included; phi, Yule's Q, the contingency coefficient, lambda, Goodman and Kruskal's tau_y, chi square and Cramer's V. The statistics selected for use were chi-square and Cramer's V. These two were chosen for the types of information they provide and also because of the various and sundry limitations associated with the other nominal statistics.

Chi-square ($\chi^2$) is a statistic designed to determine if there is a statistically significant relationship between nominal variables. It is critical to point out that a significant chi-square indicates nothing about the degree of strength of a relationship, but only that the relationship being examined departs from the assumption of statistical independence. With chi-square, a statistically significant relationship rejects the null hypothesis that there is no relationship between the variables under study.

One of the more serious problems with chi-square lies in that this statistic is sensitive to the number of observations which are included in the calculations. Nie, et al. (1975:224) suggest that with a large
sample, significant relationships may occur between variables which have even miniscule deviations or unimportant relationships. Conversely, with small samples it may be difficult to detect any significant relationships whatsoever.

Even given these potential difficulties chi-square was employed for the cross-tabulation analysis in this research. The powerful information it yields in terms of statistical significance among nominal variables was judged to compensate for its shortcomings. Chi-squares were particularly useful when applied to the matter of variable reduction.

Cramer's V was utilized as a supplementary statistic to overcome the limitation of chi-square regarding the magnitude of a statistically significant relationship. This also helped to handle the problem of sample size as it relates to chi-square values. It was necessary to inspect percentage distributions in conjunction with Cramer's V in order to take into account the fact that many relationships did not turn out to be statistically significant because of the relatively small samples sizes of 67 for the authorized cases and 78 for the cases which were denied.

Cramer's V is a measure of association for nominal variables. It is a normed statistic in that its lower limit is zero, and unlike many other nominal measures, it can reach its upper limit of unity. Cramer's V reflects the strength of association between nominal variables on a scale from zero to one.

The difficulties attending Cramer's V are generally discussed in regards to its interpretative potential. Nie, et al. (1975:225) and
Loether and McTavish (1974:197-198) indicate that Cramer's V does not permit the useful proportionate reduction in error (PRE) or percent of variance explained interpretations true of other statistical tests.

It should be pointed out that this deficiency is relative mostly to statistics which require more than a nominal level of measurement on the variables being examined. For example, most of the statistics which permit interpretations of variance explained require that at least one of the variables be interval-ratio. Similarly, with few exceptions, other statistical measures which permit a PRE interpretation require at least ordinal data. For instance, tau_b, tau_c, Gamma, and Somer's d, which allow for PRE interpretations, all require the inclusion of ordinal data. Because of the decision to treat all variables on the cross-tabulations as nominal, for reasons already mentioned, it was decided that the value of Cramer's V in conjunction with chi-square far outweighed these difficulties.

By using chi-square along with Cramer's V it was possible to systematically examine all cross-tabulations and select those variables which would be dealt with in subsequent analyses. The significance level chosen for selection on the basis of chi-square was the conventional probability level of .05. All variables which obtained values on Cramer's V of higher than .30 were also retained for further analysis.

While .30 may seem like a low score it was necessary to draw the cutting line there for several reasons. Only 7 of the 124 independent variables proved to be significantly related to the dependent variables.
in the authorized cases. It was suspected that this was due to the small sample size of 67. Inspection of all the Cramer's V scores included in the cross-tabulations indicated that the value of .30 seemed to best discriminate between relationships which were apparently existent and those which were not. Hertig (1979:15) warns that to go below .30 is not wise since anything lower is generally assumed to indicate a small or minimal relationship.

Because the more sophisticated statistical analysis would occur later, it was decided that an effort should be made not to prematurely eliminate variables which might conceivably have an influence on prosecutorial discretion. The working assumption was that while the relationships might not be strong on the cross-tabulations, they might be seen to have a greater impact at a later stage when other variables were statistically controlled. At the same time it was necessary to dispose of the less important variables so that the number of variables would not exceed the number of cases for the authorized file. Thirty-four independent variables were eventually retained after this kind of analysis.

Contingency Table Analysis With Controls

Cross-tabs with controls were run for the purpose of examining the effects of the different independent variables on prosecutorial discretion, when other types of variables were statistically controlled. This information was utilized as supplemental data to assist in interpreting the results of the stepwise regression analysis discussed in
the following section. It was also employed for the development of
the descriptive profiles of CSC cases under P.A. 266.

Organization of the cross-tabulations with controls was predicated
upon the more salient features derived from conflict theory in criminol-
ogy. The dependent variables were run against the extra-legal inde-
dependent variables, while simultaneously controlling for the legal
variables. Thus, it was possible to separate out influences on prose-
cutorial discretion according to the distinction between legal and
extra-legal criteria. For example, it was possible to examine the
influence of the defendant's race on prosecutorial discretion while
controlling for legal criteria such as his past record.

It was not feasible to meaningfully conduct this type of analysis
on the cases where a warrant was denied. The principle reason for this
was that there was virtually no information available for the extra-
legal variables such as the race and SES of the defendant which conflict
theory identifies as particularly significant.

For the cross-tabulations involving authorized cases the dependent
variable of prosecutorial discretion was left at the nominal level of
either an increase, decrease, or no change in charge. This was done in
order to facilitate comparisons between the results of this technique
and that previously discussed. The extra-legal independent variables
incorporated into the analysis were defendant's race and whether or not
counsel was appointed or retained.

Because there was an absence of data which could have been employed
to determine the SES of the defendant, the existence of appointed defense
counsel was the strategy used for trying to indicate SES. Other extra-
legal considerations such as the defendant's income, occupation, or
education, while desirable, were not utilized because of the absence of
this type of data in the prosecutor's files. Employing data on whether
defense counsel was privately retained or court appointed as an indica-
tor of SES is a technique consistent with previous studies (Neubauer,

Independent variables which could be classified as legal were
organized on two separate criteria. The first set of legal elements
controlled were those stipulated in the statutes. Controls were esta-
blished to disentangle cases which involved penetration instead of
contact, related parties from unrelated parties, and cases which in-
volved force, weapons, or victim injury from those which did not have
these characteristics.

The second set of legal variables dealt with criteria other than
those stipulated in the Criminal Sexual Conduct Code. Included here
were such factors as whether or not the defendant had previous felony
and misdemeanor convictions, previous CSC convictions or arrests as
well as whether or not the defendant had prior felony arrests. These
variables were coded in such a way as to make them mutually exclusive.
For instance, the existence of previous CSC convictions was not in-
cluded in the determination of whether or not felony convictions had
been sustained for a given case.

An illustration of a particular cross-tabulation with controls will
be useful at this time. One of the cross-tabulations run was the race
of the defendant against the first dependent variable dealing with discretion between the requested and authorized charge, while controlling for the existence of a felony or misdemeanor convictions. This analysis resulted in four tables, each of which examined race in relation to an increase, decrease or no change in charge. The first table portrayed this relationship under the condition of no previous felony or misdemeanor convictions. The second looked at race of defendant under the condition of a prior felony conviction(s) without any misdemeanor conviction. The third table contained cases where there was a previous misdemeanor conviction but no felony convictions. The fourth table included only those cases where there was the combination of previous felony and misdemeanor convictions.

Contingency tables with controls were also calculated taking into account characteristics of the offender, victim, and circumstances of the crime. Variables such as victim and defendant ages were cross-tabulated controlling for the race of the defendant and victim. Approximately ten such tables were constructed with the objective of developing a more accurate profile of the CSC cases in Kalamazoo county which came under the Criminal Sexual Conduct Code of the State of Michigan.

Stepwise Regression Analysis

Stepwise regression was employed in the final stage of data analysis in an effort to go beyond the simple chi-square test of significance and the Cramer's V method for determining the degree of association between the legal and extra-legal independent variables on
the three nominal measures of prosecutorial discretion. The desire was to ascertain which of the independent variables, including those which represent ordinal and interval-ratio variables, were able to explain the most variation on the dependent variables pertaining to prosecutorial discretion while controlling for the other independent variables. A corollary concern was to examine whether the same independent variables exerted an influence upon prosecutorial discretion as evidenced at the different stages of the criminal justice process.

The stepwise regression technique

Stepwise regression analysis selects the independent variables in the order of best to worst predictors of a dependent variable while statistically controlling for the effects of the other independent variables. The first independent variable selected explains the greatest amount of variation in the dependent variable. The second independent variable selected explains the most variation on the dependent variable after consideration of the first most effective predictor. The third independent variable explains the greatest amount of variation remaining in the dependent variable after the first two variables in the equation have explained as much as they possibly could, and so on. The stepwise name indicates that each time a new variable is entered into the equation a further step in explaining the variation in the dependent variable is performed.

There is another feature of stepwise regression analysis which merits attention at this point. In their discussion of levels of
measurement and multiple regression analysis, Kerlinger and Pedhazur (1973:8) state that "...multiple regression analysis has the fortunate ability to handle different kinds of variables with equal facility". Stepwise regression is a form of multiple regression analysis, and as such can also deal with interval-ratio, ordinal, and nominal (dummy) variables with relative ease. This asset is of particular value for this research study as there were many variables with different levels of measurement to be dealt with.

Of the alternative computer programs available for running stepwise regression SPSS (Statistical Package for the Social Sciences) was chosen because of the option it provides regarding the treatment of missing data. This option of pairwise deletion allows one to exclude cases with missing data on a particular variable, while at the same time retaining these cases for analysis of variables for which there is no missing data.

The other computer programs for stepwise regression do not have the pairwise deletion option. Instead they permit selecting options which would enter for missing values, the mean of all observations on the variable which were included, or replacement of missing values with a figure randomly generated from a distribution with the same mean and standard deviation as the variable being considered. By using pairwise deletion only true values are entered which are adjusted automatically for the number of cases, thereby providing greater accuracy.

With SPSS, as well as with alternative programs, if an option is not specified for dealing with missing data the computer automatically
defaults to the option of listwise deletion. This means that the cases containing any missing data will be excluded from all calculations, i.e., dropped from the analysis. This kind of situation would have been most detrimental for this research as there were only 5 cases for which absolutely no missing data existed.

**Statistics utilized from the stepwise analysis**

There are numerous statistics available with the stepwise regression procedure. Each statistic provides different types of information and thus for differing types of interpretations. Primarily three statistical measures were employed for interpretations of the stepwise results.

The coefficient of multiple determination, $R^2$, was the first statistic examined in order to assess the relationship between the independent variables and the prosecutorial discretion measures. This coefficient indicates the proportion of variation in the dependent variable which can be accounted for by the combination of all independent variables selected for entry in the stepwise regression analysis. By using $R^2$ it was possible to discern the amount of variation in the dependent variable measures which could be explained by the joint combination of independent variables at each step.

Each time a new independent variable is added into the stepwise analysis the $R^2$ value increases. The amount of increase which an independent variable contributed to the explanation of a dependent variable was also considered to assess its relative importance in predicting/explaining the variation in the dependent variable being examined.
The standardized partial regression coefficients, or betas, reflect the amount of change in the dependent variable for a unit change in an independent variable, when both variables have been converted to standard score form, and all other variables included in the equation are controlled (Green, 1978:58) (Blalock, 1972:453). This statistic indicates the relative contribution of an independent variable, when the effects of variables already entered in the stepwise analysis have been taken into statistical consideration. Beta values were essentially used to reveal the direction (positive or negative) in which the independent variables influenced the dependent variable measures.

The F ratio which was also examined tests the statistical significance of the unstandardized regression coefficient. This statistic was utilized as it permits the researcher to render a decision in terms of whether or not it is worthwhile to retain an independent variable because of its contribution to the prediction/explanation of the variation in the dependent variable. A statistically significant F ratio indicates that a particular independent variable merits retention, whereas an F which does not attain a level of statistical significance means that the addition of the variable in question does not sufficiently aid prediction or explanation to warrant its inclusion or retention.

The tolerance (T) and F values determine which variables will be entered into the stepwise regression calculations. Variables which are entered must have a value equal to or greater than the F and T values stipulated for inclusion. These values may be specifically set by the researcher, or one may let the default values of .01 and .001,
respectively, be operative. The $F$ value reflects the lowest or minimal $F$ ratio obtained that the researcher is willing to accept for inclusion of the variable in the stepwise process. The $T$ implies the proportion of variance a researcher is willing to accept in an independent variable (not yet in the equation) which is unexplained by independent variables already in the equation (Nie, et. al. 1975:346). A "$T$" of .001, the default value, for example, indicates that a new variable may be entered, if the proportion of variance remaining in this variable after the effects of its relation to the other independent variables in the equation have been taken out, exceeds .1 or 10%.

The default values were left to be operative in this research. It was also possible to specify the number of variables which could be considered, or the number of steps to be performed.

It was considered to be most advantageous to neglect this option as well. The variables had essentially been reduced as far as was possible with the previously discussed techniques. It was desirable at this point to discern which variables, without limiting the number or inclusion level, related most strongly to the dependent variables, one at a time, as well as to discover the effects which controls exerted on these different relationships.

**Variables included in the stepwise analysis**

There were a total of 35 independent variables incorporated into the stepwise regression program. All three variables dealing with
prosecutorial discretion were employed separately as interval-ratio ungrouped dependent variables. All of the independent variables, which were either nominal or interval-ratio, were further classified according to the legal and extra-legal distinction.

All of the true values, rather than the recoded or collapsed values utilized in the earlier data analysis, were entered for the interval-ratio independent and dependent variables included in the stepwise regression analysis. The interval-ratio independent variables, grouped according to legal and extra-legal factors, were as follows:

A) Legal;
   1) Number of prior felony and misdemeanor convictions.
   2) Number of prior arrests and convictions for CSC related crimes.
   3) Number of prior felony arrests.
   4) Age of victim.
   5) Number of witnesses.
   6) Conviction probability.

B) Extra-legal;
   1) Age of the case (a created variable for the purpose of analysis).
   2) Age of the defendant.
   3) Month of the crime.
   4) Year of the crime.
   5) Hour of the crime.
All nominal level variables were created into dummy variables in order to permit their use in this analysis. All dummy variables were dichotomous, and indicated either the absence or presence of some characteristic. Dummying the variables was accomplished by recoding categories in a like fashion to that discussed in the previous section of category collapsement. All responses encountered on the variable of weapon at crime, for example, were separated into the two categories of either yes, some type of weapon was present (coded as 1), or no, there for an absence of this characteristic (coded as 0).

The nominal level legal independent variables were:
1) Weapon at crime.
2) Victim injury.
3) Sexual penetration.
4) Resistence.
5) Evidential reason given as first reason for plea bargaining.
6) Evidential reason given as second reason for plea bargaining.

The nominal level extra-legal independent variables were:
1) Defendant's race.
2) Victim's race.
3) Victim's sex.
4) Defense counsel appointed/retained as indicator of socio-economic status.
5) Defendant's employment status.
6) Defendant's marital status.
7) Defendant's status at time of warrant request (jailed or not arrested).
8) Location of crime as a residence.

9) Police department handling case as Kalamazoo city police.

The methods of dummying the variables listed above requires clarification. Race was categorized so that a score of one was associated with black defendants and victims, to facilitate the examination of how this attribute effected prosecutorial discretion. Male victims were similarly coded as ones, and females as zero. In the case of appointed defense attorneys, a score of zero was assigned, indicating a low SES for the defendants, and a score of one for those who were able to retain their own lawyers. Unemployed defendants were assigned scores of zero, indicating the absence of employment, and employed defendants ones. Similarly, single defendants were all accorded values of zero while those who were married had scores of one. Those defendants jailed at the time of warrant request were given scores of one, those not, zeros.

Since multiple reasons were given and coded for plea bargaining, it was believed to be advantageous to include both of the first two reasons offered for engaging in plea bargaining in the stepwise regression. The third and fourth reasons were excluded as they contained a good deal of missing data. The responses were categorized as either evidential (1) or non-evidential (0) for this stage of analysis.

The location of the crime was assigned a value of one, if it took place at a residence instead of a public setting.

The police department was included in the stepwise analysis because it was suspected that it was an important variable, based upon a
statistically significant chi-square value from the cross-tabulation analysis. It was dichotomized on the basis of its frequency distribution. The Kalamazoo City Police handled 58% of all CSC cases. It was thus surmised that this police department might have exerted influence on the types of decisions prosecutors made. All cases originating from the city police department were assigned a value of one, and those originating from all other police departments accorded a value of zero.

Three ordinal level variables were also included in the stepwise regression analysis. The first of these was Circuit Court arraignment judges. The same principle of a significant chi-square dictated the inclusion of this variable. The variable was considered to be ordinal in that the judges were dichotomized on the basis of their experience with the CSC cases in this study. The first category contained all judges who had handled 7 to 21 of the CSC cases, and the second those judges who had presided over only 1 to 2 of these cases. These two categories were mutually inclusive of all judges.

Defense attorneys for the offenders were similarly treated as ordinal data. The category collapsement for this variable was outlined in the previous chapter. To reiterate, the first group was composed of those attorneys with no previous experience with CSC cases in this study, the second of those with very little experience (handled one previous case), the third of those who had some experience (2 to 3 cases), the fourth were those with a fair amount of experience (4 to 5 cases), and the final category was composed of those with a good deal of experience (handled 6 to 9 cases).
The victim/offender relationship scale, also described in the previous chapter, was considered to be an ordinal variable as well. The scale began with the value of one for no relationship between involved parties, and continued through a value of 7 for related parties who were living together in the same household.

