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# Prosecutorial Charging Decisions in Sexual Assault Cases: Examining the Impact of a Specialized Prosecution Unit

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*Although the criminal justice system has undergone reform to eliminate sexual assault case attrition and to improve the overall treatment of sexual assault victims, few studies have examined the effect of these reforms. In this study, the authors examine prosecutorial charging decisions across two unique jurisdictions: Kansas City, Missouri, which utilizes a specialized unit for sexual assault cases, and Miami, Florida, which does not use a specialized unit to determine the effect of prosecutorial specialization on case outcomes. The findings of the study reveal that, despite differences in departmental policies and rates of plea bargaining and trials, prosecutors' charging decisions and the predictors of charging are similar in the two jurisdictions. The authors conclude that, regardless of whether decisions are made in a specialized unit or not, victim credibility is a real "focal concern" of the prosecutor in sexual assault cases.*

**Keywords:** *prosecution; sexual assault; specialized unit; charging*

The organization of the prosecutor's office and the procedures used to assign cases to assistant prosecutors vary from one jurisdiction to another. Some jurisdictions assign assistant prosecutors to cases based on the attorney's expertise and skill; others assign attorneys to courtrooms either

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permanently or for a specified period of time. In many large urban jurisdictions, assistant prosecutors are assigned to courtrooms, and cases are prosecuted horizontally; different prosecutors handle the case at each stage in the process. In other jurisdictions, cases are prosecuted vertically; each case is assigned to an assistant prosecutor (typically after the decision to charge has been made by the felony review unit), who stays with the case until final disposition.

A number of large jurisdictions combine horizontal and vertical prosecution (Abadinsky, 1988). Routine cases are prosecuted horizontally, whereas targeted cases (e.g., homicides, sex offenses, white-collar crimes, cases involving career criminals) are prosecuted vertically. Typically, the targeted cases are assigned to specialized units within the prosecutor's office. In some jurisdictions, the prosecutors assigned to the unit handle all of the case decisions including the decision to file charges; in other jurisdictions, cases are forwarded to the specialized unit only after a decision to file charges has been made (Battelle Memorial Institute Law and Justice Center, 1977).

These procedural arrangements provide several potential advantages in the processing of sexual assault cases. Many legal scholars concur that the use of one attorney with continuous case responsibility is beneficial to the victim. For example, Abadinsky (1988) purports that within vertical prosecution jurisdictions, "the victim or complainant has the comfort of one assistant throughout the entire judicial process; he or she does not have to discuss the case anew with each new assistant" (p. 125). Moreover, in some specialized jurisdictions such as Kansas City, Missouri, prosecutors can become actively involved with the police investigation (Battelle Memorial, 1977). This early intervention is beneficial to both case development and victim retention, as it provides immediate opportunities to coordinate subsequent meetings with the victim.

Specialized prosecutorial units have also been touted for bolstering prosecutorial capabilities in sexual assault cases (Battelle Memorial, 1977; Loh, 1980). One assumption underlying this prediction is that routine exposure to sexual assault cases results in an accumulation of experiences that enhances an attorney's charging abilities; the specialized attorney is better able to assess the strengths and weaknesses of a case, to anticipate and respond to defense tactics, and to communicate more sensitively and confidently with the victim (Battelle Memorial, 1977). A second assumption underlying this prediction is that having a smaller group of attorneys responsible for sexual assault cases will eliminate disparity in decision making; decisions will be made with more consistency, and there will be fewer personal factors or legally irrelevant variables involved in charging

decisions. A third assumption is that specialized units will embody a more aggressive organizational posture toward sexual assault than nonspecialized units (Battelle Memorial, 1977; Loh, 1980).

With few exceptions, predictions concerning the effect of specialized units have been largely untested. Few studies have systematically evaluated the effectiveness of specialized prosecutorial units, and most of the research is dated (Barlow & Layman, 1977; Berliner, 1981; Blakey, Goldstock, & Rogovin, 1978; Los Angeles County Office of the District Attorney, 1983). Prosecutors surveyed in a recent national assessment of gang prosecution (Johnson, Webster, & Connors, 1995) believed vertical prosecution within a specialized gang unit was more effective; however, data illustrating effectiveness were not provided.

One exception is a study by LaFree (1989) that examined sexual assault case processing before and after the creation of a specialized sex offenses unit in the Indianapolis Police Department. LaFree's qualitative data from observations of and interviews with officers revealed patterns of more humane treatment of sexual assault victims after the creation of the sex offenses unit. This change in officer attitudes, however, did not translate into markedly different processing outcomes; there were no significant differences in the numbers of arrests or felony filings or in the severity of charging following creation of the unit. Furthermore, the analyses revealed that legally irrelevant variables (e.g., victim exhibited nonconforming behavior, relationship between the victim and suspect, racial composition of the victim-offender dyad) continued to affect case processing in the postreform period.

Although LaFree's (1989) research provides important insight into sexual assault case processing generally, it does not focus explicitly on prosecutorial specialization. The present study addresses this void in the research. We examine charging practices, case outcomes, sentencing philosophies, and predictors of charging in two jurisdictions that use different procedures for screening and prosecuting sex offenses. The Office of the Prosecuting Attorney for the Sixteenth Judicial Circuit of Missouri (Kansas City) has a sex crimes unit that makes the decision to charge and uses vertical prosecution from screening through disposition. In contrast, the Dade County (Miami) State's Attorney's Office has a specialized sex offense unit, but the unit focuses almost exclusively on cases involving children; sexual battery cases involving teenagers and adults, which are the focus of this study, are screened initially by either the Felony Division (first-degree felonies) or the Felony Screening Unit (second- and third-degree felonies). We predict that charging rates will be higher in Kansas City; we also expect that

legally irrelevant victim characteristics will be less influential in predictions of charging in this jurisdiction.

## PROSECUTORS' CHARGING DECISIONS

There is wide recognition of the fact that many persons who are guilty of committing crime and who would be convicted are either not charged or charged with a less serious offense (Jacoby, 1976, 1980; Miller, 1969). A considerable amount of research is devoted to explaining the congeries of variations in prosecutorial charging decisions. Some of these studies provide explanations based on the exercise of discretion at the individual prosecutor level; others contend that discretion is constrained at the departmental level.