A stepwise regression was also conducted on the cases in which there was a warrant denial. As with all other analysis of denied cases, only the first dependent variable was used. The only legal variable available was whether or not the defendant had a previous criminal record. This, of course, was also dummied. The extra-legal variables at the interval-ratio level were month and year of crime and age of defendant. The remaining extra-legal variables were all at a nominal level of measurement. Police department, defendant status at the time of the warrant request and location of the crime were all created as dummy variables in exactly the same manner as was described for the authorized cases. The reasons given for warrant denials were divided into those which were evidential from those which were not, with comparable reasoning to this same division in terms of reasons given for plea bargaining.

Further considerations

It was only possible to conduct one stepwise regression analysis for the denied warrant cases. The nature of the data necessitated conducting several stepwise analyses however for the authorized cases. The existence of three dependent variables, along with the objective
of ascertaining how the independent variables influenced them separately, called for three individual regression analyses to begin with. However, this had to be broken down even further for purposes of meaningful interpretation.

The results of treating the dependent variables as true positive and negative scores would have been confusing, if not misleading. By way of illustration, it would be difficult to interpret a positive correlation between the magnitude of discretion exercised and the number of felony convictions. Would this mean that there was more charge reduction, i.e., higher positive dependent variable scores, as the number of convictions increased; or would it intend that the magnitude of charge increase is less, i.e., higher negative dependent variable values, as the number of felony convictions increased?

This predicament was resolved by conducting two separate stepwise regressions on each of the three dependent variables.

The stepwise analyses were conducted with the purpose of assessing the impact of the independent variables upon the type as well as amount of prosecutorial discretion. To accomplish this goal the reduced charge cases were separated from the cases which evidenced charge increases. Hence, each dependent variable was separated on the basis of positive and negative scores. The cases in which there was no change from requested to authorized, authorized to adjudicated, or requested to adjudicated charge, i.e., had dependent score values of zero, were included as the lower limit for each of the divided dependent variables. In other words, the "no change" cases served as the lowest score
representing the absence of discretion for the now six dependent variables, as dichotomized by charge reduction and charge increase.

It was untennable to treat separately the cases in which there was an absence of prosecutorial discretion. This was simply because the scores on the dependent variables here were all zero. Obviously, when there is no fluctuation in values, one is dealing with a constant, not a variable. A decision had to be rendered in terms of how to deal with these values, as constants are not amenable to statistical analysis. It was decided that treating these no change cases as the lower limit in both the increased and decreased charges was the most appropriate means by which to deal with these values, as there was no a priori criteria to dictate in which category these no change cases rightfully belonged. The benefit of treating the data in this manner was that dependent variables could then be compared with comparable baseline data.
CHAPTER FOUR

RESEARCH RESULTS

Introduction

The organization of this chapter is based upon the research objectives indicated in the statement of the problem. The first section provides descriptive information pertaining to the characteristics of the offender and the victim, along with data concerning special circumstances attending the crime. The second section presents results concerning attrition rates associated with the processing of CSC cases during the three year period covered by this study. The findings discussed in these two sections will be compared to previous research literature which provides data on similar variables associated with rape cases elsewhere in the country.

The third section included in this chapter is devoted to the assessment of factors which influenced prosecutorial discretion at various stages in the criminal justice process. Special consideration is given to interpreting factors influencing prosecutorial discretion in terms of the distinction between legal and extra-legal criteria. A corollary interest will be to determine whether or not different sets of factors influenced prosecutorial discretion at the various stages of decision-making by prosecutors.

Descriptive Comparisons with Previous Research

This section will endeavor to make comparisons between findings of
this study and those which were reviewed in Chapter One under the heading of Research Literature on Rape. This analysis will provide the basis for assessing the similarities or dissimilarities between the previous literature on rape and descriptive characteristics relevant to cases prosecuted under the new Criminal Sexual Conduct Code of Michigan. These comparisons will be valuable since there is virtually no literature which compares descriptive dimensions associated with cases handled under traditional statutes pertaining to rape cases with results from cases dealt with under reform legislation.

There are a number of different characteristics which are included under the general topic concerning characteristics of the offender and victim. Comparisons with previous research under this heading will involve these dimensions: (1) the race of the offender and victim; (2) the frequency and type of interracial rape; (3) the ages of offenders and victims; (4) the marital status of the offenders; (5) the socio-economic status of the offenders; (6) prior records of offenders; (7) frequency of multiple-offender assaults; and (8) the relationship of the offender to the victim.

The descriptive comparisons concerning characteristics associated with the offense include both legal and extra-legal dimensions. Extra-legal considerations include race of victims and offenders, whether or not the offender and/or the victim had been drinking or using drugs, the location of the crime, and the season and time of day or night when crimes were committed. The presence of a weapon at the time of the offense, victim/offender relationship and the extent of victim
injury, can be considered legal factors since these dimensions are incorporated in the statutes contained in the Criminal Sexual Conduct Code of Michigan.

The comparisons concerning attrition with rape cases will examine the frequency with which cases drop out of the criminal justice process at the various stages of prosecution. The results of this study will be compared with the findings of Williams (1978), Schram (1978) and the study supported by INSLAW (1977).

The comparisons are based upon frequency, percentage, and contingency table data. All tables portray information on the cases with available data on the variables being considered. All relationships identified as statistically significant had a chi-square value with a probability level of .05. Variables which did not attain statistical significance were not considered unless they were thought to be of special theoretical significance.

Characteristics of offenders and victims

Race

The results of this study concerning the race of offenders is consistent with previous research findings. Minorities were seriously over-represented as rape offenders. Minority offenders who were black constituted 42% of all cases included in this study. One offender included in this category was Mexican-American. Given that all minorities in Kalamazoo account for only 5.3% of the total population (Verway, 1978:55), the assertion that they are over-represented as offenders
becomes quite obvious.

Consideration of the race of the victims reveals some differences from the previous research on this variable. Only 13% of the victims included in this study were black. Amir's (1971:44) study conducted in Philadelphia found that 80% of the victims were black. The figure of 37% black victims reported by MacDonald (1975:76) is somewhat more compatible with this study. A partial explanation of this discrepancy might be that in Kalamazoo County there is a relatively small percentage of blacks in the population. Black victims were still over-represented to their proportion in the population as the figure of 13% for black victims exceeds the approximate 5% proportion of blacks in the Kalamazoo area.

Interracial rape

Table I provides a summary of the race of the offenders and victims. Overall, slightly more than half of the cases involved situations where both the offender and victim were white. The next most frequent category reflects an interracial composition with black offenders assaulting white victims. In only one instance was there a case involving the opposite type of interracial rape with a white offender and black victim.
Table I

Race of Victim by Race of Offender

<table>
<thead>
<tr>
<th>Race of Offender</th>
<th>White</th>
<th>Black</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>54%</td>
<td>2%</td>
<td>56%</td>
</tr>
<tr>
<td></td>
<td>(27)</td>
<td>(1)</td>
<td>(28)</td>
</tr>
<tr>
<td>Black</td>
<td>32%</td>
<td>12%</td>
<td>44%</td>
</tr>
<tr>
<td></td>
<td>(16)</td>
<td>(6)</td>
<td>(22)</td>
</tr>
<tr>
<td>Total</td>
<td>(43)</td>
<td>(7)</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>(50)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Chi-Square = 5.75  \( p < .05 \)
Cramer's V = .34

Compared to the findings of Amir (1971:44) and Chappell (1977:16) the frequency of interracial rape involving a black offender and white victim was quite high. The results of this study concerning interracial rape are closer in frequency to figures reported by Agopian, Chappell and Geis (1977:131) and MacDonald (1975:51). The observed differences between these studies might be due to the varying racial compositions of locations examined.
Age of offenders and victims

The age distributions pertaining to the offenders and victims were in the general direction suggested by previous research on rape. This kind of information is particularly useful for studies which might want to make comparisons between age categories associated with rape cases and those involving other kinds of criminal offenses.

The age category of offenders which appears most frequently in the literature on rape is between 15 and 19 years old. Amir (1971:52) found that 40% of all the offenders he studied were in this particular age category. Schram (1978:9) indicates that 47% of the offenders in her research fell into this same age category.

The most frequent age category encountered in this study, which includes all offenders for which a requested charge was submitted to the prosecutor, was also between 15-19. But the frequency associated with this category, while in the same direction indicated by Amir and Schram, was considerably less. Approximately 22% of the cases examined in this investigation were within this particular age grouping.

Comparisons concerning the age distribution for victims can be made by looking at the percentage of victims 18 years of age or younger. Approximately 71% of all the victims for which data were available, which pertained only to authorized cases, were within this age category. This finding is quite high compared to other research results. Amir (1971:52) reports that about 45% of the cases he examined fell into this age range. Peters (1977:282) produced findings similar to Amir.
Schram (1978:17) indicates an even lower figure of 32% of cases within this age category.

The relative age of the offender and victim was examined by Amir (1971:56). In his study he made comparisons based upon an age factor of plus or minus five years. Amir’s findings were that 67% of the cases he looked at met this criteria, whereas only 33% of the sexual assaults in this study involved an age difference of this nature.

Marital status of offenders

This factor is often examined since many researchers are interested in trying to determine if marital status of an offender influences how the criminal justice system exercises discretion. Later on this factor will be considered in the light of prosecutorial discretion. The findings of this study are generally consistent with that which has been reported elsewhere. Slightly over half of the offenders in this research were single, a figure which approximates results reported by other researchers such as MacDonald (1975:54-55). This result changed very little when looking at marital status in relation to the race of the offender. Black and white offenders were pretty evenly distributed in both the single and married categories.

SES of offenders

Because of the assumption that crimes of violence are more frequently committed by members of the lower class in society, it is worthwhile to examine this characteristic as it relates to the CSC
cases under investigation. The study by Amir (1971:70) found 90% of all offenders to be from the lower strata of society. The results of this study, compared to the kind of finding reported by Amir, must be cautiously stated. It will be recalled from Chapter Two that low SES in this study was operationalized by the existence of appointed defense counsel. Almost 59% of the offenders in this study were from the lower class of society, as compared with 41% who had a higher SES.

It is interesting to note that based upon data available in terms of offenders' employment status, only 35% of the defendants were unemployed. This variable was not employed as an indicator of SES due to the amount of missing data. Nonetheless, it is instructive to bring attention to the fact that by itself, employment status may not necessarily reflect SES accurately. This statement is based on the finding that while 59% of the offenders could not afford to retain their own attorneys, only 34% were unemployed.

Prior record of offenders

Interest in whether or not an offender had a previous criminal record is based upon a concern with recidivism. In other words, both criminologists and society are concerned with the frequency with which people with past records are likely to engage in repeated criminal activity.

Sixty percent of the offenders had some type of prior record in the cases for which an arrest warrant was denied. The situation with authorized cases was higher (74%). These figures fall within the range
of previous research reports as indicated by Amir's (1971:112) 49% and MacDonald's (1975:56) findings of approximately 85%.

Based upon an analysis of authorized cases where data were available, 12.5% of the offenders had been previously convicted for sex related offenses. Nearly 23% of the offenders had been previously arrested for sexual assaults.

Most of the previous research concerning the past records of sexual offenders brackets these results. Amir (1971:112) found that 9% of the offenders in his study had prior records associated with sexual crimes. The results reported by MacDonald (1975:56) were very close to the findings in this project. He indicates that 12% of the offenders he examined had previous convictions for sexual offenses, while 20% had been arrested in the past for sex related crimes.

Multiple-offender rape

Sexual assaults involving more than one offender in Kalamazoo County were much less frequent than what had been previously reported in the literature. Only 6% of the cases had more than one assailant. Amir (1971:200) stated that 43% of the rapes in Philadelphia involved multiple-offenders. Chappell (1977:15) and Peters (1977:349) report that two or more offenders were involved in 35% of the instances they examined. And finally, Schram (1978:10) indicates that 25% of the rapes she studied involved more than one perpetrator.

Without more information it is difficult to explain these disparities. One possibility is that in cities such as Philadelphia,
there are more juvenile gangs than in Kalamazoo County, which contributed to the multiple-offender statistics. This would be consistent with other findings by Amir which indicate that young offenders from the lower class account for most of the criminal assaults.

Relationship of victim to offender

Victim/offender relationships range from complete strangers to incest. Within those two extremes are a variety of possibilities representing everything from casual acquaintances to relatives outside of the immediate nuclear family. Table II depicts the overall percentages of CSC cases associated with varying degrees of familiarity between victims and offenders.
Table II
Victim/Offender Relationship

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strangers</td>
<td>18</td>
<td>33</td>
</tr>
<tr>
<td>New Acquaintance</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>Previous Acquaintance</td>
<td>10</td>
<td>18</td>
</tr>
<tr>
<td>Offender Entrusted with Care of Child</td>
<td>7</td>
<td>13</td>
</tr>
<tr>
<td>Former Spouse, Roommate, or Cohabitant</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Relatives—Outside of the Nuclear Family</td>
<td>7</td>
<td>13</td>
</tr>
<tr>
<td>Relatives—Nuclear Family</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>Total</td>
<td>54</td>
<td>100</td>
</tr>
</tbody>
</table>

The research literature reports a great deal of variability regarding rapes by total strangers. The figure of 33% of the case included in this study is the lowest reported. By comparison those reported by Amir (1971:234) 42%, Chappell (1977:13) 53%, Schram (1978: 70) 57%, MacDonald (1975:77) 60%, Chappell and Singer (1977:258) 71%, and Hindelang and Davis (1977:95) 80%, were higher.

There is literally no data in the research literature reviewed for this study on incest. Information is presented on the frequency with which sexual assaults involve relations, but relatives are not
distinguished in terms of whether or not they were members of the nuclear family. Thus, it is impossible to directly compare the 9% of the assailants who were in the nuclear family in this study with previous research.

Instead attention must be directed to sexual assaults involving the more general category where the offender was some type of relative to the victim but not necessarily in the nuclear family. The 22% of the offenders reported in Table II who were in this category represents a figure which is much higher than reported elsewhere. Chappell (1977:13) reports that 11.3% of the cases he studied involved offenders who were related to the victim. Schram (1978:70) and MacDonald (1975:77) found that approximately 5% of the rapes involved relatives. Amir (1971:234) and Chappell and Singer (1977:258) determined that in only about 2.5% of the offenses were the offender and victim related.

A statistically significant relationship emerged in this study concerning sexual assaults on strangers by race of the offender (Table III). White offenders were more likely to assault someone they knew than was the case with black offenders.
Table III

Race of the Offender by Victim/Offender Relationship as Strangers

<table>
<thead>
<tr>
<th>Relationship to Victim</th>
<th>Black</th>
<th>White</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stranger</td>
<td>55%</td>
<td>39%</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td>(12)</td>
<td>(15)</td>
<td></td>
</tr>
<tr>
<td>Not a Stranger</td>
<td>45%</td>
<td>61%</td>
<td>33</td>
</tr>
<tr>
<td></td>
<td>(10)</td>
<td>(23)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>(22)</td>
<td>(38)</td>
<td></td>
</tr>
</tbody>
</table>

Chi-square = 7.4       p < .05
Cramer's V = .35

Patterns of incest by race of the offender also produced a statistically significant finding. Table IV provides data on this dimension. As can be seen only white offenders engaged in incest with no cases being reported where a black offender sexually assaulted a member of the nuclear household.
Table IV

Race of Offender by Victim/Offender Relationship as Incest

<table>
<thead>
<tr>
<th>Relationship to Victim</th>
<th>Race of Offender</th>
<th></th>
<th></th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Black</td>
<td>White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Incest</td>
<td>0%</td>
<td>18%</td>
<td>(0)</td>
<td>5</td>
</tr>
<tr>
<td>No Incest</td>
<td>100%</td>
<td>82%</td>
<td>(22)</td>
<td>45</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>(22)</td>
<td>50</td>
</tr>
</tbody>
</table>

Chi-square = 4.36  p < .05
Cramer's V = .30

Sex of the victim

This variable reflects a neglected area in research on sexual assaults. Most of the homosexual assaults (78%) involved victims who were under 15 years of age. Of the youthful victims the vast majority were in the age category of 10-14.

Table V shows that there was a strong difference between the victim/offender relationship when a comparison is made concerning heterosexual and homosexual assaults. Nearly 40% of the heterosexual offenses were between complete strangers, while there were no instances
of homosexual assaults involving an offender who was completely unknown to the victim. Similarly, 10.2% of heterosexual offenses involved an offender who was a new acquaintance to the victim, whereas there were absolutely no homosexual assaults involving this kind of victim/offender relationship. This means that approximately 50% of all heterosexual assaults were perpetrated by an offender who was a complete stranger or the victim hardly knew at the time. Homosexual assaults never were between complete strangers or people who barely knew each other.

Table V

Sex of Victim by Victim/Offender Relationship

<table>
<thead>
<tr>
<th>Victim/Offender Relationship</th>
<th>Sex of Victim</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>Strangers</td>
<td>0%</td>
<td>39%</td>
</tr>
<tr>
<td></td>
<td>(0)</td>
<td>(19)</td>
</tr>
<tr>
<td>New Acquaintance</td>
<td>0%</td>
<td>10.2%</td>
</tr>
<tr>
<td></td>
<td>(0)</td>
<td>(5)</td>
</tr>
<tr>
<td>Old Acquaintance</td>
<td>20%</td>
<td>16.4%</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>(8)</td>
</tr>
<tr>
<td>Defendent Entrusted with Care of Victim</td>
<td>20%</td>
<td>10.2%</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>(5)</td>
</tr>
</tbody>
</table>

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### Table V (Cont')

**Sex of Victim by Victim/Offender Relationship**

<table>
<thead>
<tr>
<th>Victim/Offender Relationship</th>
<th>Sex of Victim</th>
<th>(N)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>Former Spouse, roommate</td>
<td>20%</td>
<td>6%</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>(3)</td>
</tr>
<tr>
<td>Relatives: Non-nuclear Family</td>
<td>20%</td>
<td>10.2%</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>(5)</td>
</tr>
<tr>
<td>Related and Living in Same Household</td>
<td>20%</td>
<td>8%</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>(4)</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>(10)</td>
<td>(49)</td>
</tr>
</tbody>
</table>

Chi-square = 10 \(p > .05\)

Cramer's \(V\) = .41

Another interesting comparison which is suggested by Table V concerns heterosexual and homosexual assaults where the offender was related to the victim. Forty percent of all homosexual assaults involved an offender who was related to the victim, but only in 18.2% of the cases involving heterosexual assaults were the victim and offender related. This difference may be influenced by the fact that 78% of all the homosexual assaults involved youthful victims under 15 years of age.
Hence, homosexual offenders in this study chose youthful victims who were accessible by being related to the offender much more frequently than was the case with heterosexual offenders.

There was also a statistically significant relationship between the race of the offender and sex of the victim (Table VI). The overwhelming majority (87.5%) of homosexual assaults involved white offenders, whereas only one black defendant assaulted a male victim. It is also worth mentioning that 80% of all homosexual assaults involved offenders from the lower socio-economic strata of society.

Table VI

Sex of Victim by Race of Offender

<table>
<thead>
<tr>
<th>Race of Offender</th>
<th>Male</th>
<th>Female</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>87.5%</td>
<td>55%</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>(7)</td>
<td>(25)</td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>12.5%</td>
<td>45%</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(20)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>(8)</td>
<td>(45)</td>
<td></td>
</tr>
</tbody>
</table>

Chi-square = 8  \( p \leq .05 \)

Cramer's \( V = .39 \)
Circumstances attending the crime

Circumstances associated with sexual assaults most frequently mentioned in the literature can be partitioned into legal and extra-legal categories. Extra-legal considerations include whether or not drugs or alcohol had been consumed, where the crime took place, and the season and time of the day or night during which the offense occurred. Legal factors relevant to this study include whether or not a weapon was evident at the crime and the extent of victim injury.

Alcohol/drugs

In 18 cases information was available regarding the use of alcohol or drugs. In the 49 cases where there was no information provided in the prosecutor's files it had to be assumed that these elements were not relevant. The 18 cases represented 27% of all the authorized CSC crimes. This percentage is close to the 34% figure reported by Amir (1971:98) and the 31% reported by Chappell (1977:14).

As indicated in Table VII the most frequent occurrence was one where only the defendant had been drinking. Half of the cases were accounted for by combining this with situations where the defendant alone had been drinking with the situations where the defendant had been smoking marijuana. Defendant use of other drugs contributed another 5% to this figure. Table VII also indicates that both the offender and victim had been drinking and/or smoking marijuana in the remaining cases for which information was available. There were absolutely no instances where the victim had been consuming alcohol and/or...
drugs when the offender had not been drinking, smoking, or using other drugs.

Table VII

Consumption of Alcohol/Drugs

<table>
<thead>
<tr>
<th>Offender/Victim</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defendant Drinking</td>
<td>7</td>
<td>39%</td>
</tr>
<tr>
<td>Defendant Drinking &amp; Smoking Marijuana</td>
<td>2</td>
<td>11%</td>
</tr>
<tr>
<td>Defendant/Drugs</td>
<td>1</td>
<td>5%</td>
</tr>
<tr>
<td>Both Defendant &amp; Victim Drinking</td>
<td>5</td>
<td>28%</td>
</tr>
<tr>
<td>Both Drinking &amp; Smoking Marijuana</td>
<td>3</td>
<td>17%</td>
</tr>
<tr>
<td>Total</td>
<td>18</td>
<td>100%</td>
</tr>
</tbody>
</table>

Patterns associated with the consumption of alcohol in Amir's (1971:99) study can be compared to these results. Whereas approximately 63% of the cases he examined reflected a circumstance where both the offender and victim had been drinking, only 45% of the cases reported here manifested this combination. Amir's finding that 29% of the victims had been drinking when offenders had not, is quite divergent.
from the findings of this research. The 39% of the cases in this re-
search which indicated that the defendant alone had been drinking is
also different from Amir's reported 8% figure for this category.

Chappell (1977:14) found yet another pattern concerning the con-
sumption of alcohol as it related to sexual assaults. He reports that
36% of the offenders had been drinking when the victim had not, 9% of
the victims had been drinking when the offender had not, and in 24% of
the cases both the offender and victim had been drinking.

Location of the crime

An essential ingredient of any rape prevention program is in-
formation concerning where rapes are most likely to occur. Table VIII
provides this kind of data as it pertained to the authorized cases
examined in this study.

Table VIII

<table>
<thead>
<tr>
<th>Location</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victim's Residence</td>
<td>23</td>
<td>38</td>
</tr>
<tr>
<td>Offender's Residence</td>
<td>12</td>
<td>20</td>
</tr>
<tr>
<td>Shared Residence of Victim &amp;</td>
<td>6</td>
<td>10</td>
</tr>
<tr>
<td>Offender</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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Table VIII (Cont')

Location of the Crime

<table>
<thead>
<tr>
<th>Location</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residence of a Relative of the Victim</td>
<td>1</td>
<td>1.5</td>
</tr>
<tr>
<td>Unknown Residence</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Dormitory</td>
<td>1</td>
<td>1.5</td>
</tr>
<tr>
<td>Jail</td>
<td>1</td>
<td>1.5</td>
</tr>
<tr>
<td>Motel</td>
<td>1</td>
<td>1.5</td>
</tr>
<tr>
<td>Automobile</td>
<td>8</td>
<td>13</td>
</tr>
<tr>
<td>Street</td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>Park</td>
<td>1</td>
<td>1.5</td>
</tr>
<tr>
<td>Field</td>
<td>1</td>
<td>1.5</td>
</tr>
<tr>
<td>Total</td>
<td>61</td>
<td>100</td>
</tr>
</tbody>
</table>

Sexual assaults taking place at the residence of the victim were the single most frequent location discovered in this study. The 38% figure from this study is higher than the 24% reported by Chappell (1977:13) or the 30% indicated by Schram (1978:72) for this same
location. Amir (1971:145) found a much higher percentage of 56% of sexual offenses occurring in the home of the victim.

This study found that offenses taking place at the home of the offender represented 20% of the authorized cases. This finding is more than twice the figure of 8% reported by Chappell (1977:13) and somewhat less than double the 11% reported by Amir (1971:145) and the 13% indicated by Schram (1978:72).

The probability of a sexual assault taking place in an automobile reveals a similar pattern between the results reported here and in other investigations. In this study 13% of the offenses took place in a car, a finding similar to Amir's (1971:145) reported 15% and Schram's (1978:72) figure of 16%.

Most interesting is the frequency of sexual attacks outdoors or in public places. Hindelang and Davis (1977:94) report their highest frequency pertaining to this location. They found 50% of the cases to have taken place outdoors. Chappell (1977:13) reports a figure of 27%, whereas Amir (1971:145), MacDonald (1975:33), and Schram (1978:72) all report findings which range from 14 to 18 percent. All of these research findings are higher than the 10% found to be the case in this study.

Season and time of sexual assaults

Amir (1971:14) suggests that rape is often associated with the summer months. His findings support this contention when comparisons are made to the other seasons of the year. A similar pattern was
evidenced in this study. Table IX compares the findings in this project to those obtained by Amir (1971:75). Both studies support the general contention that sexual assaults occur most frequently during the warmer summer months.

Table IX

A Comparison of Seasonal Patterns in Kalamazoo County and Philadelphia

<table>
<thead>
<tr>
<th>Season*</th>
<th>Kalamazoo County</th>
<th>Philadelphia</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
<td>Percentage</td>
</tr>
<tr>
<td>Fall</td>
<td>14</td>
<td>20.9</td>
</tr>
<tr>
<td>Winter</td>
<td>15</td>
<td>22.4</td>
</tr>
<tr>
<td>Spring</td>
<td>15</td>
<td>22.4</td>
</tr>
<tr>
<td>Summer</td>
<td>23</td>
<td>34.3</td>
</tr>
<tr>
<td>Total</td>
<td>67</td>
<td>100</td>
</tr>
</tbody>
</table>

*Fall (September, October, November)
Winter (December, January, February)
Spring (March, April, May)
Summer (June, July, August)

Chappell and Singer (1977:251) show a similar disproportionate distribution with sexual assaults in Boston during the summer months,
but indicate that this seasonal fluctuation was not evident in New York City. Similarly, rapes in L.A. were evenly distributed over the seasons. This later finding is understandable since seasonal variations are less pronounced in Southern California. Without the benefit of specific additional information it is difficult to explain the findings for New York City which has a similar climate to Kalamazoo County, Philadelphia, and Boston.

The time of the day or night when sexual assaults are most likely to occur is of interest to those concerned with rape prevention. This study found that sexual assaults are the most likely to occur during the night. Approximately 61% of the offenses took place between 8 P.M. and 8 A.M. Of these 38% happened between 8 P.M. and midnight. Sexual assaults during the day were fairly evenly distributed by hour.

The findings of Amir (1971:84) are quite similar. He found that 69% of the rapes occurred between 8 P.M. and 8 A.M. His study shows that more than twice as many rapes occurred between 8 P.M. and 2 A.M. than the rest of the night. Daytime rapes in the Amir study were distributed in approximately the same fashion as was evident in this study.

Hindelang and Davis (1977:94), Schram (1978:67) and MacDonald (1975:30) report findings which support the contention that the most likely time for rapes is during the later night hours. The consistency of this pattern should be of considerable interest to those trying to inform the public concerning the threat of sexual assaults.
Weapons

The presence or absence of a weapon in the commission of sexual assaults is frequently cited in the research literature. Twenty percent of the CSC cases in Kalamazoo County involved some type of weapon. This figure is relatively low compared with the 62% reported by Chappell (1977:14), 53% by Schram (1978:11), the 50% given by Hindelang and Davis (1977:96), and even the 33% reported by Chappell and Singer (1977:261). Consistent with studies by Chappell (1977:14) and Chappell and Singer (1977:261) the findings here suggest that knives are by far the most frequent weapons chosen by offenders (78% or 7 out of 9 cases).

Table X contains information concerning whether or not weapons were present according to the race of the offender. As can be seen black offenders had weapons 33% of the time, whereas white assailants only had weapons in 11% of the sexual assaults. Both blacks and whites, as previously mentioned, preferred knives. A gun was evident in only one case as was a blunt instrument, both of which involved black offenders.
Table X

Race of Offender by Weapon

<table>
<thead>
<tr>
<th>Weapons</th>
<th>Race of Offender</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Blacks</td>
<td>Whites</td>
<td>N</td>
</tr>
<tr>
<td>None</td>
<td>67% (12)</td>
<td>89% (25)</td>
<td>37</td>
</tr>
<tr>
<td>Gun</td>
<td>5.5% (1)</td>
<td>- (0)</td>
<td>1</td>
</tr>
<tr>
<td>Knife</td>
<td>22% (4)</td>
<td>11% (3)</td>
<td>7</td>
</tr>
<tr>
<td>Blunt Instrument</td>
<td>5.5% (1)</td>
<td>- (0)</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>100% (18)</td>
<td>100% (28)</td>
<td>46</td>
</tr>
</tbody>
</table>

Chi-square = 4.9  p > .05
Cramer's V = .33

As might be expected the presence of weapons during sexual assaults does result in greater victim injury than when no weapons are involved. Table XI presents these data which were statistically significant.
Table XI

Presence of Weapons by Victim Injury

<table>
<thead>
<tr>
<th>Victim Injury</th>
<th>Present</th>
<th>Absent</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Present</td>
<td>87.5%</td>
<td>53%</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>(7)</td>
<td>(18)</td>
<td></td>
</tr>
<tr>
<td>Absent</td>
<td>12.5%</td>
<td>47%</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(16)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>42</td>
</tr>
<tr>
<td></td>
<td>(8)</td>
<td>(34)</td>
<td></td>
</tr>
</tbody>
</table>

Chi-square = 4.8  \( p < .05 \)

Cramer's V = .39

Victim injury

In half of the cases examined here there was no physical injury to the victim. This is quite similar to the findings of Hindelang and Davis (1977:97). It is higher than the figure of 33% reported by Chappell (1977:14) but somewhat lower than the 68% reported by Schram (1978:19). The results indicated by Amir (1971:155) are divergent from all of these findings in that he found only 15% of the instances involving no victim injury. Normally, sexual penetration by itself is not considered in these figures. It becomes a factor when there are
additional injuries such as vaginal tears and so forth.

There was a statistically significant relationship between victim injury and race of the offender as indicated in Table XII. This was also accompanied by a strong Cramer's V value. Clearly, victims of white offenders are less likely to sustain an injury as the result of a sexual assault than when the assailant is black. This finding is consistent with the aforementioned observations that black offenders more frequently than white assailants have weapons and that the presence of a weapon influences the likelihood of victim injury.

Table XII

Race of Offender by Victim Injury

<table>
<thead>
<tr>
<th>Degree of Injury</th>
<th>Race of the Offender</th>
<th></th>
<th></th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Black</td>
<td>White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No Injury</td>
<td>19%</td>
<td>78.3%</td>
<td>(3)</td>
<td>(18)</td>
</tr>
<tr>
<td>Minor Injury</td>
<td>56%</td>
<td>4.3%</td>
<td>(9)</td>
<td>(1 )</td>
</tr>
<tr>
<td>Treatment Required</td>
<td>12.5%</td>
<td>17.4%</td>
<td>(2)</td>
<td>(4)</td>
</tr>
<tr>
<td>Hospitalization</td>
<td>12.5%</td>
<td>-</td>
<td>(2)</td>
<td>(0)</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>(16)</td>
<td>(23)</td>
</tr>
<tr>
<td>Chi-square = 19.17</td>
<td>p &lt; .05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cramer's V = .70</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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Attrition Rates in CSC Cases

The intent of this section is to examine the frequency with which the different criminal sexual conduct charges do not proceed through complete adjudication. A special concern is to discern at which of the different stages in the criminal justice process these cases were eliminated. The results are compared to findings of other researchers.

Overall attrition rate

Flow Chart A provides an overall picture of discretion exercised by the criminal justice system in processing CSC cases examined in this study. The process shown begins with police decisions regarding requested charges, moves through whether or not an arrest warrant was authorized by the prosecutor, continues on to preliminary hearing disposition and the extent of plea bargaining, and finally ends with the frequency of guilty convictions.

Table XIII provides the more specific information from this study and from the research by Schram (1978:49), INSLAW (1977:125), and Williams (1978:26, 28) pertaining to a number of different rates. Blank cells indicate that there was not sufficient information provided by a particular study to calculate the rate of particular concern. Before a discussion of this table is possible it will be necessary to identify and explain how each different rate was calculated.
FLOW CHART A

CSC Cases Processed Through the Criminal Justice System in Kalamazoo County, Michigan from 1975 to 1977

- Suspect Not Arrested (79) 57.2%
- Suspect Released (4) 2.9%
- Suspect Jailed (55) 39.9%
- Total Warrant Requests By Police (145) 100%
- Warrant Requests Authorized (AZ) (67) 46.2%
- Cases Bound Over at Prelim. (63) 94% of AZ (43% of total)
- Plea Bargaining (11) 16.4% of AZ (8% of total)
- Dismissed at Prelim. (4) 6% of AZ (3% of total)

In seven cases data were unavailable on this dimension.

In 13 cases the prelim. was waived. In these cases defendants are automatically bound over to circuit court. This is not necessarily indicative of plea bargaining.
In 40 cases, defendants waived the circuit court arraignment, the court thereby enters the plea of "Stood Mute, Not Guilty". This is not necessarily indicative of plea bargaining.

d. Total of 39 plea bargained cases. This represents 58% of all authorized cases and almost 30% of the total.

e. A total of 15 cases (11 at this stage plus 4 dismissed at the prelim.) or 22% of the warrants authorized for CSC crimes were dropped out of the system.

f. Missing data at various disposition stages accounts for the varying number of cases at decisional points indicated.
Table XIII
Factors Indicating Attrition in the Prosecution of Sexual Assaults

<table>
<thead>
<tr>
<th>Factors</th>
<th>This Study</th>
<th>Schram</th>
<th>INSLAW</th>
<th>Williams</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecution Rate</td>
<td>46%</td>
<td>27%</td>
<td>-</td>
<td>74%</td>
</tr>
<tr>
<td>Plea Bargaining Rate</td>
<td>58%</td>
<td>-</td>
<td>39%</td>
<td>22%</td>
</tr>
<tr>
<td>Rate of Acquittals and Dismissals/Nolles</td>
<td>22%</td>
<td>27%</td>
<td>36%</td>
<td>-</td>
</tr>
<tr>
<td>Conviction Rate/Authorized Cases</td>
<td>73%</td>
<td>44%</td>
<td>63%</td>
<td>-</td>
</tr>
<tr>
<td>Overall Conviction Rate</td>
<td>34%</td>
<td>12%</td>
<td>-</td>
<td>20%</td>
</tr>
<tr>
<td>Overall Attrition Rate</td>
<td>64%</td>
<td>88%</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Prosecution rate

The prosecution rate involves the first stage where the prosecutor exercises discretion. It is calculated by dividing the authorized charges by the number of requested charges forwarded to the office of the prosecutor by the police.
Plea bargaining rate

The rate of plea bargaining relates to the frequency with which a prosecutor enters into plea bargaining with cases which have been authorized. The rate is calculated by dividing the total number of authorized charges into the number of cases plea bargained.