### **Explanations at the Individual Level**

*Prosecutors' concerns with convictability.* Studies of the charging process demonstrate that prosecutors exercise their discretion and reject a significant percentage of cases at screening (Frazier & Haney, 1996; Spears & Spohn, 1997). This research also indicates that prosecutors attempt to "avoid uncertainty" (Albonetti, 1987) by filing charges in cases where the odds of conviction are good and by rejecting charges in cases where conviction is unlikely. These studies suggest that prosecutors' assessments of convictability are based primarily—although not exclusively—on legally relevant factors. Characteristics such as seriousness of the offense (Albonetti, 1987; Jacoby, Mellon, Ratledge, & Turner, 1982; Mather, 1979; Miller, 1969; Myers, 1982; Neubauer, 1974; Rauma, 1984; Schmidt & Hochstedler Steury, 1989), strength of evidence in the case (Albonetti, 1987; Jacoby et al., 1982; Miller, 1969; Nagel & Hagan, 1983), and culpability of the defendant (Albonetti, 1987; Mather, 1979; Miller, 1969; Neubauer, 1974; Schmidt & Hochstedler Steury, 1989; Swiggert & Farrell, 1976) consistently emerge as predictors in assessments of prosecutorial decision making.

A second fairly consistent finding is that prosecutorial charging decisions reflect the influence of extralegal characteristics on prosecutors' decisions. Some studies suggest that prosecutors attempt to predict how the background, behavior, and motivation of the suspect and victim will be interpreted and evaluated by other decision makers, especially potential jurors. According to Frohmann (1997), "Concern with convictability creates a 'downstream orientation' in prosecutorial decision making—that is, an

anticipation and consideration of how others [i.e., jury and defense] will interpret and respond to a case" (p. 535). Research demonstrates that prosecutors are more likely to file charges in cases with male defendants (Nagel & Hagan, 1983; Spohn, Gruhl, & Welch, 1987) and with those who are unemployed (Schmidt & Hochstedler Steury, 1989). Other research reveals that prosecutors are more likely to file charges if the defendant is non-White (Spohn et al., 1987) or if the defendant is Black and the victim is White (LaFree, 1980; Paternoster, 1984; Spohn & Spears, 1996; see also Kingsnorth, Lopez, Wentworth, & Cummings, 1998).

There is compelling evidence that victim characteristics also play a role in the charging process. According to many prosecutors, a so-called stand-up victim is an essential element of a strong case. Stanko (1988) defines this as a person whom a judge or jury would consider credible and undeserving of victimization. In assessing victim credibility, prosecutors rely on stereotypes about appropriate behavior; they attribute credibility to victims "who fit society's stereotypes of who is credible: older, White, male, employed victims" (p. 172). Victims who exhibit behavior extraneous to traditional societal norms of female behavior (LaFree, 1989) or who engage in "precipitatory behavior" (Amir, 1971) are deemed less credible. The relationship between the victim and the suspect also affects case processing; several studies conclude that prosecutors are less likely to file charges if the victim knew the offender (Albonetti, 1987; Simon, 1996; Stanko, 1988). These studies suggest that a prior relationship with the offender may raise questions about the veracity of the victim's story and may lead the victim to refuse to cooperate as the case moves forward (Myers & Hagan, 1979; Vera Institute of Justice, 1981).

*Focal concerns theory.* Spohn, Beichner, and Davis-Frenzel (2001) posit that prosecutors' charging decisions, like judges' sentencing decisions, are guided by a set of "focal concerns" (Steffensmeier, Ulmer, & Kramer, 1998). According to the focal concerns perspective, judges' sentencing decisions reflect their assessment of the blameworthiness or culpability of the offender, their desire to protect the community by incapacitating dangerous offenders or deterring potential offenders, and their concerns about the practical consequences or social costs of sentencing decisions. Because judges rarely have enough information to accurately determine an offender's culpability or dangerousness, they develop a "perceptual shorthand" (Hawkins, 1981, p. 208; Steffensmeier et al., 1998, p. 767) based on stereotypes and attributions that are themselves linked to offender characteristics such as race, gender, and age. Thus, "race, age, and gender will interact to

influence sentencing because of images or attributions relating these statuses to membership in social groups thought to be dangerous and crime prone” (p. 768).

Spohn and her colleagues (2001) maintain that the focal concerns that guide prosecutors’ charging decisions are similar but not identical to those of judges. Prosecutors, like judges, are motivated by what Steffensmeier et al. (1998, p. 767) refer to as the “practical constraints and consequences” of decisions. They are more likely to file charges when the offense is serious, when it is clear that the victim has suffered real harm, and when the evidence against the suspect is strong. The nature of prosecutors’ concerns, however, is somewhat different from those of judges. Although both sets of officials are concerned about maintaining relationships with other members of the courtroom workgroup, prosecutors’ concerns about the practical consequences of charging decisions focus on the likelihood of conviction rather than the social costs of punishment. In other words, their “downstream orientation” (Frohmann, 1997) forces them to predict how the victim, the suspect, and the incident will be viewed and evaluated by the judge and jurors. These authors contend that because prosecutors’ predictions are inherently uncertain, prosecutors develop a perceptual shorthand that incorporates stereotypes of real crimes and credible victims. As a result, prosecutors consider not only the legally relevant indicators of case seriousness and offender culpability but also the background, character, and behavior of the victim, the relationship between the suspect and the victim, and the willingness of the victim to cooperate as the case moves forward.

### **Explanations at the Departmental Level**

Jacoby and her colleagues (Jacoby 1976, 1980; Mellon, Jacoby, & Brewer, 1981) assert that prosecutorial decision making is not a product of individual exercises in discretion but instead is influenced by factors over which the individual prosecutor has no control. More specifically, this research suggests that departmental policy dictates prosecutorial decision making. These authors emphasize the importance of examining case outcomes—rates of rejections, dismissals, rates and types of plea bargains, and trials—in the context of departmental policy.

According to Jacoby (1976, 1980), prosecutors’ offices operate within one of four distinct types of prosecutorial policies: legal sufficiency, system efficiency, defendant rehabilitation, and trial sufficiency. Prosecutors operating under the legal sufficiency policy accept all cases in which the elements of the crime are present; dispositional patterns include high levels of

cases accepted for prosecution and high dismissal rates at preliminary hearings and trials. System efficiency policy, which emphasizes case screening as a way of decreasing office workload, is characterized by two distinct dispositional patterns: high levels of referrals to diversionary programs and overcharging (for the purpose of enhancing plea bargaining power). Defendant rehabilitation policy reflects the notion that the majority of defendants should not be processed through the criminal justice system; the focus of this policy is on early diversion of defendants and the use of noncriminal justice alternatives, as evidenced in the dispositional patterns. Trial sufficiency policy, which is congruous with the contention that prosecutors' decisions reflect concerns with convictability (Albonetti, 1987; Frohmann, 1991, 1997), is characterized by two distinct dispositional patterns: a low acceptance of cases for prosecution (or conversely, a high number of cases rejected in the screening process) and a high level of offenders convicted at trial.

### SEXUAL ASSAULT CASE PROCESSING DECISIONS

Studies examining sexual assault case processing generally indicate that decision making in sexual assault cases is similar to other types of cases. Decisions are influenced primarily by legally relevant variables, namely, the seriousness of the offense, the suspect's prior record, and the presence of evidence. Some evidence suggests, however, that the factors that influence decision making in sexual assault cases are somewhat different from the factors that affect decision making in other types of cases. More specifically, given that most rapes are perpetrated by nonstrangers and that few involve physical injury to the victim, the end product is that in many sexual assault cases, attention is focused on the victim, her moral character, and her behavior preceding the assault (Bryden & Lengnick, 1997). Many studies indicate that sexual assault case outcomes are affected by the victim's age, occupation, and education (McCahill, Meyer, & Fischman, 1979; Spears & Spohn, 1997), by risk-taking behavior such as hitchhiking, drinking, or using drugs (Kalven & Zeisel, 1966; LaFree, 1981; McCahill et al., 1979; Spears & Spohn, 1997), and by the reputation or moral character of the victim (Kalven & Zeisel, 1966; McCahill et al., 1979; Reskin & Visser, 1986; Spears & Spohn, 1997; see also Kerstetter, 1990; Kingsnorth, MacIntosh, & Wentworth, 1999).

Sexual assault case outcomes are also affected by the relationship between the victim and the suspect. Stranger cases are investigated more

thoroughly (McCahill et al., 1979) and are less likely to be unfounded by the police (Kerstetter, 1990) or rejected by the prosecutor (Battelle Memorial, 1977; see also Spohn & Holleran, 2001). Studies examining the effect of victim-offender relationships on prosecutorial charging decisions, however, provide rather consistent results: prosecutorial charging decisions do not appear to be influenced by the type of victim-offender relationship, but different predictors affect charging decisions in stranger and acquaintance cases (Kerstetter, 1990; Kingsnorth et al., 1999; Spohn & Holleran, 2001).

There are some inconsistencies in the research examining the effects of offender and victim race on sexual assault case processing decisions. Early assessments of charging decisions provided support for the sexual stratification hypothesis; Black offenders who sexually assaulted White victims were punished more harshly than were other offenders (LaFree, 1989). More recent research, on the other hand, revealed that sexual stratification was confined to cases in which the victim did not engage in some type of risk-taking behavior (Spohn & Spears, 1996). Moreover, a recent study of prosecutorial charging decisions found interactive effects of victim race and victim-suspect relationship; prosecutors were more likely to file charges in stranger sexual assault cases involving White victims (Spohn & Holleran, 2001). The findings also revealed a differential effect of a case characteristic (e.g., use of a weapon) on charging decisions based on victim race; the effect of offender's use of a weapon was confined to cases involving Black victims.

## RESEARCH DESIGN

### **Jurisdictions**

The two jurisdictions chosen for this study are Jackson County (Kansas City), Missouri, and Dade County (Miami-Dade), Florida. These jurisdictions were selected to represent variations in procedures for screening and prosecuting sexual assault and sexual battery cases. Demographic profiles of each jurisdiction are provided in the appendix.

### **Case Screening and Case Assignment**

An overview of case processing in the two jurisdictions is presented in Panel 1 of Table 1. In Kansas City, the Sex Crimes Unit of the Office of the Jackson County Prosecutor handles all cases of sexual assault involving children and adults, as well as cases of child homicide. All arrests for these

**Table 1: Case Processing and Respondent Demographics**

	<i>Kansas City Sex Crimes Unit</i>	<i>Miami Felony Division</i>
No. of prosecutors	6	22
Type of cases handled	Sex crimes	All felonies
Prosecutor assignment	Choice	Rotation or permanent assignment
Case assignment	Randomly to individual prosecutor	Randomly to courtroom
Authority in decision making		
Charging	Yes	No
Plea bargaining	Yes	Yes
Supervisory approval of plea bargaining decisions	No	Yes
Method of prosecution	Vertical	Vertical—post-initial screening

*Demographic Data of Prosecutors Interviewed in the Study*

	<i>n = 10</i>	<i>n = 6</i>
Sex		
Male	3	2
Female	7	4
Race or ethnicity		
Black	0	1
Hispanic	0	1
White	10	4
Years of prosecutorial experience		
Range	4-11	6-12
Average	6.5	9.0

offenses are referred to the Sex Crimes Unit for screening, and one of the prosecutors assigned to the unit reviews the case, decides whether or not to charge the suspect with a felony, and then handles the case as it moves to trial. All cases are prosecuted vertically. In 1999, there were six prosecutors assigned to the unit. According to the director of the unit, most attorneys remain at least 2 years and some stay “more or less permanently.”

Miami also uses vertical prosecution of cases, but only after the initial charging decision has been made. Most arrests for sexual battery are screened by the Felony Screening Unit, which reviews and makes charging decisions for all second- and third-degree felonies. The unit includes 22

assistant state attorneys, some of whom are assigned permanently and some of whom rotate through the unit. If charges are filed, the case is forwarded to the Felony Division for assignment to one of the circuit judges. The case is then prosecuted by one of the three attorneys assigned to that courtroom.

In summary, the procedures used to screen cases vary in the two jurisdictions. The initial decision to file charges is made by prosecutors assigned to a specialized Sex Crimes Unit in Kansas City; these attorneys are responsible for the case from inception to final disposition. In Miami, the charging decision is made by prosecutors in a Felony Screening Unit, which screens all felonies that result in an arrest. Once the initial decision to file charges has been made in Miami, the case is then forwarded to the Felony Division and prosecuted vertically; prosecutors are assigned to cases based on their respective courtroom assignments.

### **Data Collection**

The methods used for case selection and data collection varied between the two jurisdictions. In Miami, we selected sexual battery cases<sup>1</sup>, involving female victims<sup>2</sup> over the age of 12, that were cleared by arrest in 1997 from the Sexual Crimes Bureau of the Miami-Dade Police Department. Officials in the Sexual Crimes Bureau provided photocopies of the incident reports, arrest affidavits, and closeout memorandums for all cases matching the specified case requirements; this resulted in 140 cases.