Rate of acquittals/dismissals

This calculation is restricted to considerations of cases for which a warrant has been authorized. It is calculated by dividing the total number of cases acquitted or dismissed by the number of cases which were authorized by the prosecutor.

Conviction rate for authorized cases

This heading is more or less self-explanatory. The method of determining this rate is to combine convictions achieved through plea bargaining and trials and dividing this figure by the number of authorized cases.

Overall conviction rate

The overall conviction rate looks at the criminal justice system in a somewhat different fashion. Rather than looking at convictions established through plea bargaining and trials over the number of authorized cases, the strategy is to employ the total number of requested charges as the denominator. This permits the inclusion of cases for which the
prosecutor denied warrants, as well as the authorized cases, which gives a better overall indication of conviction ratios.

Overall attrition rate

The overall attrition rate is the flip side of the overall conviction rate. The calculation requires combining the denied, acquitted, and dismissed/nolled cases and dividing them by the total number of police requested charges.

As was previously mentioned it was not always possible to make calculations for all these different rates given data limitations involved with the studies by Schram, INSLAW, and Williams. It should also be noted that while adding the Overall Conviction Rate and the Overall Attrition Rate should result in 100%, the figures did not total this amount in this research due to missing data on three cases. Thus, the combined figure was 98%.

Discussion

While it is beyond the scope of this discussion to try and definitively determine factors accounting for variations indicated in Table XIII, it is possible to suggest some directions for future research considerations. The most general recommendation is for greater standardization of information which would facilitate more systematic comparisons between different studies concerning these various rates associated with the prosecution of sexual assaults.

Prosecution rates vary considerably among the studies for which
this figure could be calculated. The figure of 27% based upon the data from Schram is the lowest while the 46% reported here is between this (27%) and the 74% rate associated with the study by Williams. The interpretation of these findings is that prosecutors studied by Schram deny the greatest proportion of requested charges from the police while those studied by Williams authorized warrants most frequently. The proportion of cases denied by the prosecutor in Kalamazoo County falls in between these two extremes. One way of explaining this difference is to consider the organizational relationship between the police and the office of the prosecutor. It is possible that in the study reported by Schram the police and prosecutor had not attained an effective working relationship which results in the prosecutor having to deny more requested charges because they fail to meet prosecutorial standards. There may also be a tendency among the prosecutors studied by Schram to be more stringent on authorization while those investigated by Williams may have had a strong proclivity toward authorizations regardless of the merit behind police requested charges. There is some support for the possibility that a compromise strategy as evidenced by the prosecutor in this study is justified when attention is direction toward Conviction Rates for Authorized cases. Figures concerning this rate indicate that the prosecutor in Kalamazoo County is considerably more effective in attaining convictions for authorized cases than the prosecutors studied by Schram. Unfortunately, it was not possible to calculate a Conviction Rate for Authorized cases in the study by Williams which might have further supported the possibility that
a middle-ground strategy is the most effective.

The data in Table XIII indicate a distinctive pattern which suggests that prosecutors enter into plea negotiations at differential rates. The Kalamazoo County prosecutor did so with 58% of the authorized CSC cases, while the study by INSLAW suggests a figure of 39% and William's one of 22%. Comparing this to the Prosecution Rate it would appear that the prosecutors examined by William's authorize cases more frequently than the one in Kalamazoo County, but the former are much less inclined toward plea bargaining. The Overall Conviction Rate suggests that the prosecutors in William's research had a lower figure than that which was calculated for the prosecutor in Kalamazoo County. Perhaps if the prosecutors included in William's study were more willing to engage in plea negotiations they could have effectively increased their Overall Conviction Rate. It might be useful if sentencing data were available so that comparisons could be made, in a general sense, between severity of sentences in relation to guilty pleas and trial conviction. One reason for failing to make extensive use of plea bargaining might be the desire of prosecutors to sustain severe sentences through trial convictions.

Both the Kalamazoo County cases and those examined by Schram portray a similar rate of acquittals/dismissals for authorized cases. Those prosecutors considered by INSLAW lost a relatively higher percentage of authorized cases through acquittals or dismissals. Comparing the figures attributed to the Kalamazoo County prosecutor with those involved in the INSLAW study regarding plea bargaining a possible
explanation emerges. The Kalamazoo prosecutor entered plea negotia-
tions with 58% of the authorized cases, whereas prosecutors discussed
in the study by INSLAW did so in 39% of cases for which a warrant had
been authorized. What this means is that by not engaging as frequently
in plea bargaining the prosecutors in the INSLAW research lost rela-
tively more cases through acquittals and dismissals than was the situa-
tion with the Kalamazoo County prosecutor.

The Conviction Rate for Authorized cases was the highest for the
Kalamazoo prosecutor, followed by the prosecutors studied by INSLAW
and then those examined by Schram. As had been previously suggested
the difference between this study and that of Schram may be based upon
more effective authorization policies employed by the Kalamazoo prose-
cutor as indicated by the Prosecution Rates. The lack of data from
the INSLAW study concerning the Prosecution Rate makes it impossible
to determine if the direction of this explanation would hold for
offenses they studied.

The Kalamazoo prosecutor had the highest Overall Conviction Rate
of 34%, whereas those studied by Williams were the next highest with a
rate of 20%. The prosecutors included in the study by Schram had the
lowest rate of 12%. The result from the Schram study can be explained
by the fact that the prosecutors there had the lowest Prosecution Rate
along with the lowest Conviction Rate for Authorized Cases. Prosecutors
in that study also had a slightly higher loss of cases through acquit-
tals and dismissals than was the situation with the Kalamazoo prosecutor.
The apparent strategy of the prosecutors investigated by Williams was to
authorize warrants with a high degree of frequency. In fact, as the table indicates, their Prosecution Rate of 74% is considerably higher than the others reported. Because of the high frequency of authorizations compared to the low figure associated with the research by Schram, it is understandable that they would manifest a higher Overall Conviction Rate. The high frequency of denials by the prosecutors in Schram's study obviously undermines their Overall Conviction Rate. Once again, however, the strategy of the Kalamazoo County prosecutor to take a middle-ground approach regarding authorizations seems to result in more effective prosecution than either extreme as represented in the figures related to the studies by Schram and Williams. The Overall Conviction Rate in this study is nearly three times as high as the figure reported for Schram's study and approximately 15% higher than the figure calculated for prosecutors investigated by Williams.

Since the Overall Attrition Rate is simply the flip-side of the Overall Conviction Rate it is not necessary to discuss it further. The interpretation for the differences in Overall Conviction Rates would apply equally to this factor.

Prosecutorial Discretion

Davis (1976) has pointed out that prosecutors enjoy considerable discretionary latitude in their pivotal position within the criminal justice system. Through the denial or authorization of an arrest warrant they exercise a great deal of discretionary power regarding whether or not cases will continue through the criminal justice system. By
deciding to enter plea negotiations the prosecutor is able to obtain convictions without having to go through trial proceedings. All of this crucial discretion by the prosecutor occurs in the virtual absence of systematic review or structured checks by other agencies within the criminal justice system.

This section discusses the kinds of variables which influenced prosecutorial discretion in CSC cases during the three year period covered by this study. Flow chart B provides an overview of prosecutorial discretion in terms of the number and percentages of cases affected at the various stages of criminal prosecution.

All prosecutorial discretion begins when the police submit their requested charges for consideration. The prosecutor then decides whether or not to deny or authorize an arrest warrant. An authorized warrant may reflect an increase, decrease, or no change in charging from what was requested by the police. Before an authorized warrant can be officially issued it must be submitted for judicial approval. All authorized warrants in this study were issued by the judges and left unaltered from that which prosecutors recommended. Plea bargaining in this study always resulted in a reduction from the authorized to final adjudicated charge. When plea bargaining did not occur the final adjudicated charge was equivalent to that which was originally authorized.

The flow chart is useful in establishing the basis for selecting the principle points at which prosecutorial discretion was analyzed in this project. The first dependent variable involves those cases where
FLOW CHART B

Stages of Prosecutorial Discretion

- **Requested Charges**: 100% (145)
- **Warrants Authorized as Requested**: 52% (34) of Authorized
- **Warrants Authorized for Increased Charges**: 24% (16) of Authorized
- **Warrants Authorized for Reduced Charges**: 24% (16) of Authorized
- **Warrant Denials**: 53.8% (78)
- **Total Warrant Authorizations**: 46.2% (67) of all requests
- **Cases Adjudicated as Authorized**: 40.2% (27) of Authorized
- **Cases Adjudicated for Reduced Charges - plea bargained**: 58.2% (39) of Authorized*
- **Total Adjudicated Cases**: 100% (67) of Authorized

*Percentages short of 100% due to missing data.
the prosecutor denied the authorization of a warrant. The second dependent variable pertains to those cases where the prosecutor increased the authorized charge from that which was requested by the police. The third dependent variable represents those instances when the prosecutor decided to reduce the authorized charges from what the police had requested. The fourth dependent variable concerns those cases which were plea bargained by the prosecutor. And finally, the fifth dependent variable indicates the magnitude of overall prosecutorial discretion from requested through the final adjudicated charges.

Stepwise regression analysis was employed to select those independent variables which had an influence on prosecutorial discretion as measured by the five dependent variables. The statistical technique of stepwise regression selects independent variables in rank order of the amount of variation in the dependent variable they are able to explain. The first independent variable chosen is the one which accounts for the greatest amount of variation in the dependent variable when nothing else is controlled. The second independent variable selected will be the one which accounts for the greatest amount of remaining variation in the dependent variable. This process continues in sequential order through the remaining independent variables selected for inclusion in the stepwise analysis.

Each of the discussions on factors influencing prosecutorial discretion on the four dependent variables associated with authorized cases will be preceded by a summary table which will provide important information from the stepwise analysis. Because of problems associated
with insufficient data on independent variables associated with warrant denials it was deemed unnecessary to provide a table in that situation.

These summary tables will firstly identify the independent variables selected by the stepwise regression analysis in the order they were entered and then indicate the amount of variation which could be accounted for in the dependent variable at each of the various stages ($R^2$). The summary tables will also provide information regarding the amount of increase each independent variable contributed to the explanation/prediction of the variation in the dependent variable being considered. The tables further present information in terms of whether or not a variable was worth retaining based upon statistical significance as determined by the F ratios.

All variables selected by the stepwise regression analysis will be discussed and interpreted. Given the importance of conflict perspectives in criminology a special effort will be made to interpret each of these variables as legal or extra-legal influences on prosecutor's discretion. Those independent variables which were statistically significant are the most important to identify as influencing the different types of discretion examined. Those variables which were selected by the stepwise regression analysis but did not attain statistical significance are also discussed but should be viewed as factors of much less importance.
Denied warrants

Slightly more than half of the cases included in this study resulted in the denial of an arrest warrant by the prosecutor. Unfortunately, the files of the prosecutor contained very little information concerning factors related to this decision. The problem of available data for denied cases became strikingly apparent upon completion of the stepwise analysis for this dependent variable. All of the available independent variables taken together could account for only 18% of the variation in prosecutorial discretion concerning denied authorizations. This meant that a full 82% of the variation could not be explained by the available data.

Because of this finding there was little that could be done in terms of interpreting factors influencing prosecutorial discretion at this stage of the criminal justice process. Given that denied authorizations accounted for more than half of the cases examined in this investigation, in conjunction with the observation by Davis (1976: 10) that discretion involving denials of warrants is the most immune from any type of review or structured checks, this development was very disappointing.

Variables influencing an increase from requested to authorized charge

Of all the warrants which were authorized by the prosecutor 24% reflected an increased charge from that which was requested by the police. As the final $R^2$ shows (Table XIV) approximately 55% of the variation was accounted for by taking into consideration the age of
the victim, the number of previous sex related convictions of the offender, and the number of witnesses to the crime.

Table XIV

Summary of Variables Influencing an Increase From Requested to Authorized Charges

<table>
<thead>
<tr>
<th>Variables Name</th>
<th>Statistic</th>
<th>2 Increase in R</th>
<th>2 Significant at Final Step</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Age of Victim</td>
<td>.250</td>
<td>---</td>
<td>No</td>
</tr>
<tr>
<td>2. Number of Previous Sex Related Convictions</td>
<td>.316</td>
<td>.066</td>
<td>Yes</td>
</tr>
<tr>
<td>3. Number of Witnesses</td>
<td>.547</td>
<td>.231</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Age of victim

Even though the age of the victim did not reach statistical significance it warrants discussion as it relates to the specific criteria stipulated in the CSC Code. The finding essentially indicates that there were more charge increases with older victims, than was the case for younger victims of sexual offenses.

The reason for this can be ascertained by examining the severity associated with the different degrees of sexual conduct. The Michigan code varies the severity of offense with the age of the victim. The statutes specify particular degrees of offense taking into account...
whether or not the victim was under thirteen, between thirteen and sixteen, or over sixteen years of age (Appendix A). Thus, cases involving younger victims generally involve a higher requested charge from the police than those where the victim was over the age of sixteen. When the victim's age is not a specific consideration influencing requested charges there is a tendency for greater variability in interpretations by both police and the prosecutor. This accounts for the prosecutors increasing charges with a greater frequency when victims were over the age of sixteen.

The cross tabulation between age of the victim and requested charges lent support to this type of interpretation (Table B1, Appendix B). In other words, the results showed that police did in fact request the more serious CSC offenses most frequently when victims were less than 16 years of age. An illustration of this is found in that police requested CSC in the first and second degrees in all cases involving victims under the age of 13, while CSC in the fourth degree was the requested charge exclusively for cases involving victims 17 years of age or older.

Given the manner in which the Michigan CSC Code is written, the age of the victim can be understood as increasing prosecutorial flexibility with older victims, and hence facilitating the exercise of discretion in these cases. The nature of this variable's influence is not amenable to strict classification as either legal or extra-legal at this point. The subsequent variables which significantly effected the increases in charging must be considered in order to shed light upon
the nature of influences as they effect the degree of increase in warrant authorizations.

Number of previous sex related convictions

After age of the victim was taken into consideration this variable was the second strongest predictor of increased charging by the prosecutor from what the police requested. Because this variable was statistically significant it should be considered as more important than age of victim which did not attain statistical significance.

There are a number of alternative explanations which have been suggested in the research literature which account for the prosecutors increasing of charges for offenders who had previous convictions for sexual offenses. One possibility which has been offered is that the prosecutor operates with a greater presumption of guilt when offenders have been convicted in the past of similar types of criminal activity. By increasing authorization charges the prosecutor enhances his latitude for attaining convictions later through plea bargaining in these cases. Leverage for plea bargaining is also increased with offenders who have prior convictions for sexual offenses since this information is likely to be included in the Pre-sentence Investigation Report submitted to a judge when considering severity of sentencing for convictions obtained through trial proceedings.

Support for this reasoning can be seen in the fact that charges were increased from the warrant request to authorization stage, but this never occurred between the authorization and final adjudication stage.
Of the 16 cases where charges were initially increased by the prosecutor at authorization, 14 were later reduced through plea bargaining negotiations.

Since conflict theorists interpret anything having to do with the prior record of an offender as a legal criteria, prior convictions for sex-related offenses can be seen as a legalistic rather than an extra-legal factor influencing prosecutorial discretion at this stage. Accordingly, this result can be interpreted as supporting a legalistic rather than conflict perspectives pertaining to the administration of justice by the prosecutor.

**Number of witnesses**

The third and final independent variable selected by the stepwise regression analysis which contributed to understanding charge increases at authorization was the number of witnesses to the criminal offense. This variable was statistically significant and along with prior convictions for sexual offenses represents a more important factor than age of the victim. What this finding means is that as the number of witnesses increased, so too did the extent of charging increases at authorization.

The relationship between the number of witnesses and charge increases can be explained by suggesting how this is related to evidential criteria influencing the strength of the prosecutor's case. As the number of witnesses increases the prosecutor's confidence in obtaining a guilty conviction also increases.
It is reasonable to assume that the prosecutor's estimates concerning the likelihood of conviction given the number of witnesses is understood by the defense attorney. By increasing the charge at authorization the prosecutor provides latitude for plea negotiations when the defense attorney would like to avoid a trial given the likelihood of the offender being convicted.

Previous literature pertaining to the classification of discretionary criteria as legal or extra-legal does not deal with the factors concerning the number of witnesses. It is difficult to imagine how this variable could be classified as extra-legal, but it is possible to understand how it can be seen as a legal criteria. The number of witnesses is related to considerations concerning the sufficiency of evidence for prosecution. Therefore it seems reasonable to interpret this factor as being a legal influence on the exercise of discretion.

If there was a relationship between number of witnesses and the SES or race of offenders, it could be argued that this variable is actually masking extra-legal criteria. Since this was not found to hold in this study it must be concluded that the number of witnesses is a legalistic rather than extra-legal factor influencing prosecutorial decisions to increase charges at authorization.