In Kansas City, data were collected from cases of forcible rape, forcible sodomy, first-degree statutory rape, first-degree statutory sodomy, sexual assault, and deviate sexual assault, involving female victims over the age of 12, that were cleared by arrest and referred to the Jackson County Sex Crimes Unit of the Office of the Prosecuting Attorney in 1996, 1997, and 1998.<sup>3</sup> The Kansas City data were collected from case files maintained by the Sex Crimes Unit; a total of 259 cases matching the aforementioned selection criteria are included in the analyses.

In each jurisdiction, we read through the documents in the case file and recorded detailed information about the sexual assault, the suspect, the victim, and the final case disposition on an optical scan form. We supplemented the quantitative case file data with qualitative data gathered from interviews with prosecutors in the Dade County State's Attorney's Office and the Jackson County Sex Crimes Unit. Panel 2 of Table 1 provides an overview of the respondents' demographic data.

## CHARGING DECISIONS

Rape law reformers predicted that a specialized prosecution unit for sexual assault cases would embody a more aggressive organizational posture toward sexual assault than would a nonspecialized unit. A frequency distribution of charging decisions is presented in Table 2 to test the hypothesis that prosecutors' charging decisions will differ in the two jurisdictions and that fewer cases will be rejected in Kansas City than in Miami.

As displayed in Table 2, prosecutors filed charges in 57.5% of all sexual assault cases in Kansas City and in 58.6% of cases in Miami. To determine if this difference in charging was statistically significant, an equality of means test was conducted. The results of the *t* test ( $t = .201$ ) indicated that these differences in charging decisions are not statistically significant. In other words, prosecutors in Kansas City are not more likely to file charges in sexual assault cases than are their counterparts in Miami. This similarity in charging decisions between Kansas City and Miami is validated in prosecutors' explanations of case filing practices.

When asked how they determine whether or not to file charges in a sexual assault case, prosecutors from both jurisdictions indicated that they use a standard of "proof beyond a reasonable doubt." These comments confirm Frohmann's (1991, 1997) contention that in evaluating a case, prosecutorial attention is focused "downstream" at jurors and judges. Interviews with prosecutors in the Jackson County Sex Crimes Unit revealed that this "downstream concern" with convictability is incorporated in the policy used for charging decisions within the specialized unit. As one attorney observed,

The saying around here is, "File for trial." In the worst case scenario, the case goes before the jury, so we have to ask, "Can I win this case?" The standard with a jury case is proof beyond a reasonable doubt, so that is the appropriate filing standard. (Kansas City Prosecutor #7)

A second Kansas City prosecutor, whose comments also reflect downstream concerns, acknowledged that the proof-beyond-a-reasonable-doubt standard exceeds the legal requirement for filing charges. She stated,

Of course legally [the charging standard] only has to be probable cause, but I don't think that's reasonable. I think that if it gets to the trial point, it should be proof beyond a reasonable doubt. I think we accept cases at a lower standard, but we know that the investigation is still ongoing, and we have an idea

**Table 2: Charging Decisions and Final Case Dispositions: Data Partitioned by Jurisdiction**

<i>Final Disposition</i>	<i>Kansas City</i>		<i>Miami</i>	
	n	%	n	%
Intake screening	259		140	
Rejected	110	42.5	58	41.4
Filed	149	57.5	82	58.6
Postintake	149		82	
Dismissed	22	14.8	16	19.5
Continued	127	85.2	66	80.5
Fully prosecuted	127		66	
Guilty plea	96	75.6	62	94.0
Trial	31	24.4	4	6.0

of what is coming. Generally, I would want to know that I could make the case in court. (Kansas City Prosecutor #5)

Comments from Miami prosecutors similarly indicated that charging decisions in the jurisdiction are also predicated on the possibility that the case goes to trial. As one prosecutor explained, the standard used in the jurisdiction is not based on legal sufficiency alone:

Proof beyond a reasonable doubt is our standard since that is what will be required if the case goes to trial. We look to see if all of the legal elements of the crime are met. But, even if this is true, we still have to be able to prove the case beyond a reasonable doubt. (Miami Prosecutor #6)

Although many prosecutors in Kansas City and Miami indicated that their charging decisions are based on successfully obtaining a conviction at trial, others admitted that they have filed charges using a lower standard in exceptional sexual assault cases. One Kansas City prosecutor indicated that she has taken a risk and filed charges in cases in which she is convinced beyond a reasonable doubt that a crime has occurred even if she is uncertain about how the jury will react to the case. In her words,

Looking at the case as a prosecutor, we feel like we need to look to trial. Some cases, you, as a prosecutor, are convinced beyond a reasonable doubt and don't know if a jury will be able to meet that same standard, but you take the case. You go out on a limb, or as we say, "You go down in flames for the case." (Kansas City Prosecutor #10)

Similarly, one of the Miami prosecutors commented that although he generally follows the standard of proof beyond a reasonable doubt, he is willing to file charges on a lower standard if he believes the victim. In his words,

The truth of the matter is this—the real issue is whether I believe the victim. If I do and the case is not particularly strong, I will explain to her what she will encounter if we proceed. If she's willing to go forward, I'll proceed with the case as long as I'm convinced beyond a reasonable doubt that she is telling the truth. (Miami Prosecutor #2)

In other words, in cases with believable victims who are willing to proceed with the case, some prosecutors will take a risk and file charges even when the probability of conviction is low.

## FINAL CASE DISPOSITIONS

Research conducted by Jacoby and her colleagues (Jacoby, 1976, 1980; Mellon et al., 1981) suggests that prosecutorial decision making is not a byproduct of individual acts of discretion but rather is constrained by overarching departmental policies. Accordingly, these authors contend that case outcomes—rates of rejections, dismissals, rates and types of plea bargains, and trials—will vary from department to department. To test the hypothesis that final case dispositions will vary between Kansas City and Miami, frequencies of final case dispositions are presented in Table 2.

### **Kansas City**

One pattern that emerges from the case outcomes in Kansas City is the high level of case rejections at initial screening. Kansas City prosecutors rejected approximately 42.5% of all of the sexual assault cases cleared by arrest. Of the 149 cases in which charges were initially filed, 14.8% ( $n = 22$ ) were later dismissed by the prosecutor. Also, 1 case that resulted in charges at the initial screening was dismissed at the preliminary hearing, and 8 cases that were bound over for trial were later dismissed. Considered together, charges were filed in 149 cases, but 22 of those cases were later dismissed. In other words, only 49% ( $n = 127$ ) of all cases in Kansas City proceed to the plea or trial stage.

To assess why some of the cases were initially charged but later dismissed, we asked prosecutors about the kinds of circumstances that would

lead to a dismissal of charges in a case. As one prosecutor commented, "We do such a good job of assessing up front, this doesn't happen much" (Kansas City Prosecutor #10). Most of the prosecutors mentioned that something catastrophic would have to happen for charges to be dismissed after a decision to file had been made. Prosecutors identified several catastrophes that could lead to case dismissal: evidence problems, victim recantation or failure to cooperate, information that would lead to the exoneration of the defendant, or a change in the victim's or key witness's story. As one prosecutor explained, any number of circumstances may lead to case dismissal:

Sometimes if the victim completely refuses to cooperate [we have to dismiss the case]. We have prosecuted some cases where the victim refused to cooperate, but obviously if we can't find her that's a problem. It could also be evidence falling apart, people changing their stories. But most of the time, it is not because of lack of victim cooperation. It's that evidence falls apart. Maybe there are physical evidence problems or the statements fall apart. It is a move from over the line of beyond a reasonable doubt to below the line. Then we make an educated guess that we could not prove the case beyond a reasonable doubt. (Kansas City Prosecutor #7)

As illustrated in Table 2, a substantial number of cases selected for prosecution in Kansas City resulted in guilty pleas; in fact, only 2 of the 31 cases tried in court resulted in a not guilty verdict. Consequently, we asked prosecutors in the Sex Crimes Unit about the departmental policies that regulate plea bargaining, the typical scenarios of plea negotiations, and the extent to which the victim's wishes were taken into account in the plea negotiation process. According to the director of the Sex Crimes Unit, although attorneys in the Sex Crimes Unit meet weekly to discuss their current cases and may ask their colleagues or the director for advice on specific cases, plea bargains are exempt from review and are made at the sole discretion of the individual prosecuting attorney.

In general, prosecutors in the Sex Crimes Unit indicated that they are amenable to any means of conviction; they do not oppose the use of plea bargaining to secure a conviction. One of the prosecutor's statements emphasizes the positive features of this outcome-based approach to sexual assault case decision making:

To me, the single most important goal is getting someone convicted [at trial or with a plea]. No one including the victim will have to go through anything again; there's no chance for acquittal, there's no appeal . . . I am often willing to take reduced time . . . If I am offering the maximum limit [under the stat-

ute], there is little likelihood of pleading. It is the statute that will determine the way I reduce because sometimes the minimum [sentence] is so high. The victim doesn't care what the suspect is charged with. What they want is the outcome, so I go for it. If I can get a good outcome, it doesn't matter what it is called. It is okay with me. (Kansas City Prosecutor #6)

Interviews with Kansas City prosecutors revealed that they engage in three common plea agreements within the specialized unit: reducing the seriousness of the primary charge, reducing the number of charges, and recommending specific sentences. One prosecutor's comments, related to reducing the number of charges in a case, reinforce the practice of outcome-based plea bargaining decisions:

We tend to charge for every single act that occurs in the commission of the assault, for evidence purposes. In any given case, we may charge 15-20 counts. Sometimes we will dismiss some [of the charges] because the end result [the sentence] is the same. And even with lowering the number of charges, it is possible to still get what you originally wanted. (Kansas City Prosecutor #9)

Another prosecutor commented that he is willing to reduce the severity of the primary charge to get a defendant to plead in a case.

This is a fairly tough jurisdiction on sexual offenses, but cases that are just over the line of beyond a reasonable doubt are sometimes problematic. In those instances, we are going to plea to a lower charge just to get a conviction. Evidence is like a game of cards: If you have a strong hand, you keep playing; if you don't, you bail out before you lose it all. (Kansas City Prosecutor #7)

When asked about the victim's role in the plea negotiation process, prosecutors indicated that by law in the state of Missouri, the victim must be notified and has a right to appear at the hearing. The prosecutors also explained that although this exceeds the legal requirement, the Sex Crimes Unit has a departmental policy that requires prosecutors to keep the victim apprised of every step in a given case; this task is part of the victim advocate's responsibility.

All of the prosecutors indicated that they consider the victim's wishes in the plea negotiation process. One prosecutor indicated that she was particularly accommodating to all of the victims in the sexual assault cases she handles. In discussing the victim's role in the plea negotiation process, she had this to say:

It is ultimately my decision, but I want the victim's input. Maybe she has acquired therapy bills or missed work, and the defendant, if he's on probation, he can make reparations. Sometimes it is also important if we have a hard case involving a brother and sister, we consider if the victim would heal better if he [the offender] went away [to prison] or he didn't. We just sort of ask them. If the victim is unhappy with the decision, she can make a statement to the judge, and the judge can make the decision. (Kansas City Prosecutor #5)

A second prosecutor, in commenting on the victim's role in the process, emphasized that the state is the ultimate owner of any given case:

The victim is notified of the terms, but she doesn't have power to veto the agreement, because we have to necessarily make that decision. It's not a good analogy to the medical field, where a patient can veto what the doctor is going to do. In the purest form, the state is the owner of the case. We have to make a dispassionate decision. But, we do consider what the victim says and what the victim wants. If we can honor her wishes, we do. (Kansas City Prosecutor #7)

In summary, considering the standard used for filing charges and the pattern of final case dispositions, it appears that Kansas City prosecutors operate under what Jacoby (1976, 1980) termed a *trial sufficiency* policy. The two patterns that emerge within the jurisdiction typify the trial sufficiency model: high levels of case rejection and high levels of convictions for the cases that are prosecuted. In Kansas City, 51% of all sexual assault cases were either rejected at the initial case screening or filed but later dismissed. Of the 127 cases that did not end in dismissal, 76% resulted in guilty pleas ( $n = 96$ ), and 23% ( $n = 29$ ) resulted in guilty verdicts at trial. Less than 2% ( $n = 2$ ) of the cases selected for prosecution resulted in not guilty verdicts at trial. Considered in conjunction with the comments made by prosecutors, the conviction record in Kansas City is clearly a by-product of the careful case assessments made early on in the screening process. In other words, Kansas City prosecutors appear to be making charging decisions consistent with past research. Their charging philosophies reflect a general preference for avoiding uncertainty and selecting only winnable cases for prosecution (Albonetti, 1987). The end result is a 98% conviction rate.