Summary

All of these independent variables selected by the stepwise regression analysis on the dependent variable associated with increased charges at authorization can be viewed to be of a legal nature. Age
of the victim, prior convictions for sex-related offenses, and the number of witnesses to the crime taken together accounted for 55% of the total amount of variation in the dependent variable. While these factors contribute to understanding influences on prosecutorial discretion involving increases in charges at authorization, there is much left to be explained since almost half of the variability could not be accounted for by available data.

The finding that the prosecutor increased charges in approximately 24% of all cases which were authorized is most interesting given the previous literature on prosecutorial discretion. Most of that literature focuses on whether or not warrants are denied or authorized, along with factors related to the frequency of plea bargaining. Very little attention has been directed toward systematically examining situations where the prosecutor increases the authorized charge from that which was requested by the police.

The employment of the weighted-scale to assess the magnitude of prosecutorial discretion in this direction represents another contribution of this study. By measuring the magnitude of increased and decreased charges at authorization, and then the magnitude of charge reductions established through plea bargaining it was possible to more precisely investigate prosecutorial discretion.

It is also important to realize that the new Criminal Sexual Conduct Code examined in this research project may contribute to prosecutorial discretion involving increases in charges at authorization. The reason for this is based upon the fact that the legislation
explicitly identifies degrees of severity associated with criminal sexual offenses, which permits prosecutors greater flexibility in charging with sex related offenses.

Variables influencing a reduction from requested to authorized charge

Flow Chart B indicates that the prosecutor reduced charges at authorization in exactly the same number of cases as those involving increases at this stage of the criminal justice process. This means that in 16 instances, or 24% of all authorized warrants, the prosecutor reduced the authorized charges from what had been requested by the police. Table XV reveals that taken together victim injury, and the number of previous felony convictions and arrests for offenders accounted for 84% of the variation concerning the dependent variable involving charge reduction at authorization. All three of these variables were statistically significant as determined by their F ratios.

Table XV

Summary of Variables Influencing a Reduction From Requested to Authorized Charge

<table>
<thead>
<tr>
<th>Variable Name</th>
<th>Statistic</th>
<th>2 R² Increase in R</th>
<th>2 Significant at Final Step</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Victim Injury</td>
<td>.320</td>
<td>---</td>
<td>Yes</td>
</tr>
<tr>
<td>2. Number of Previous Felony Convictions</td>
<td>.414</td>
<td>.094</td>
<td>Yes</td>
</tr>
<tr>
<td>3. Number of Previous Felony Arrests</td>
<td>.842</td>
<td>.428</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Victim injury

The variable which is strongest in its association to reduction in authorized charges was victim injury. Thirty-two percent of the variability in the prosecutors decision to reduce the seriousness of police requested charges could be explained by the absence or presence of victim injury when other variables were not taken into account. The result suggests that the largest reduction is likely to occur when victims sustain injuries during the criminal sexual assault and require some type of medical treatment. It should be noted that victim injuries refer to those sustained apart from the act of the sexual assault itself.

At first glance this finding would appear to contradict what might normally be expected. The explanation for this result can be seen in the divergent interpretations of the significance of victim injury as seen by the prosecutor and the police.

The Criminal Sexual Conduct Code in Michigan provides for consideration of victim injury in all four degrees of criminal sexual conduct and not only for the more serious charges. Furthermore, the legislation does not take into account the severity of victim injury according to the seriousness of the offense by degrees of criminal sexual conduct. Law enforcement agencies, however, may interpret the CSC charge to be more serious than the actual victim injury would sustain in court. Because of the way the code is written, with victim injury being a factor with all four degrees of severity pertaining to sexual assaults, the prosecutor is more likely to utilize other criteria...
in addition to victim injury when deciding on the authorized charge. Accordingly, the prosecutor exercises a more stringent check on police definitions concerning the seriousness of sexual offenses. The propensity to reduce charges in these cases can be seen as a function of the prosecutor's attempt to fit the offense authorized with the corpus dilecti of the crime itself.

Table B2 (Appendix B) provides support for this interpretation. It was found that requested charges for the more serious offenses of CSC 1 and CSC 2 were made in 20 out of 21 cases where the victims sustained some type of injuries. In 96% of the cases involving victim injury the police requested charges were for CSC offenses with the most severe maximum sentences as dictated by state statute.

Number of previous felony convictions

This finding indicates that as the number of prior convictions for felonies increased, charge reductions by the prosecutor were more likely to occur. The interpretation of this finding requires once again looking at the possible relationship between factors influencing police as opposed to prosecutorial charging decisions. The police may be inclined to try and charge any type of recidivist with the highest possible offense. Reductions by the prosecutor from what is requested may represent a check on over-charging by the police. Prosecutorial consideration of the total picture concerning the offense may result in the judgment that the requested charges do not merit retention at the level suggested by the police who may exaggerate the significance of
prior felony convictions.

Examination of the relationship between previous felony convictions and requested charges by the police substantiates this interpretation (Table B3, A, Appendix B). Higher requested charges, such as CSC 1 and CSC 3 which both involve penetration, were more often for offenders with previous convictions for felonies than for those without prior felony convictions.

It is important to recognize the differential effect prior convictions have on prosecutorial discretion at authorization depending upon the nature of the previous offenses. In the previous section it was found that prior convictions for sexual assaults led to an increase in charging by the prosecutor from what was requested by the police. Here it was found that number of previous felony convictions produced greater reduction in authorization charges from that which was requested by the police.

To understand this difference concerning the prior convictions of offenders it is necessary to take into consideration the entire criminal justice process. Previously, it was suggested that with prior convictions involving sexual offenses the prosecutor may not only presume guilt, but additionally he knows that this information will likely be included in the Pre-Sentence Investigation Report which a judge will take into consideration when considering severity of sentencing. While information concerning prior felony convictions will usually also be included in this report, it is possible to assume that it will not have as direct of an effect on sentencing as convictions for sex-related offenses when
the conviction is for the same type of crime. This means that the prosecutor may sense greater leverage with prior convictions for sexual assaults in cases dealing with the same kind of offense than when the previous convictions are for non-sexual offenses. This would explain why the prosecutor may strategically feel that an increase concerning authorization warrants with offenders who had prior convictions for sexual offenses is viable, whereas the same strategy would probably be less effective with offenders who had prior convictions for non-sexually related crimes. Again, the effect of prior felony convictions was found to be related to the seriousness of the requested charge as an influence on charging reduction.

Number of felony arrests

The stepwise regression analysis selected the number of previous felony arrests as the final variable influencing the decision of the prosecution to reduce charges at authorization. Just as was the case with victim injury and the number of prior felony convictions this variable was statistically significant.

This research finding is consistent with the influence of prior felony convictions on prosecutorial discretion involving the reduction of charges at authorization. The same interpretations would be relevant to this variable.

As was true with offenders with previous felony convictions, those with prior felony arrests were more frequently charged by police for the more serious criminal sexual conduct offenses (Table B4, Appendix B).
For example, of all police requests for CSC 1, twenty-one were for offenders with one or more felony arrests, while only five were for offenders with no past felony arrests.

Summary

Victim injury, the number of past felony convictions, and the number of prior felony arrests were found to significantly influence the prosecutor's decision to reduce charges at the warrant authorization stage. Taken together they accounted for 84% of the variation in charge reduction. Only 16% of the total variation was left unexplained by the available data.

From the perspective of assessing the relevance of conflict theory in explaining prosecutorial discretion at this stage it clearly is of little value. Victim injury, previous felony convictions, and past arrests for felonies are all legal factors influencing the decision by the prosecutor to reduce authorized charges from that which was requested by the police. The seriousness of the charges requested was found to be an important factor in understanding the discretion exercised by prosecutors.

Consideration of all factors influencing prosecutorial discretion, involving either an increase or decrease in charging at authorization, do not support the contentions of conflict theory as narrowly defined. SES and race never once were selected as variables influencing prosecutorial discretion. Moreover, race and SES were not found to be significantly related to the independent variables selected. The only exception here
was victim injury and race of offender, (Table XII) but this finding was also directionally inconsistent with conflict perspectives. Victim age, prior convictions for sexual offenses, the number of witnesses, victim injury, along with the number of felony convictions or arrests, are more clearly interpreted as legal rather than extra-legal criteria.

**Variables influencing charge reduction through plea bargaining**

Plea bargaining normally ensues after prosecutors have determined the charge to be authorized on an arrest warrant. Of the total 66 cases in this study where there was available data, 39 were reduced from authorization to the final adjudicated charge through plea bargaining. The remaining 27 cases were left unaltered and the final adjudicated charge was the same as that which had been originally authorized by the prosecutor. There were no instances of charge increases from the authorized to adjudicated stage in this study.

The stepwise regression analysis selected a total of five independent variables which contributed to the explanation of the magnitude of charge reduction through plea bargaining. Table XVI identifies each of these variables in rank order of importance.
### Table XVI

Summary of Variables Influencing a Reduction From Authorized to Adjudicated Charge

<table>
<thead>
<tr>
<th>Variable Name</th>
<th>$R^2$</th>
<th>Increase in $R^2$</th>
<th>Significant at Final Step</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Criminal Sexual Penetration</td>
<td>0.090</td>
<td>---</td>
<td>No</td>
</tr>
<tr>
<td>2. SES of Offender</td>
<td>0.181</td>
<td>0.091</td>
<td>No</td>
</tr>
<tr>
<td>3. Experience of Defense Attorney</td>
<td>0.252</td>
<td>0.071</td>
<td>Yes</td>
</tr>
<tr>
<td>4. Second Reason for Plea Bargaining was Non-Evidential</td>
<td>0.318</td>
<td>0.066</td>
<td>Yes</td>
</tr>
<tr>
<td>5. First Reason for Plea Bargaining was Evidential</td>
<td>0.512</td>
<td>0.194</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Criminal sexual penetration

The cases which involved criminal sexual penetration rather than contact evidenced a greater degree of charge reduction through plea negotiations. Even though this particular variable was not statistically significant, it does warrant further discussion.

The importance of the distinction between criminal sexual penetration and contact, as it pertains to plea bargaining, lies in the way the Criminal Sexual Conduct Code in Michigan was written by the legislators. CSC crimes involving sexual contact are by statute considered to be less
serious offenses than those involving penetration. Accordingly, maximum sentences for serious offenses, those involving sexual penetration, have an overall severity which exceeds that which is associated with offenses involving sexual contact. This in turn influences the magnitude of discretionary flexibility for the prosecutor.

CSC 1, which involves penetration, carries a maximum life sentence. Conceivably, a CSC 1 could be reduced to the lesser included offense of assault and battery which carries a maximum sentence of only 90 days. A similar reduction of a CSC 2 (sexual contact) authorized charge, which has a maximum sentence of 15 years, would entail considerably less prosecutorial discretion. Although the influence on this variable was not statistically significant, it does reveal how the criteria stipulated in the CSC code effect the exercise of prosecutorial discretion.

SES of offenders

While this variable was not statistically significant, and therefore had a negligible effect on plea bargaining reductions, it was in the direction predicted by conflict theorists. The result of the step-wise analysis indicates that those with low SES were less likely to have charges reduced through plea bargaining than those with a higher SES.

Comparisons between high and low SES offenders on a variety of legal criteria such as the seriousness of the offense, prior felony convictions and arrests, CSC convictions, victim injury, and so forth, produced no statistically significant patterns of differences which
might account for this finding.

Within the broader context of all variables selected as having an impact on charge authorizations and plea bargaining, SES is the only one that can be interpreted as extra-legal and supportive of conflict theory in criminology. Because this variable did not attain statistical significance, along with the fact that it was the only clearly extra-legal criteria selected, it is suggested that it provides weak directional support for conflict theory. It would seriously stretch matters to assume that it's impact on prosecutorial discretion was critical.

Experience of defense attorney

It was found that the more experience which defense attorneys had accumulated with CSC cases over the three year period of this study, the greater the magnitude of resulting charge decreases. Unlike the previously discussed factors of penetration and the SES of the offender, this variable had a statistically significant influence on plea bargaining charge reductions.

The effect of this variable is best understood in relation to the literature on prosecutorial discretion. Grosman (1969), Neubauer (1974) and Cole (1975) all posit that the working relationship between prosecuting and defense attorneys exerts an influence on the exercise of prosecutorial discretion. Cooperative and positive working relationships are seen by these authors to facilitate the achievement of both attorneys' goals. Sudnow (1965) describes how through the course of their interactions prosecutors and defense lawyers come to share
definitions regarding the seriousness of different criminal offenses and subsequently develop "recipes" for dealing with different cases according to their shared definitions. Sudnow intimates that as defense attorneys gain greater exposure to the office of the prosecutor they are able to promote working relationships which are more mutually advantageous.

It might be speculated that the relationship between prosecutors and less experienced defense lawyers is more problematic in that these types of attorneys are more susceptible to being dominated by the prosecutor. Conversely, less experienced defense attorneys may engender prosecutorial resistance by assuming unrealistic stances regarding their client's situation.

While there is no direct data available from this study to substantiate these possibilities, if true they would account for the finding that as defense attorneys increase their experience with CSC cases they are able to more effectively benefit their clients through plea bargaining reductions. A future direction for research on prosecutorial discretion would be to more systematically explore how the experience of defense attorneys influences plea negotiations.

**The impact of evidential reasons on plea bargaining**

The prosecutor in Kalamazoo County cites his reasons for entering plea negotiations on a standardized form which was accessible to this investigation. Cole's (1975) distinctions between evidential, pragmatic, and organizational factors influencing prosecutorial discretion were
employed to categorize the 48 different types of reasons provided by the prosecutor for plea bargaining. The result was that 26 reasons were classified as evidential, while the remaining 22 reasons were categorized as either pragmatic or organizational. All 48 categorized reasons can be found on page 61 of Chapter Two.

For the purposes of the stepwise regression analysis of reasons given for plea bargaining all 48 responses were classified as evidential or non-evidential. The non-evidential category includes both pragmatic and organizational factors influencing prosecutorial discretion. There were two basic reasons for dichotomizing reasons for plea bargaining as evidential and non-evidential. Evidential reasons for plea bargaining are the most directly amenable to a strictly legalistic interpretations. The other consideration was that dichotomizing, as opposed to trichotomizing prosecutorial reasons, greatly facilitates interpretations of the data.

The prosecutor most frequently responded with multiple reasons for engaging in plea bargaining on the plea negotiation form. In almost every case which was plea bargained, the prosecutor offered at least two reasons for entering into plea negotiations. Because of this factor both the first and second reasons given were included in the stepwise regression analysis.

Evidential reasons included dimensions such as the legal strength of the case as determined by force, coercion, or violence. The lack of victim credibility constituted another salient evidential consideration. The sufficiency and amount of available evidence was similarly viewed as evidential criteria.
Non-evidential reasons include both pragmatic and organizational considerations as indicated by Cole (1975). Pragmatic considerations include factors such as defendants having no prior record, the possibility that trial testimony would produce victim trauma, and so forth. Organizational reasons such as the judge asking the prosecutor to get rid of some of the charges against the defendant, the defendant agreeing to total cooperation, and the defendant willing to plea to other CSC charges pending against him were also considered to be in the non-evidential category. The literature suggests that because prosecutors are very often elected officials, a political dimension might also be operative with these organizational and pragmatic considerations. For example, plea bargaining decisions might be affected by prosecutor's assessments of political expediency, concern for the reputation of the office and so forth.

What is interesting to observe about the impact of evidential and non-evidential criteria on the first or second reason for plea bargaining is their relative impact on charge reductions through plea bargaining. Table XVI indicates that when the second reason was non-evidential it had a greater impact on charge reduction than when the first reason cited was evidential.

Interpretation of this finding requires looking at Table XVII which examines the interrelationship between evidential and non-evidential factors on the first and second reasons given by the prosecutor for plea bargaining. There is a statistically significant relationship suggesting that either the first and second reasons will both be evidential.
or the first and second reasons cited will both be non-evidential. The Cramer's V of .46 indicates that the relationship is quite strong.

Table XVII

First Reason Given for Plea Bargaining By Second Reason Given for Plea Bargaining

<table>
<thead>
<tr>
<th>Second Reason Given for Plea Bargaining</th>
<th>Evidential</th>
<th>Non-Evidential</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidential</td>
<td>59% (10)</td>
<td>19% (3)</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Evidential</td>
<td>41% (7)</td>
<td>81% (13)</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100% (17)</td>
<td>100% (16)</td>
<td>33</td>
</tr>
</tbody>
</table>

Chi-Square = 7.07   p < .05
Cramer's V = .46

Bearing this in mind it is possible to explain what is implied by the stepwise regression analysis which indicates that when the second reason given for plea bargaining is non-evidential there will more likely result a charge reduction through plea bargaining than when the first is evidential.

All of this implies that the combination of a first and second
reason which are both pragmatic or organizational is a more important influence on charge reduction through plea bargaining than when the first and second reasons are both evidential. What this means in terms of legalistic and conflict perspectives in criminology is unusual and crucial. While it is clear that no extra-legal factors were selected by the stepwise to account for prosecutorial discretion at plea bargaining the relative importance of evidential and non-evidential criteria is quite unexpected. A strictly legalistic perspective would anticipate that evidential factors should be more important than pragmatic or organizational factors on prosecutorial discretion. Yet, the finding here suggests just the opposite conclusion. The implication is that future research should go beyond a distinction between strictly legal or extra-legal influences on prosecutorial discretion, and direct more attention to the quasi-legal dimension associated with pragmatic and organizational factors.