Moreover, as evident in Table 2, the trial rate for fully prosecuted cases in Kansas City is four times greater (24.4%) than in Miami (6.0%). To determine if this difference in trial rates was statistically significant, an equality of means test was conducted. The results of the  $t$  test ( $t = 3.18$ ) indicated that this difference is statistically significant ( $p = .002$ ). That is, prosecutors in the Sex Crimes Unit are less likely to engage in plea bargaining and more likely to take cases to trial than are their Miami counterparts.

## Miami

Similar to their counterparts in Kansas City, Miami prosecutors did not file charges in 41.4% of the sexual assault cases. Of the 82 cases filed at screening, an additional 20% were later dismissed.<sup>4</sup> Unlike Kansas City, however, all of the rejected cases were dismissed early in the process; none of the cases were eliminated at the preliminary hearing stage or after a decision was made to bind the case over for trial. Adjusting the original number of cases in which charges were filed for the cases that were eventually dismissed results in a 47% rate of cases proceeding to the plea or trial stage ( $n = 66$ ). Most of the charged cases in Miami resulted in a guilty plea (94%). In fact, only 4 of the 66 cases in which charges were filed and not dismissed made it to trial. The conviction rate for those cases that made it to trial was 50%; 2 cases resulted in guilty verdicts, and 2 cases resulted in not guilty verdicts.

Although most of the sexual assault cases in Miami are disposed of as guilty pleas, none of the prosecutors suggested that they overcharge in sexual assault cases to enhance the likelihood of plea bargaining. They did suggest, however, that there may be an incentive in place in the jurisdiction to entice defendants into plea bargaining in their jurisdiction. As one prosecutor explained,

We have sentencing guidelines in Florida, and the plea offer generally will be for the minimum sentence under the guidelines or something close to that. But, if the defendant goes to trial, he cannot expect that the state is going to ask for the same sentence [as they offered during plea negotiations]. It's not that we penalize him for exercising his constitutional right to a trial by jury. Rather, the state makes an initial offer, and if the defendant accepts it, everyone benefits. If the defendant turns down the offer, the price goes up. (Miami Prosecutor #4)

Plea bargains in Miami, unlike those in Kansas City, are not made at the sole discretion of the prosecuting attorney; all plea bargains are reviewed by the chief prosecutor. Another jurisdictional difference was revealed in discussions of the most common types of plea agreements; most Miami prosecutors commented that they would be more likely to negotiate a particular sentence than to reduce the severity of the charge or drop one or more counts of the charge in a given case. As one prosecutor commented,

I believe that when I charge someone with a crime, the charge is appropriate. I don't overcharge and then hope that the defendant will agree to plea to a lesser charge. So, whereas I would be willing to bargain for a reduced sen-

tence, I am always mindful of the fact that the original charges are appropriate and that he should therefore plead to these charges. (Miami Prosecutor #6)

The only exception to this general plea bargaining practice of negotiating a sentence, according to the prosecutors interviewed in the jurisdiction, is in the case of a capital offense. As one prosecutor explained,

We never, generally speaking, reduce the severity of the charges. The only exception is sexual battery on a minor; conviction for this offense leads to a mandatory life sentence without the possibility of parole. In order to get the defendant to plead guilty, we have to reduce the charge to attempted sexual battery on a minor, which is punishable by up to 30 years in prison. (Miami Prosecutor #2)

When asked about the role played by the victim in the plea negotiation process, each respondent indicated that she or he tries to consider the victim in deciding how to proceed with a sexual assault case. As one attorney explained, this is not a legal requirement, but more of a courtesy to the victim.

Obviously, the prosecutor has the power to do whatever she or he feels is the right thing to do in the case, but in this office we're very victim sensitive, and we try to make sure that the victim is comfortable with the outcome. If the family insists on a trial but you as a prosecutor think that the best solution for all concerned is a plea, you would explain to them why going to trial is not the best strategy. (Miami Prosecutor #1)

A second prosecutor believes that there is a certain duty to protect sexual assault victims from suffering any additional trauma. In this prosecutor's opinion, if a sexual assault victim would be traumatized by taking the stand in a case, this prosecutor will probably plead the case.

I think that we always have to be mindful of the victim's opinion and wishes. I don't think that I've ever come across a victim who is not completely humiliated by the circumstances of the crime. When the victim tells you that she is willing to testify at trial but that it will cause her immeasurable pain to recount the details to strangers, you have to take that into account in deciding how to proceed with the case. It might influence you to plead the case rather than take it to trial. (Miami Prosecutor #4)

In short, given the selection criteria used for case filing and the patterns of case outcomes, it appears that Miami prosecutors operate under what

Jacoby (1976, 1980) termed a *system efficiency* model of prosecutorial decision making. The three patterns that emerge within the jurisdiction typify system efficiency: high levels of case rejection, early disposal of cases, and high levels of guilty pleas. Thus, although the differences in the number of cases charged but later dismissed did not reach statistical significance in the equality of means tests, the differences in rates of plea bargaining and trials, coupled with the interview data, provide compelling evidence to suggest that the two jurisdictions are disposing of cases differently.

### THE EFFECT OF VICTIM, SUSPECT, AND CASE CHARACTERISTICS ON PROSECUTORS' DECISIONS TO FILE CHARGES

Descriptive statistics for the multivariate analyses are displayed in Table 3. To test the hypothesis that factors affecting charging will vary in the two jurisdictions, and more specifically that legally irrelevant variables will have less of an effect on the decision to charge in Kansas City than in Miami, we estimated a dichotomous logistic regression equation for each of the jurisdictions.<sup>5</sup> The results of the analyses are presented in Table 4.<sup>6</sup>

In Kansas City, only two independent variables significantly affected the decision to file charges. Consistent with prior research, the presence of physical evidence increased the likelihood of a prosecutor's filing charges in Kansas City. Also consistent with prior research but contrary to our hypothesis, evidence of risk-taking behavior on the part of the victim decreased the likelihood of charging in Kansas City.<sup>7</sup> Furthermore, as indicated by the proportional semistandardized regression coefficients in Table 4, risk-taking behavior ( $B_{RL} = .451$ ) is a more influential predictor of charging than is physical evidence ( $B_{RL} = .128$ ).<sup>8</sup>

Although the Miami analysis reveals a similar combination of legal and extralegal characteristics affecting the charging decision, the significant variables are different from those in the Kansas City model. Consistent with prior research indicating that prosecutors' charging decisions reflect case seriousness and evidentiary factors, victim injury, the suspect's use of a weapon in the assault, and a prompt report by the victim increased the likelihood of charging in Miami. In addition, as indicated by the semistandardized estimates, these three variables are the most influential predictors in the model.

As in Kansas City, however, one overtly extralegal characteristic decreased the likelihood of charging in Miami: evidence that called into question the victim's moral character.<sup>9</sup> Prosecutors in Miami were also less

**Table 3: Frequency Distribution for Dependent and Independent Variables: Data Partitioned by Jurisdiction**

	<i>Kansas City</i> <sup>a</sup>		<i>Miami</i> <sup>b</sup>	
	n	%	n	%
Dependent variable				
Charged (% yes)	149	57.5	82	58.6
Victim characteristics				
Race (% White)*	125	49.2	53	38.4
Age ( <i>M</i> )	23.52		21.78	
Relationship to suspect				
Stranger	53	20.5	18	12.9
Acquaintance or relative	143	55.2	72	51.8
Intimate partner*	63	24.3	49	35.3
Risk-taking behavior (% yes)*	112	43.2	39	27.9
Moral character (% yes)	89	34.5	57	40.7
Reported within 1 hour (% yes)	82	31.9	36	26.3
Suspect characteristics				
Race (% White)*	92	35.9	31	22.3
Age ( <i>M</i> )*	31.86		29.20	
Case characteristics				
Victim injury (% yes)	79	30.5	41	29.3
Suspect used gun or knife (% yes)	42	16.2	20	14.3
Physical evidence (% yes)	142	54.8	79	56.4
Witness*	110	42.5	44	32.4

a.  $n = 259$ .b.  $n = 140$ .\* $p = .05$  in equality of means tests.

likely to file charges in cases with older victims, as indicated by the negative direction of the effect of victim age on the charging decision. Contrary to prior research, charges were more likely to be filed in cases involving acquaintances or relatives compared to the reference category of stranger. As indicated by the associated proportional semistandardized coefficient, however, this variable exerts the least influence in the model (.005).

In an effort to discern the extent to which the statistically significant variables were exerting differential influences in the two jurisdictions,  $z$  values were calculated to assess the equality of the respective regression coefficients (Paternoster, Brame, Mazerolle, & Piquero, 1998).<sup>10</sup> The results of these analyses revealed that the effect of physical evidence on charging in Kansas City was significantly different than that exerted in Miami ( $z = 2.12$ ). The effects of victim-suspect relationship ( $z = 2.22$ ) and victim injury ( $z = 2.09$ ) also were significantly different from the effects in Kansas City.

**Table 4: The Effect of Victim Characteristics, Suspect Characteristics, and Case Characteristics on the Decision to Charge: Data Partitioned by Jurisdiction**

Variable	Kansas City				Miami			
	b	SE	Exp(B)	B <sub>ML</sub>	b	SE	Exp(B)	B <sub>ML</sub>
Victim characteristics								
Race (1 = White)	-0.454	0.465	NS		-0.031	0.563	NS	
Age	-0.010	0.015	NS		-0.085*	0.038	0.918	-0.094
Relationship to suspect								
Acquaintance or relative	0.010	0.480	NS		2.240*	0.882	9.390	0.005
Intimate partner	-0.328	0.504	NS		1.580	0.840	NS	
Risk-taking behavior	-1.766*	0.341	0.171	-0.451	-0.908	0.533	NS	
Moral character	-0.173	0.347	NS		-1.140*	0.465	0.320	-0.085
Reported within 1 hour	0.413	0.398	NS		1.268*	0.615	3.555	0.144
Suspect characteristics								
Race (1 = White)	-0.194	0.483	NS		0.722	0.689	NS	
Age	0.024	0.015	NS		0.055	0.028	NS	
Case characteristics								
Victim injury	0.293	0.419	NS		2.009*	0.705	7.457	0.134
Suspect used gun or knife	0.484	0.521	NS		1.674*	0.831	5.331	0.170
Physical evidence	1.523*	0.356	4.586	0.128	0.257	0.479	NS	
Witness	0.326	0.317	NS		0.528	0.505	NS	
N of cases		248				127		
-2 log likelihood		262.225				130.446		
$\chi^2$		77.938				40.660		
df		13				13		
Cox and Snell Pseudo R <sup>2</sup>		.270				.274		
Nagelkerke Pseudo R <sup>2</sup>		.361				.370		
Probability		.00				.00		

NOTE: NS = nonsignificant.  
\* $p \leq .05$ .

None of the other independent variables produced statistically significant  $z$  values.<sup>11</sup>

### **The Sexual Stratification Hypothesis**

Prior sexual assault research has found support for the sexual stratification hypothesis, which asserts that “various degrees of opprobrium are attached to sexual assaults according to the racial makeup of the offender/victim dyad” (Walsh, 1987, p. 154). To test the hypothesis that prosecutors are more likely to file charges in sexual assaults committed by Black offenders on White victims, a second dichotomous logistic regression equation was estimated with all Kansas City and Miami cases pooled together in the same data set.<sup>12</sup> The results of the analysis are presented in Table 5.

The analysis in Table 5 failed to support the sexual stratification hypothesis: Sexual assaults with White offenders and White victims and Black suspects and Black victims are no more likely to result in charges than the omitted reference category of assaults with Black offenders and White victims. Research conducted by Spohn and Spears (1996) found that Black offenders who assaulted White victims were treated more leniently than were other offender and victim racial groups when there was evidence to suggest that the victim had engaged in some type of risk-taking behavior preceding the assault. Two interaction models were estimated to model the effect of offender’s race and victim’s race with risk-taking behavior and questions about the victim’s moral character. The results of these analyses are presented in Panels 2 and 3 of Table 5. As indicated in Panel 2, the interaction terms for offender’s race and victim’s race and risk-taking behavior failed to reach statistical significance. Similarly, as indicated in Panel 3, there are no statistically significant differences among groups in cases with questions about the victim’s moral character. Hence, the analyses fail to support the sexual stratification hypothesis in original or modified forms. The effect remains statistically nonsignificant in all three models and is not conditioned by the influence of the victim’s risk-taking behavior or moral character.