Summary

Fifty-one percent of the discrepancies in plea bargained charge reduction could be accounted for by the five variables of criminal sexual penetration, SES of offender, experience of defense attorney and evidential reasons for plea bargaining (Table XVI). The first two of these independent variables were discussed for heuristic purposes and theoretical implications even though they did not attain a level of statistical significance. The remaining three variables were found to merit retention due to their statistically significant contributions to
the prediction/explanation of the variability in plea bargaining reductions.

It is instructive to point out that at this crucially important stage of plea bargaining none of the findings supported the strict theoretical perspectives as advanced by conflict theory. Although the SES of the offender did relate to prosecutorial discretion in a direction which could be predicted by conflict theory, its impact was negligible as evidenced by the fact that it had to be rejected due to a lack of statistical significance. It is important to reiterate that considerations which cannot be strictly classified as legal or extra-legal, such as pragmatic and organizational influences, were essential variables explaining plea bargaining discretions.

Variables influencing overall reduction from requested to adjudicated Charge

This dependent variable was intended to reflect the magnitude of overall prosecutorial discretion in the CSC cases examined in this research project. The variable was operationalized as the difference between the severity of the charge(s) requested by the police and the final charge(s) adjudicated by the prosecutor. Of the 66 cases where information was available 6 reflected an increase, 46 a decrease and 14 manifested no alteration in this overall discrepancy measure. Because of the small number of cases, the instances of charging increase from the warrant request to adjudication stage had to be deleted from the analysis. The results discussed below thus pertain to the magnitude of charge reductions in an overall sense.
There were a total of eight variables which contributed to the explanation of approximately 85% of the variation in the exercise of overall discretion in CSC case prosecutions. Table XVIII presents a summary of these variables with the associated relevant statistics.

**Table XVIII**

Summary of Variables Influencing a Reduction From Requested to Adjudicated Charge

<table>
<thead>
<tr>
<th>Variable Name</th>
<th>$R^2$</th>
<th>Increase in $R$</th>
<th>Significant at Final Step</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Marital Status of Offender</td>
<td>.229</td>
<td>---</td>
<td>Yes</td>
</tr>
<tr>
<td>2. Criminal Sexual Penetration</td>
<td>.359</td>
<td>.130</td>
<td>No</td>
</tr>
<tr>
<td>3. Victim Injury</td>
<td>.434</td>
<td>.075</td>
<td>Yes</td>
</tr>
<tr>
<td>4. Employment Status of Offender</td>
<td>.476</td>
<td>.042</td>
<td>Yes</td>
</tr>
<tr>
<td>5. Police Department</td>
<td>.540</td>
<td>.064</td>
<td>Yes</td>
</tr>
<tr>
<td>6. Defendant's Status at Time of Warrant Request</td>
<td>.585</td>
<td>.045</td>
<td>Yes</td>
</tr>
<tr>
<td>7. Age of Victim</td>
<td>.672</td>
<td>.087</td>
<td>No</td>
</tr>
<tr>
<td>8. Hour of Crime</td>
<td>.853</td>
<td>.181</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Marital status of the offender

There was a statistically significant relationship between the marital status of the offender and overall charge reduction from what was requested by the police through the final adjudicated charge. Basically, married offenders received greater overall charge reductions than did single offenders. Interpretation of this variable as legal or extra-legal requires careful consideration to determine whether or not it was associated with other factors. At first glance it would certainly appear to be extra-legal. If this accurately portrays its impact on overall prosecutorial discretion there would be support for conflict theorists who could argue that the power structure in a capitalistic society discriminates against unmarried members of the society. As an extension of the power structure the criminal justice system would be expected to follow suit. The logic for this assumption is that married workers represent a more stable labor force through familial roots than is thought to be the case with singles who do not have those ties.

If this were the case it should be anticipated that the marital status of people accused of crimes should systematically be reflected throughout the criminal justice system. Table XIX indicates that this was not the case with this study. There is no evidence that married offenders received preferential treatment concerning warrants authorized i.e., whether or not charges were increased, decreased, or were not changed at authorization. Where the marital status of the offender
apparently comes into play is at the stage of plea bargaining.

Table XIX

Marital Status of Offender and Prosecutorial Discretion at Authorization

<table>
<thead>
<tr>
<th>Prosecutorial Discretion at Authorization</th>
<th>Single</th>
<th>Married</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Change From Requested To Authorized</td>
<td>60%</td>
<td>58%</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>(12)</td>
<td>(11)</td>
<td></td>
</tr>
<tr>
<td>Increased Charge From Requested to Authorized</td>
<td>20%</td>
<td>21%</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>(4)</td>
<td>(4)</td>
<td></td>
</tr>
<tr>
<td>Decreased Charge From Requested to Authorized</td>
<td>20%</td>
<td>21%</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>(4)</td>
<td>(4)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>(20)</td>
<td>(19)</td>
<td></td>
</tr>
</tbody>
</table>

Chi-Square = .018  \( p > .05 \)
Cramer's V = .021

Table XX indicates that there was a statistically significant relationship between plea bargaining and marital status. Plea negotiations were entered into with married offenders significantly more than when the accused were single. Because of what happened with authorizations based upon marital status it is not logical to assume that the
criminal justice system in this study operates in accord with expectations taken from conflict theory.

Table XX

Marital Status of the Offender by Charge
Reduction Through Plea Negotiation

<table>
<thead>
<tr>
<th>Plea Bargaining</th>
<th>Single</th>
<th>Married</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduced Charges</td>
<td>35%</td>
<td>70%</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>(7)</td>
<td>(14)</td>
<td></td>
</tr>
<tr>
<td>No Reduced Charges Through</td>
<td>65%</td>
<td>30%</td>
<td>19</td>
</tr>
<tr>
<td>Plea Bargaining</td>
<td>(13)</td>
<td>(6)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>(20)</td>
<td>(20)</td>
<td></td>
</tr>
</tbody>
</table>

Chi-Square = 4.92  p < .05
Cramer's V = .35

One factor which may account for this disparity in plea bargaining involves the relationship between the victim and offender for single and married offenders. It was found that married offenders were involved in 64% of the CSC cases which occurred between related parties, whereas this was true of only 36% of the single offenders (Table B5, Appendix C). The possible implications of this finding are most
interesting. Prosecutors may be more inclined to reduce charges through plea bargaining when relatives are involved to avoid traumatizing the victim by making them appear at a trial. It is difficult enough for a victim to re-live the experience because of trial exposure when the offender is a stranger, and it can be assumed that this trauma would be increased when the offender is related. Similarly, trial proceedings could easily stigmatize the entire family when a trial is held involving a relative.

Another consideration is that families may be more disposed to seek alternatives such as psychiatric treatment as opposed to risking having the relative face a more serious conviction. Reduction through plea bargaining would permit this option. Consistent with this alternative might be the belief on the part of the prosecutor that repeated offenses with an offender who is a relative are less likely than when the offender had assaulted a stranger. To some degree this interpretation assumes that familiar structures may present the means for reducing the probability of future offenses, a control factor not nearly so likely with single offenders. These family situations are also less publicly visible which precludes the need for prosecution to placate the public and the press to a certain degree.

Cole (1975) presents a schema which is relevant to classifying the kinds of considerations discussed here concerning marital status and charge reduction through plea bargaining. Pragmatic criteria influencing prosecutorial discretion include such matters as deciding to refer an offender to alternative treatment facilities as preferable to
criminal prosecution. A proclivity to prevent unnecessary victim trauma through trial proceedings if a just alternative solution is available would also come under pragmatic considerations.

Criminal sexual penetration

The fact that greater charge reductions occurred when sexual assaults involved penetration rather than contact was discussed in terms of prosecutors decisions in plea bargaining. The same type of result was encountered in relation to overall reduction in charging, and once again this variable did not merit retention because of statistical insignificance. This variable was not found to have an influence on the charging decision at the warrant authorization stage and its impact on overall reductions can be seen to be due to the carry-over effect from the plea bargaining decision. The explanation, that prosecutors have greater flexibility with these more serious offenses and thus exercise more discretion would be equally applicable here. Again the effect of this legal criterion variable was of theoretical interest but negligible in the final analysis in terms of its impact on prosecutorial discretion.

Victim injury

The existence of victim injury as an influence on reduction from the requested to authorized stage has been previously discussed. Victim injury was not found to influence the plea bargaining decision but had a similar effect on overall reductions through its impact on the warrant...
charging decision. In both these cases the variable was worth retaining. The prior interpretation that prosecutors may find a need to correct for over-inflated charges as requested by police when victims sustain injuries would still seem to hold true. In other words, police may misinterpret the seriousness of the criminal offense because victims sustained injuries in addition to the sexual assault, and prosecutors must then reduce the charges in order to better fit the offense charged with the corpus dilecti of the crime itself.

Employment status of offenders

The results of this analysis indicated that unemployed offenders received less lenient treatment by prosecutors in terms of overall reduction from the warrant request to adjudication stage than those who were employed. This finding would initially appear to be consistent with the notion advanced by conflict theorists that disadvantaged members of society are treated less favorably than the advantaged through the processes of the criminal justice system. However, since neither the stepwise analysis nor the cross tabulations show this variable to be a clear separate influence on either the charging or plea bargaining decisions, further consideration is required.

It should first be mentioned that the employment status of offenders is not an accurate indicator of their SES as might initially be believed. Many of the offenders who were employed were not able to afford to retain their own defense attorney. In other words, while only 34% of the defendants in this study were unemployed, 59% had low
SES as determined by the necessity for appointed defense counsel.

Examination of the effect of this variable as mediated through the legal considerations of seriousness of the charge and prior felony convictions and arrests provides for the interpretation of the manner in which employment status of offenders effects charging reductions. Table XXI shows that the most serious offenses were consistently requested with a higher frequency for those who were employed.

Table XXI

Requested Charge by Employment Status of Offenders

<table>
<thead>
<tr>
<th>Employment Status</th>
<th>CSC 1</th>
<th>CSC 2</th>
<th>CSC 3</th>
<th>CSC 4</th>
<th>CSC, NDS*</th>
<th>Attempted CSC, NDS</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unemployed</td>
<td>36%</td>
<td>43%</td>
<td>--</td>
<td>33%</td>
<td>--</td>
<td>--</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>(8)</td>
<td>(3)</td>
<td>(0)</td>
<td>(1)</td>
<td>(0)</td>
<td>(0)</td>
<td></td>
</tr>
<tr>
<td>Employed</td>
<td>64%</td>
<td>57%</td>
<td>100%</td>
<td>67%</td>
<td>100%</td>
<td>100%</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>(14)</td>
<td>(4)</td>
<td>(3)</td>
<td>(2)</td>
<td>(1)</td>
<td>(1)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>37</td>
</tr>
<tr>
<td></td>
<td>(22)</td>
<td>(7)</td>
<td>(3)</td>
<td>(3)</td>
<td>(1)</td>
<td>(1)</td>
<td></td>
</tr>
</tbody>
</table>

*NDS is an abbreviation for no degree specified

Chi-Square = 2.898  p > .05  
Cramer's V = .28
Almost 65% of the most serious crimes of CSC 1, the majority of the CSC 2 crimes, and all of the CSC 3 offenses were requested for those who were employed. When a more serious crime is requested the prosecutor has flexibility to reduce the charges to a greater extent. This helps to explain the fact that those who were employed received greater charging reduction.

The additional criteria of previous felony convictions and arrests for offenders aids interpretation even further. The section regarding reductions from the warrant request to authorization stage discussed the fact that those with prior felony convictions and arrests were more likely to be involved in the cases with the greater magnitudes of charge reduction. The relevance of this is that of those with prior convictions or arrests for felonious crimes, employed offenders represented almost two-thirds of the cases. In other words, employed offenders can be seen to experience more charge reduction because requested charges were higher and this was due in part, as previously discussed, to the fact that police had a tendency to request the more serious offenses for those with prior felony records. In sum, the effect of this variable on prosecutorial discretion was found to be mediated through its association with the legal criteria which influenced the decisions rendered by prosecutors in this study.

Police department

The CSC cases which originated from the Kalamazoo City Police Department were associated with less overall charge reduction from the
warrant request to adjudication stage. Conversely, this means that cases which originated from the county or smaller township police agencies were subject to a greater degree of charging reduction in the overall sense. The pattern between reduction and police department was most evident in prosecutors plea bargaining decision. This variable was found to merit retention due to statistical significance as determined by the stepwise procedure. The descriptive information on Table XXII below also portrays a statistically significant relationship between these two variables based upon the nominal statistic of chi-square.

Table XXII

Police Department by Reduction in Plea Bargaining

<table>
<thead>
<tr>
<th>Plea Bargaining</th>
<th>City Police</th>
<th>Other</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduced Charges</td>
<td>48%</td>
<td>74%</td>
<td>41</td>
</tr>
<tr>
<td>(15)</td>
<td></td>
<td>(26)</td>
<td></td>
</tr>
<tr>
<td>No Reduced Charges Through Plea Bargaining</td>
<td>52%</td>
<td>26%</td>
<td>25</td>
</tr>
<tr>
<td>(16)</td>
<td></td>
<td>(9)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>66</td>
</tr>
<tr>
<td>(31)</td>
<td></td>
<td>(35)</td>
<td></td>
</tr>
</tbody>
</table>

Chi-Square = 4.77  p < .05
Cramer's V = .27

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Almost three-quarters of all cases which originated with the county or smaller township police agencies had charges reduced through plea bargaining. The need to reduce charges requested by the police was less a factor when the city police department (KPD) was involved in the requests.

This research result would suggest that the city police were more effective in bringing sufficient evidence to the prosecutor or more thorough in their investigation so that charge reductions were less often required. It is also quite possible that law enforcement officers from KPD were more protective of the rights of the accused which precluded the necessity for prosecutors to consider violations of constitutional rights as an obstacle to successful prosecutions. All of these elements are discussed by Cole (1975) in terms of evidential considerations which influence the exercise of prosecutorial discretion.

This finding is further understandable in light of the fact that the smaller townships would have less available resources to facilitate effective investigations and so forth. The fact that cases stemming from the county police required greater charging reduction can be best understood within the organizational framework as provided by Cole (1975). Cole discusses that the types of working relationships between prosecutors and other criminal justice agencies such as the police have an impact upon the prosecutors decision making process. It would seem that the county and possibly township police agencies did not have as effective a relationship with the prosecutor as did the city police department. This could be seen to be due to the frequency of their
interactions. For example, as can be evidenced in Table XXII, almost half of all CSC cases originated from KPD, whereas the five other police departments constituted the remaining 53% of the CSC cases over the three year period.

Defendant status

Offenders who were jailed by police at the time of a warrant request were more likely than those who were either released or not initially arrested to receive greater overall charge reduction. The interpretation of this finding is based on its association with seriousness of requested charge(s).

A statistically significant relationship was found between seriousness of the charge requested and whether or not offenders had been jailed by police. Table XXIII shows that police more frequently jailed offenders who had committed crimes involving sexual penetration rather than criminal sexual contact.

The fact that prosecutors engage in more charge reduction with the more serious offenses which involve criminal sexual penetration was discussed in terms of its effects on plea bargaining. To reiterate, prosecutors enjoy greater discretionary flexibility with the more serious offenses as there are a larger number of lesser included offenses to which charges can be altered. This intends that prosecutors have a wider range of possible crimes to charge and are consequently dealing with a greater latitude of statutory maximum sentences. The effects of the status of the offender at the time of the warrant request are thus
### Table XXIII

Criminal Sexual Penetration/Contact By Defendant Status at Warrant Request

<table>
<thead>
<tr>
<th>Defendant Status</th>
<th>Crimes of Penetration</th>
<th>Crimes of Contact</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Arrested or Released</td>
<td>39% (16)</td>
<td>67% (12)</td>
<td>28</td>
</tr>
<tr>
<td>Jailed</td>
<td>61% (25)</td>
<td>33% (6)</td>
<td>31</td>
</tr>
<tr>
<td>Total</td>
<td>100% (41)</td>
<td>100% (18)</td>
<td>59</td>
</tr>
</tbody>
</table>

Chi-Square = 3.85  \( p < .05 \)

Cramer's V = .26

seen to be mediated through the seriousness of the crime. It should be noted that prosecutors may reduce charges for jailed offenders, in the overall sense, either because of greater discretionary latitude due to the seriousness of the request, or to correct for police interpretations of seriousness, given other relevant criteria considerations.

**Age of victim**

Cases which involved victims of younger ages were subject to greater charge reductions than cases involving older victims from the overall warrant request to adjudication stage of prosecution. The age
of the victim as an influence on discretion was discussed in relation to prosecutors increased charging from the warrant request to authorization stage of criminal prosecution. The results there indicated that charges were increased to lesser extent for young victims than for victims in the older age brackets. The explanation offered was that police were more accurate in their warrant requests for victims under the age of sixteen because the law was more precise regarding these younger age victims. The research finding relevant to this overall stage of charging reduction from requested to adjudicated charges provides further information in terms of the influence of age of victims. Although the variable was not statistically significant in its relation to overall discretion, the pattern of influence is important because of the implications it holds in terms of discretion.

The analysis indicated that cases involving younger victims were not only increased with a lesser frequency at the warrant authorization stage, but that these cases were further reduced in an overall sense from the requested to adjudicated stage of prosecution. This suggests that while police may be more accurate at the time of request, prosecutors find a need to reduce these charges which are initially for more serious crimes between the time of the warrant disposition and final adjudication.

Because the initially requested charges are for more serious offenses with young victims (Table B1, Appendix B) prosecutors again are permitted greater discretionary latitude at the later stages of the criminal justice system to reduce charges in these cases. A further
interpretation is provided by examining the age of victims in regards to victim/offender relationships.

A statistically significant relationship existed between victims under the age sixteen and related members involved in CSC crimes. The following table portrays descriptive information regarding the pattern in which these two variables were associated.

Table XXIV

Victim/Offender Relationship By Statutory Age of Victim

<table>
<thead>
<tr>
<th>Victim's Age</th>
<th>Related</th>
<th>Not Related</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sixteen or Younger</td>
<td>91%</td>
<td>44%</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>(10)</td>
<td>(12)</td>
<td></td>
</tr>
<tr>
<td>Seventeen or Older</td>
<td>9%</td>
<td>55%</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(15)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>38</td>
</tr>
<tr>
<td></td>
<td>(11)</td>
<td>(27)</td>
<td></td>
</tr>
</tbody>
</table>

Chi-Square = 6.92  p < .05
Cramer's V = .43

Cases which involve younger victims and a greater magnitude of charge reduction can thus be understood in terms of the fact that parties
are more often related in these instances. As has been explained previously, victims and their families are more likely to be reluctant to proceed with prosecution when familial relations are involved in the CSC crimes. There are several alternate interpretations for this reluctance.

Because of their youth, victims under the age of 16 are much more likely to be influenced or pressured by the desires of the family in terms of decision in sexual assault prosecutions. After initially seeking criminal prosecution, victims and their families may become more aware of the severe repercussions of the decision to bring criminal charges against a related member of the family. They may further become aware of alternatives to prosecution such as psychiatric treatment, or the possible trauma which may ensue for the victim through the course of testifying against a family member at a public trial. As the parties seeking criminal action grow more cognizant of these types of factors which are involved in the processing of CSC cases they have a tendency to grow more reluctant in proceeding with the charge. These explanations help to interpret the fact that cases involving younger victims are subject to greater overall charging reduction by prosecutors.

Hour of the crime

This finding indicates that CSC offenses which occurred at night were reduced more than were those which took place during the day or early evening hours. There are a number of possible factors which may have influenced this result.
Once again, the victim/offender relationship comes into play. Approximately 75%, or 6 out of the 8 cases, involving related parties occurred during the night between 8 P.M. and 8 A.M. As previously argued, there are several reasons why reduction in charges may take place when the victim and offender are related. Families may lose their motivation to press charges or to prosecute at more serious levels when they actually become aware of the consequences to the related offender. This would suggest the possibility of opting for charge reductions tied in with psychiatric treatment or recommendations for more lenient sentences. Avoidance of a trial might also come into play when the family starts to consider the possible traumatic effects it could have on the victim. The family may additionally come to believe that once prosecution has been pressed, to whatever degree, future difficulties regarding repeated offenses can be effectively managed through the family structure. This is because they would then possess the leverage gained by threatening to press charges in the future, when they, as well as the prosecutor, would likely be considerably less lenient with the offender.

Concerning the victim/offender relationship where the offender, such as a babysitter, had been entrusted with the care of the victim, a similar logic might prevail. Of all cases involving an offender in this relationship to the victim, 83% (5 out of 6) occurred during the nighttime.

Victims and their families might be reluctant in these cases as persons entrusted with the care of the child would be likely to be those
who are known and friends with the family.

Another factor concerns the presence of drinking and/or smoking marijuana by both the victim and offender at the time of the sexual assault. In 86% of the cases where the victim and offender had both been engaging in this type of activity, the offense took place between 8 P.M. and 8 A.M. This circumstance, while not a definitive indicator of victim consent, might be interpreted by the prosecutor as weakening his case. Thus, the prosecutor might have been more inclined to reduce charges because of this factor which attended the commission of the crime.

The combination of the victim and offender being related, the offender being entrusted with the care of the victim, and joint drinking and/or smoking by the victim and the offenders were factors in 39% (18 out of 46) cases involving charge reductions associated with late hour crimes. Accordingly, they do shed some light upon the possible reasons for overall charge reductions from the requested to adjudicated stage of CSC prosecutions.

Summary

The objective of this final stage of analysis was to discern which of the independent variables exerted an influence upon the prosecutors discretion in an overall sense in CSC case prosecution from the requested charges brought by police to the final adjudicated charges. Eight variables were entered in the stepwise analysis procedure accounting for a total of 85% of the variation in prosecutor overall discretion. The two
variables of criminal sexual penetration and victim's age were not found to be worth retaining because of statistical insignificance, but were discussed as they are legal criteria specified in the CSC Code. The remaining six variables of defendant's marital status, victim injury, defendant's employment status, police department, defendant's status at the time of the warrant request (not arrested or released and jailed) and hour of the crime were found to significantly contribute to the explanation/prediction of the variability in overall prosecutorial discretion. The findings and interpretations presented in this section once again are not consistent with conflict theory as narrowly conceived. Even more importantly, the findings call attention to the need for expanding notions regarding categories of influence on criminal justice decision making beyond the simplistic conceptions of merely legal and extra-legal factors. The host of differential criteria effecting prosecution discretion has certain implications for theoretical paradigms as well as future research directions.

**Summary of variables influencing prosecutorial discretion in CSC cases**

The objective of employing stepwise regression analysis was to ascertain which of the independent variables had an effect upon the exercise of prosecutorial discretion. A corollary concern was to assess whether similar or different independent variables had an effect on the different stages at which prosecutors exercise discretion. A particular emphasis was to discern whether the variables of influence were legal
or extra-legal in nature.

The predominant pattern discovered was that legal rather than extra-legal factors as delineated by conflict theory, had an impact on prosecutorial discretion. The findings were therefore more supportive of legalistic rather than conflict contentions. Variables which were not clearly legal or extra-legal were also found to have a significant impact on discretion.

Conflict theorists identify race and SES of offenders as the two most salient factors which bias the processing of criminal cases. These two variables were not found to be significantly related to any of the decisions rendered by prosecutors in this study. The results of the stepwise analysis indicated that race and SES were not significantly related to the magnitude of charging reduction or increase from the warrant request to authorization, authorization to adjudication, or request to adjudication stages of decision making. The race of offenders never once entered in the stepwise analysis as an influence on the exercise of prosecutorial discretion. Although SES of offenders did enter at the plea bargaining (authorization to adjudication) stage of prosecution, its effect was deemed to be negligible due to a lack of statistical significance. Moreover, in examining the cross tabulations between these two variables and the types of decisions made by prosecutors there was no evidence found for the argument that race or SES of offenders influenced prosecutors decisions to increase, reduce or not alter charges at any of the stages where discretion was exercised.

It should be recalled here, however, that assessment of the factors
influencing the prosecutor's decision to deny arrest warrants was precluded because of limited data. It is tenable that variables such as race and SES could have influenced this decision making stage, but unfortunately it was impossible to make such a determination in this investigation.

Several variables found to influence the exercise of prosecutorial discretion were derived from the Criminal Sexual Conduct Code itself. Considerations of victim injury, criminal sexual penetration, victim/offender relationship, and victim's age were all found to have an impact on prosecutor's decision making. Of these four factors only victim injury was significantly related to the exercise of discretion. The age of the victim and existence of penetration did not attain a level of statistical significance and thus were seen to be less important influences on discretionary decisions. They were discussed in order to shed light on the manner in which these types of considerations effect the prosecution of CSC cases. The victim/offender relationship was seen to be an influence due to its relationship with other variables such as the hour of the crime and the age of the victim.

Another category of independent variables effecting prosecutorial discretion were those which could be consumed under Cole's (1975) categories of evidential, pragmatic and organizational elements as an influence on prosecutor's decision making. Factors entered in the step-wise procedure relevant to these classifications were items such as the number of witnesses, types of reasons given for engaging in plea bargaining, police department from which the requested charges originated, and
the experience of the defense attorney involved in the CSC case. Evi­
dential elements were amenable to classification as legal influences, while pragmatic and organization considerations could not be strictly categorized as either legal or extra-legal criteria. These latter fac­
tors which influenced prosecutors discretion were discussed in terms of identifying the need for more encompassing categories of influencing elements on criminal justice discretionary activities.

The analysis indicated that prosecutors raised charges from the warrant request to authorization stage to a greater extent as the number of available witnesses increased. This suggests that the amount of cor­
roboring evidence had an effect on the types and magnitude of prose­
cutorial discretion.

In terms of the reasons given for plea bargaining it was found that organizational and pragmatic concerns were stronger predictors of the magnitude of charging reduction than were evidential concerns. The lack of sufficient evidence however was still found to be correlated with plea bargaining reduction. The interesting result was that organizational/ pragmatic considerations were relatively more important in understanding the magnitude of charge reductions in plea bargaining vis à vis eviden­
tial criteria.

Requested charges originating from the city police department were reduced to a lesser degree than were those stemming from the county or smaller township police agencies. The implication here was that the city police have either a better working relationship with the office of the prosecutor (organizational element) or that they present stronger cases
to the prosecutor (evidential concerns) which facilitate less charging reductions.

The experience of defense attorneys in the CSC cases studied was described in terms of the organizational relationships as presented by Cole. The finding indicated that the more experienced attorneys were able to secure more charge reduction for their clients than were those with less experience. The finding suggested that those attorneys with greater experience were more likely to be effective in obtaining reductions due to a higher frequency of interaction and hence better working relationships with prosecutors.

The fact that married offenders received greater charging reductions from the requested to adjudication stage was found to be related to pragmatic considerations, as the finding indicated that those who were married were also those most likely to be involved in CSC offenses between related parties. It was stated that in these instances victims and their families were inclined to be reluctant to proceed with criminal prosecutions once they became aware of all of the repercussions of the decision to initiate criminal charges.

The final type of variables were those which could be clearly categorized as legal influences as identified by conflict theorists. All elements which could be classified under the heading of past record of offender were seen to be legal factors as delineated by conflict theory. Independent variables such as the number of previous CSC and felony convictions, as well as the number of prior arrests for felonious crimes, were categorized as legal and were found to have an impact upon prosecutorial discretion. A further kind of variable included here was the
seriousness of the CSC crime itself. The manner in which these considerations influenced prosecutors decisions varied with the stage of prosecution being examined. For example, the number of previous CSC convictions were seen to influence the prosecutor to increase charges, while the number of prior felony convictions and arrests were found to influence the prosecutor to reduce charges at the warrant authorization stage. The explanation offered here was that prosecutors are more concerned with recidivists who have committed similar types of crimes in the past and that they operate with a greater presumption of guilt in the cases where offenders had previously committed sex related crimes. Additionally, by increasing charges where offenders had previous sex related convictions the prosecutor enhanced the probabilities of gaining plea bargaining convictions at a level higher than or approximating the charge originally requested by the police. The reasoning here is that the prosecutor may anticipate that the defense attorney will desire avoiding trial because judicial discretion will likely lead to a more severe sentence given past criminal sexual conduct. The reason that prosecutors reduced charges to a greater extent when offenders had previous felony convictions and arrests was that police were found to consistently request the more serious charges for these offenders. It was necessary for prosecutors in these instances to consider other relevant information in determining the charges for which to authorize arrest warrants.

The remaining two variables of offender status at the time of the
warrant request (jailed or not arrested/released) and his employment status were found to be related to the seriousness of the crime. Cases involving employed and jailed offenders involved greater overall charging reduction because prosecutors had more discretionary latitude to begin with due to the serious nature of the CSC crimes which were involved. In addition to the explanation of prosecutorial discretion in terms of the greater flexibility provided given serious requested charges, it was also explained that often times prosecutors may reduce charges in order to correct for over-inflated or misinterpreted charges requested by police in an attempt to fit authorized or adjudicated counts with the corpus dilecti of the criminal offense.

In sum it can be seen that essentially legal elements, in conjunction with those which could not be definitively classified as either legal or extra-legal, were the considerations which were found to influence the exercise of prosecutorial discretion. As the factors such as race and SES were never a clear influence on discretion, it can be stated that there was virtually no evidence in this study for the contentions of conflict theorists who advance the notion that the less powerful members of society are discriminated against through the processes of the criminal justice system.

In terms of assessing whether different or similar variables had an impact on the different stages of prosecutors decision making, it was found that primarily different types of criteria influenced the charging, plea bargaining and overall discretion exercised by prosecutors. The only factor which was significantly related to more than one stage of
prosecutorial discretion was victim injury. This independent variable was important for both the warrant authorization and overall discretion dependent variables. All other significant variables were important for only one of the three stages at which prosecutorial discretion was measured. This research result indicates that prosecutors consider numerous dimensions before rendering the different types of decisions required in CSC case prosecutions. Each stage at which discretion was examined, e.g. warrant increases and decreases, reductions in plea bargaining and overall charging reductions, involved a different type of prosecutorial decision. It is understandable that different sets of considerations came to influence the separate stages of prosecutorial discretion as each dependent variable represented a different type of prosecutorial decision.
CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Chambliss (1976) has critiqued the functional approach in criminology which assumes that the law in a society represents value consensus around central interests which are fundamental to the preservation of social order. Functionalists not only contend that the legal code represents the collective morality of society, but further assume that the state acts as an impartial agent when it implements the law. Chambliss argues that this is a distortion of capitalistic societies where the ruling class protects its vested interests at the expense of the lower class.

Quinney (1974:18) takes an even stronger Marxist approach and suggests that the legal system is a vehicle for the "...forceful and violent control of the rest of the population". Inherent in this perspective is the assumption that power in society is a function of social class distinctions. Turk (1977) agrees with certain premises of the Marxist interpretation of the legal system, but believes that focusing exclusively on social class differentials restricts the scope of analysis. Turk contends that the legal code is an expression of powerful vested interests in society, but he is not willing to limit power influences to simply the ruling class. Furthermore, Turk believes that conflict in society which is based upon disproportionate power and vested interests is a constant in society, and is thus not amenable to eradication by a proletariat revolution.
Labeling theory as expressed by Becker (1963) does not advocate a strictly Marxist perspective but does argue that deviancy is not inherent in the quality of a particular act. Becker contends that deviancy is a result of the successful labeling of an act as criminal or deviant by the people in society who make and enforce the rules. Wellford (1975) argues against the relativism of labeling theory, and by implication conflict theory, when he notes that cross-culturally there is consistency in terms of what kinds of acts are identified as serious crimes.

Previous research

Race and social class are the most salient variables scrutinized by researchers in criminology who have investigated the assumptions of conflict theory. The research results to date are inconsistent and hence inconclusive. Bullock (1961), Thornberry (1973), Hepburn (1973), Peterson and Friday (1975), Pope (1976) and Lizotte (1978) all found some empirical support for conflict interpretations. On the other hand, researchers such as Green (1960, 1964), Hagan (1974), Burke and Turk (1975), Chiricos and Waldo (1975), Cohen and Kluegel (1978) and Lotz and Hewitt (1977) report findings which support a more legalistic as opposed to conflict perspective.

This research project was designed to discern the impact of legal and extra-legal (conflict) variables on prosecutorial discretion in rape cases in the State of Michigan. The importance of this type of empirical approach lies in that the assumptions of conflict theory have not to this point been applied to the study of the middle stage of prosecution in the
criminal justice system. Most research has concentrated on either the beginning stage originating with the police or the end result involving final dispositions and sentencing. This research is novel in that it examines the exercise of prosecutorial discretion in rape case prosecution and does so within the context of rape reform legislation as well as conflict theory.

Methods

Data were collected on all criminal sexual conduct cases in Kalama-zoo County, Michigan for the three year period from 1975 to 1977. The dependent variable of prosecutorial discretion was operationalized as a weighted scale based upon the severity of the criminal offense. The three dependent variables constructed from the weighted scale reflected the magnitude of discretion exercised from the warrant request to authorization, authorization to adjudication, and overall request to adjudication stages of prosecutors decision making. The analysis conducted examined the impact of numerous independent variables on each of these dependent variable measures. The value of this type of approach for the study of rape prosecutions is that previous literature and research has neglected the issues of the magnitude and direction in which prosecutors exercise discretion. Moreover, prior literature relating to the crime of rape generally provides simple frequency and percentage data, with occasional contingency table summaries. This study utilized stepwise regression analysis which is advantageous in that it systematically controls for the effects of the independent variables,
something which contingency table analysis can do only to a restricted
degree.

Research findings

Perhaps the most significant result of this research was that extra-
legal criteria such as race and SES characteristics of offenders, which
are the principle dimensions cited by Marxists, did not have an impact on
warrant authorizations, plea bargaining or overall prosecutorial discre-
tion in rape prosecutions during the time span covered by this study.
The most salient factors which exerted an influence upon prosecutorial
discretion were found to be predominantly those which could either be
categorized as legal considerations or those which were "non-legal",
i.e., neither legal nor extra-legal in the conventional sense of the
terms.

Slightly over half (54%) of all requests for CSC charges were de-
nied by prosecutors at the warrant authorization stage. It was quite
unfortunate that due to the type of information available it was not
possible to assess the types of factors which influenced this prosecu-
torial decision. Without any further information it can only be stated
that either legal, extra-legal, or non-legal factors could have come
to influence this decision.

Of all cases which were authorized it was found that legal as well
as "non-legal" factors influenced the type as well as degree of discretion
exercised by prosecutors. Extra-legal considerations did not emerge as an
influence as would have been predicted from a conflict perspective. In
approximately one-fourth of all cases which were authorized prosecutors increased charges from that which was requested by police. Prosecutors also reduced requested charges in 24% of all cases which were authorized. The legal considerations of previous sex related convictions for offenders and the number of available witnesses were discovered to be the variables influencing charging increases. Victim injury and number of prior felony arrests and convictions were found to effect the magnitude of charge reductions at this stage of prosecutorial discretion. In both instances the results lent more support to legalistic rather than conflict interpretations as conventionally defined, of criminal prosecutions.

A prominent research result, which should be highlighted here, is that when prosecutors altered requested charges at the warrant authorization stage they increased and reduced the seriousness of the charge authorized with equal frequency. In other words, charges were increased in the same proportion to which they were decreased. This finding merits attention in that the common perception of prosecutorial discretion is overwhelmingly in terms of charge reductions. The explanation offered for the increase in charging from police requests was that prosecutors may engage in this type of activity in order to enhance their later plea bargaining positions.

The variables discovered to influence the magnitude of charge reduction evidenced in plea bargaining (authorization to adjudication) were also divergent from the contentions of conflict theorists. The principle variables of influence at this stage were evidential and pragmatic/organizational elements as defined by Cole (1975). It was found that
organizational concerns such as the prosecutor's relationship with the defense attorney, pragmatic considerations such as absence of prior arrest records or possible victim trauma, and lack of sufficiency evidence influenced prosecutors to reduce charges at this stage. These findings were not supportive of the conflict assumption which asserts that factors such as race and SES of offenders enter into the criminal justice system to bias case processing in a discriminatory manner. The research results here were further not wholly consistent with legalistic interpretations, but identified the need for broader categories and perspectives within the criminal justice field.

The variables which had an impact on the overall extent of prosecutorial discretion in CSC cases were similar to those discussed in regards to charging and plea bargaining decisions, i.e., either legal or "non-legal" factors. The effects of victim injury, the offender's status at the time of the warrant request (jailed or not arrested/released) and his employment status were found to be related to the seriousness of the criminal offense. The effect of the hour of the crime and marital status of offenders were found to be mediated through the criteria in the CSC legislation of victim/offender relationship. The police department from which the warrant request had originated was discussed in terms of Cole's (1975) evidential and organizational considerations as they influence decisions rendered by prosecutors.

In conclusion, the extra-legal factors such as race and social class of offenders, so central to conflict theory, were found not to have any significant impact upon the type of magnitude of prosecutorial discretion exercised in CSC case prosecution. The legal variables such
as seriousness of the offense, past record of offenders and evidential considerations were several primary influences on discretionary judgments by the prosecutor. Organizational and pragmatic considerations as discussed by Cole (1975) were also found to have a significant effect on the exercise of discretion. This research project did not provide any definitive support of conflict theory, as it is conventionally thought to exist. Legalistic perspectives, on the other hand, were found to be useful in many instances for interpretations. Other variables which helped to explain the exercise of prosecutorial discretion, such as the pragmatic and organizational elements, suggested the need for broader conceptions of the types of variables which come to play an active role in influencing criminal justice decision making.

Recommendations

There are a number of research directions which follow from that which has been discussed in previous chapters. Some of these recommendations are novel, while others have been recognized by other researchers.

There seems to be a clear necessity for creating a more flexible conflict perspective than the one attributed to Marxist criminologists. Turk's (1977) discussion of a Weberian perspective is helpful in this regard. In complex industrial states a two class differential regarding power structures is extremely limited. This can be evidenced by the fact that Women's Task Force on Rape in Michigan was the instrumental group effecting the reform legislation in this state. More research is needed to assess the role of powerful interest groups aside from the "ruling
class" in society in terms of their impact on the legal code and its implementation.

The need for conflict theory to broaden its perspectives in order to more fully comprehend the influences on decisions made in the criminal justice system was also illustrated by the findings that organizational and pragmatic concerns effected the exercise of prosecutorial discretion. While these factors cannot be clearly classified as either legal or extra-legal considerations, they were a definite influence in criminal prosecutions. It is suggested that other types of considerations be examined in conjunction with the legal and extra-legal factors as indicated by conflict theorists.

Another direction for future research is an effort to systematically assess variables influencing discretion in the criminal justice system across agencies in an integrative rather than fragmentary manner. Most studies to date focus exclusively on the police, prosecutors, or the judiciary. While this study does not find any results to support the contention that prosecutors discriminated on the basis of SES or race, it was impossible to make any determination of this nature regarding the police or judiciary. In other words, more research is required to assess if discrimination occurs at certain stages of the criminal justice system and not at others. Further research is also needed to examine the types of variables which influence the prosecutorial decision to deny arrest warrants. Although this investigation did endeavor such an assessment, lack of data precluded the determination of the kinds of factors which have an impact on this decision.
The Women's Task Force on Rape in Michigan points out yet another important but neglected research need. They note that victims of sexual assault crimes are treated differently in areas such as resistance and consent standards, than victims of other felonious crimes such as robbery or homicide. Since rape victims are treated differently it would be most instructive to investigate whether different types of factors come to influence the types of decisions rendered in these cases as well. A related concern would be to assess whether or not the bias referred to by conflict theorists is less operative in serious offenses such as murder or rape than is the case when the threat to the community is perceived to be less severe. This type of interpretation has been suggested by authors such as Chiricos and Waldo (1975).

Given the increased amount of concern with reform legislation regarding sexual assaults, it is imperative that future research examine the effectiveness of these innovations. Chappell and Fogarty (1978) have observed that studies of the implementation and impact of rape reform codes are sorely needed. Within states which have enacted reform legislation comparisons should be made between how the criminal justice system processed cases under the old and new legislation. There is further a need to compare the effects of reform statutes between states which have recently enacted new statutes as well as contrast this to states with the more traditional rape laws.

The design of this research project points the way for several methodological directions in future research. It was seen that the weighted scale for measuring the magnitude and direction of prosecutorial
discretion greatly enhanced the analysis. This type of weighted scale could be applied to all stages of the criminal justice process with relative ease, thereby affording a more precise assessment as well as more comparable results regarding police, prosecutorial and judicial discretion. The possibility of refining this weighted scale by the incorporation of sentencing data, something which was not available in this endeavor, should also be explored. Care must be taken, if this strategy is attempted, to control for a wide variety of factors which may influence sentencing discretion. The inclusion of more sophisticated measures of discretion would greatly facilitate the utilization of more sophisticated data analysis techniques and thus permit more detailed interpretations.

Most of the research on rape, as well as on prosecutorial discretion, has been limited to frequency analysis along with some contingency table analysis. The utilization of statistical techniques such as stepwise regression are extremely important since they can more systematically control for other variables when examining the impact of a particular independent variable on some dimension such as prosecutorial discretion. By comparison the control possibilities associated with contingency table analysis are quite limited.

The strategy for analyzing attrition rates in CSC cases offers a beneficial basis for systematic comparisons of criminal justice systems across the country. By encouraging researchers to gather data relevant to the six rates associated with attrition it would enhance the possibility of making meaningful comparisons. Specific information on these rates and their calculation can be seen in Chapter Four. Additionally, studies of
attrition could be improved by using a weighted scale in the calculation of specific rates. This would facilitate the assessment of not only the frequency with which cases are dropped out of the system at different stages, but also the magnitude of discretion exercised by different agencies at the various points of attrition.

Methodologically, considerably more attention should be devoted to comparing survey data with information gathered by examining police, prosecutor and judicial records. Survey data based upon impressions provided by the police, prosecutors and judges may be at variance with what is revealed by the more painstaking task of systematically examining their records. The relative ease of conducting surveys may have serious hidden costs.

Finally, it must be acknowledged that more research is necessary to determine if the patterns found in this project obtain elsewhere. It would be entirely improper to generalize these results beyond Kalamazoo County during the time period covered by this study. More research, with a broader sample base, is required before it is possible to determine if these findings are consistent across jurisdictions within the State of Michigan. Hopefully, this research endeavor will serve to inspire future directions which may ultimately facilitate the abatement of problems concomitant to rape prosecutions.
REFERENCES


Appendix A

Michigan's Criminal Sexual Conduct Code
The People of the State of Michigan Enact:

Section 1. Act No. 328 of the Public Acts of 1931, as amended, being sections 750.1 to 750.568 of the Compiled Laws of 1970, is amended by adding sections 520a, 520b, 520c, 520d, 520e, 520f, 520g, 520h, 520, 520j, 520k, and 520l to read as follows:

Sec. 520a  As used in sections 520a to 520l:
(a) "Actor" means a person accused of criminal sexual conduct.
(b) "Intimate parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.
(c) "Mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.
(d) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.
(e) "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.
(f) "Personal injury" means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.
(g) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification.

(h) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

(i) "Victim" means the person alleging to have been subjected to criminal sexual conduct.

Sec. 520b. (1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) The other person is at least 13 but less than 16 years of age and the actor is a member of the same household as the victim, the actor is related to the victim by blood or affinity to the fourth degree to the victim, or the actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
(c) Sexual penetration occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in subdivision (f)(i) to (v).

(e) The actor is armed with a weapon or any other article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes but is not limited to any of the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.
(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.

(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.

(v) When the actor, through concealment or by the element of surprise, is able to overcome the victim.

(g) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

2. Criminal sexual conduct in the first degree is a felony punishment by imprisonment in the state prison for life or for any term of years.

Sec. 520c. (1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:
(a) That other person is under 13 years of age.

(b) The other person is at least 13 but less than 16 years of age and the actor is a member of the same household as the victim, the actor is related to the victim by blood or affinity to the fourth degree to the victim, or the actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(c) Sexual contact occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes but is not limited to any of the circumstances listed in sections 520b (1)(f)(i) to (v).

(e) The actor is armed with a weapon or any other article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes but is not limited to any of
the circumstances listed in section 520b (1) (f)(i) to (v).

(g) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

(2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 15 years.

Sec. 520d. (1) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exists:

(a) That other person is at least 13 years of age and under 16 years of age.
(b) Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in section 520b (1)(f)(i) to (v).
(c) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

(2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than 15 years.

Sec. 520e. (1) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another
person and if either of the following circumstances exists:

(a) Force or coercion is used to accomplish the sexual contact. Force or coercion includes but is not limited to any of the circumstances listed in section 520b (1)(g)(i) to (iv).

(b) The actor knows or has reason to know that the victim is mentally incapacitated, or physically helpless.

(2) Criminal sexual conduct in the fourth degree is a misdemeanor punishable by imprisonment for not more than 2 years, or by a fine of not more than $500.00, or both.

Sec. 520f. (1) If a person is convicted or a second or subsequent offense under section 520b, 520c, or 520d, the sentence imposed under those sections for the second or subsequent offense shall provide for a mandatory minimum sentence of at least 5 years.

(2) For purposes of this section, an offense is considered a second or subsequent offense if, prior to conviction of the second or subsequent offense, the actor has at any time been convicted under section 520b, 520c, or 520d or under any similar statute of the United States or any state for a criminal sexual offense including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit such an offense.

Sec. 520g. (1) Assault with intent to commit criminal sexual conduct involving sexual penetration shall be a felony punishable by imprisonment for not more than 10 years.
(2) Assault with intent to commit criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 5 years.

Sec. 520h. The testimony of a victim need not be corroborated in prosecutions under sections 520b to 520g.

Sec. 520i. A victim need not resist the actor in prosecution under sections 520b to 520g.

Sec. 520j. (1) Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admitted under sections 520b to 520g unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

(a) Evidence of the victim's past sexual conduct with the actor.

(b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease.

(2) If the defendant proposes to offer evidence described in subsection (1)(a) or (b), the defendant within 10 days after the arraignment on the information shall file a written motion and offer of proof. The court may order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1). If new information
is discovered during the course of the trial that may make the evidence described in subsection (1)(a) or (b) admissible, the judge may order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1).

Sec. 520k. Upon the request of the counsel or the victim or actor in a prosecution under sections 520b to 520g the magistrate before whom any person is brought on a charge of having committed an offense under sections 520b to 520g shall order that the names of the victim and actor and details of the alleged offense be suppressed until such time as the actor is arraigned on the information, the charge is dismissed, or the case is otherwise concluded, whichever occurs first.

Sec. 520l. A person does not commit sexual assault under this act if the victim is his or her legal spouse, unless the couples are living apart and one of them has filed for separate maintenance or divorce.

Section 2. All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act.

Compiled Laws of 1970, and section 82 of chapter 7 of Act No. 175 of the Public Acts of 1927, being section 767.82 of the Compiled Laws of 1970, are repealed.

Section 4. This amendatory act shall take effect November 1, 1974.
Appendix B

Additional Contingency Tables for Stepwise Interpretations
Table B1

Age of Victim By Requested Charge

<table>
<thead>
<tr>
<th>Requested Charge</th>
<th>Age of Victim</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1-12</td>
</tr>
<tr>
<td>CSC 1</td>
<td>40%</td>
</tr>
<tr>
<td>CSC 2</td>
<td>60%</td>
</tr>
<tr>
<td>CSC 3</td>
<td>--</td>
</tr>
<tr>
<td>CSC 4</td>
<td>--</td>
</tr>
<tr>
<td>CSC No Degree Specified</td>
<td>--</td>
</tr>
<tr>
<td>Attempted CSC No Degree</td>
<td>--</td>
</tr>
<tr>
<td>Specified</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
</tr>
</tbody>
</table>

Chi-Square = 33.2 \( p < .05 \)
Cramer's V = .54
Table B2

Victim Injury By Requested Charge

<table>
<thead>
<tr>
<th>Requested Charge</th>
<th>Victim Injury</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>CSC 1</td>
<td>41%</td>
<td>76%</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(16)</td>
</tr>
<tr>
<td>CSC 2</td>
<td>32%</td>
<td>19%</td>
</tr>
<tr>
<td></td>
<td>(7)</td>
<td>(4)</td>
</tr>
<tr>
<td>CSC 3</td>
<td>4%</td>
<td>--</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(0)</td>
</tr>
<tr>
<td>CSC 4</td>
<td>23%</td>
<td>5%</td>
</tr>
<tr>
<td>Attempted CSC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No Degree Specified</td>
<td>(5)</td>
<td>(1)</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>(22)</td>
<td>(21)</td>
</tr>
</tbody>
</table>

Chi-Square = 6.19  p > .05
Cramer's V = .38
Table B4

Previous Felony Arrests
By Requested Charge

<table>
<thead>
<tr>
<th>Requested Charge</th>
<th>None</th>
<th>One or More</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>CSC 1</td>
<td>50%</td>
<td>84%</td>
<td>26</td>
</tr>
<tr>
<td>(5)</td>
<td>(21)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CSC 2</td>
<td>40%</td>
<td>8%</td>
<td>6</td>
</tr>
<tr>
<td>(4)</td>
<td>(2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CSC 3</td>
<td>--</td>
<td>4%</td>
<td>1</td>
</tr>
<tr>
<td>(0)</td>
<td>(1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CSC No Degree Specified</td>
<td>10%</td>
<td>4%</td>
<td>2</td>
</tr>
<tr>
<td>Attempted CSC</td>
<td>(1)</td>
<td>(1)</td>
<td></td>
</tr>
<tr>
<td>No Degree Specified*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>35</td>
</tr>
<tr>
<td>(10)</td>
<td>(25)</td>
<td></td>
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</tr>
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Chi-Square = 5.26  p > .05
Cramer's V = .39

*Data were not available for CSC 4 cases in relation to previous felony arrests.
### Table B3

**Previous Felony Convictions**

**By Requested Charge**

<table>
<thead>
<tr>
<th>Requested Charge</th>
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<th>One or More</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>CSC 1</td>
<td>61%</td>
<td>75%</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>(11)</td>
<td>(15)</td>
<td></td>
</tr>
<tr>
<td>CSC 2</td>
<td>28%</td>
<td>15%</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>(5)</td>
<td>(3)</td>
<td></td>
</tr>
<tr>
<td>CSC 3</td>
<td>--</td>
<td>10%</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>(0)</td>
<td>(2)</td>
<td></td>
</tr>
<tr>
<td>CSC No Degree Specified</td>
<td>11%</td>
<td>--</td>
<td>2</td>
</tr>
<tr>
<td>Attempted CSC</td>
<td>(2)</td>
<td>(0)</td>
<td></td>
</tr>
<tr>
<td>No Degree Specified*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>38</td>
</tr>
<tr>
<td></td>
<td>(18)</td>
<td>(20)</td>
<td></td>
</tr>
</tbody>
</table>

**Chi-Square = 5.02  \( p > .05 \)**

**Cramer's V = .36**

*Data were not available for CSC 4 cases in relation to previous felony convictions.
Table B5

Victim/Offender Relationship As Related by Marital Status of Offenders

<table>
<thead>
<tr>
<th>Marital Status</th>
<th>Related</th>
<th>Not Related</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>36%</td>
<td>58%</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>(4)</td>
<td>(15)</td>
<td></td>
</tr>
<tr>
<td>Married</td>
<td>64%</td>
<td>42%</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>(7)</td>
<td>(11)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>37</td>
</tr>
<tr>
<td></td>
<td>(11)</td>
<td>(26)</td>
<td></td>
</tr>
</tbody>
</table>

Chi-Square = 1.42  p > .05

Cramer's V = .20