### **PREDICTED PROBABILITIES OF PROSECUTORS FILING CHARGES IN DIFFERENT TYPES OF SEXUAL ASSAULT CASES**

Next, to calculate the predicted probabilities of charging in different types of sexual assault cases in the two jurisdictions, we re-estimated the logistic regression models using a backward elimination procedure to

**Table 5: The Effect of Suspect Race or Victim Race on Charging Decisions: Pooled Data**

<i>Variable</i>	b	SE	<i>Exp(B)</i>
White suspect and White victim	-0.130	0.142	NS
Black suspect and Black victim	0.157	0.142	NS
Victim age	-0.022	0.013	NS
Relationship to suspect			
Acquaintance or relative	0.668	0.377	NS
Intimate partner	0.330	0.387	NS
Risk-taking behavior	-1.413	0.263	0.244
Moral character	-0.558	0.254	0.572
Reported within 1 hour	0.645	0.306	1.906
Offender age	0.0282	0.0128	1.029
Victim injury	0.881	0.325	2.414
Suspect used gun or knife	0.609	0.398	NS
Physical evidence	0.960	0.266	2.611
Witness	0.515	0.254	1.674
To test for interaction effects (Black offender, White victim, and risk-taking behavior is the omitted category)			
White suspect and White victim with risk-taking behavior by victim	-0.020	0.209	NS
Black suspect and Black victim with risk-taking behavior by victim	0.061	0.209	NS
To test for interaction effects (Black offender and White victim and questions about victim's moral character is the omitted category)			
White suspect and White victim with questions about victim's moral character	-0.272	0.225	NS
Black suspect and Black victim with questions about victim's moral character	0.273	0.225	NS
<i>N</i> of cases	380		
-2 log likelihood	423.524		
$\chi^2$	93.755		
<i>df</i>	13		
Cox and Snell Pseudo $R^2$	.219		
Nagelkerke Pseudo $R^2$	.294		
Probability	0.00		

NOTE: NS = nonsignificant

\* $p \leq .05$ .

ensure that only statistically significant variables were included in the models ( $p \leq .05$ ). The associated estimates (presented in Table 6) were then utilized to calculate predicted probabilities.<sup>13</sup> As indicated in Table 6, the pre-

**Table 6: Logistic Regression Analysis Using Backward Elimination: Data Partitioned by Jurisdiction**

Variable	Kansas City		Miami	
	b	SE	b	SE
Victim characteristics				
Race (1 = White)				
Age <sup>a</sup>			-0.0808	0.0347
Relationship to suspect				
Acquaintance or relative			2.4615	0.8462
Intimate partner			1.8481	0.8130
Risk-taking behavior	-1.9153	0.3139		
Moral character			-1.0940	0.4376
Reported within 1 hour			1.4364	0.5854
Suspect characteristics				
Race (1 = White)				
Age <sup>b</sup>			0.0563	0.0263
Case characteristics				
Victim injury			2.0328	0.6645
Suspect used gun or knife			1.6307	0.7864
Physical evidence	1.5724	0.3127		
Witness				
Intercept	0.2687	0.2283	-2.0711	1.0941

NOTE: All variables are significant at the  $p \leq .05$  level.

a. Using a dummy-coded variable for a young teen victim (1 = victim is 13-16 years old; 0 = other) yielded a coefficient of 1.8355 and a standard error of 0.5552.

b. Using a dummy-coded variable for a young offender (1 = offender is 21 years old or younger; 0 = other) yielded a coefficient of -1.2952 and a standard error of 0.5229.

dictors of charging in Kansas City remain the same in the backward elimination model. The re-estimated Miami model, on the other hand, reveals that prosecutors are more likely to file charges in sexual assault cases between intimate partners than they are in cases with victims and suspects who are strangers (the omitted reference category). Although this finding departs from prior research, it may reflect the difficulty of identifying and locating suspects whose identity is unknown to the victim.

The predicted probabilities of prosecutors filing charges in Kansas City are presented in Table 7. In this jurisdiction, physical evidence and risk-taking behavior emerged as significant predictors of charging. As such, the predicted probabilities for all four possible combinations of these two variables are presented: no evidence and no risk-taking behavior, evidence and no risk-taking behavior, evidence and risk-taking behavior, and no evidence and risk-taking behavior. Prosecutors were least likely to file charges in

**Table 7: Predicted Probabilities of Prosecutors Filing Charges in Different Types of Sexual Assault Cases**

Kansas City	
Sexual assaults: Physical evidence and risk-taking behavior	.57
No evidence and no risk-taking behavior	.86
Evidence and no risk-taking behavior	.48
Evidence and risk-taking behavior	.16
Miami	
Sexual assaults: Young teen victims (13-16 years old) and young suspects (21 years old or younger) in typical cases <sup>a</sup>	
Young teen victim and young offender	.58
Young teen victim and older offender	.84
Older victim and older offender	.45
Weak sexual assaults cases: Relationship and questions about the victim's moral character <sup>b</sup>	
Acquaintances or relatives and no questions about moral character	.58
Intimate partners and no questions about moral character	.41
Strangers and no questions about moral character	.09
Acquaintances or relatives and questions about moral character	
Intimate partners and questions about moral character	.20
Strangers and questions about moral character	.19
Strong sexual assaults cases: Relationship and questions about the victim's moral character <sup>c</sup>	
Acquaintances or relatives and no questions about moral character	.03
Intimate partners and no questions about moral character	.98
Strangers and no questions about moral character	.98
Acquaintances or relatives and questions about moral character	
Intimate partners and questions about moral character	.89
Strangers and questions about moral character	.95
Intimate partners and questions about moral character	
Strangers and questions about moral character	.73

a. Typical sexual assault cases in Miami took place between victims and suspects who were acquaintances or relatives and involved no weapon, no injury, no timely report, and no questions about the victim's moral character.

b. These weak or less serious sexual assault cases did not involve the suspect's use of a weapon, injury to the victim, or a timely report by the victim.

c. These strong or more serious sexual assault cases involved the suspect's use of a weapon, injury to the victim, and a timely report by the victim.

sexual assault cases with no evidence and risk-taking behavior (.16); they were most likely to file charges in cases with some type of evidence and no risk-taking behavior on the part of the victim (.86). Comparing only cases with some type of physical evidence, the effect of risk-taking behavior becomes more evident: Cases in which the victim did not exhibit risk-taking behavior were 38% less likely to be prosecuted than were cases in which the victim engaged in some type of risk-taking behavior.

Both victim and suspect age had significant effects on charging in Miami. Whereas the likelihood of charging decreased as victim age increased, the likelihood of charging increased as the suspect age increased. To examine the extent to which victim and suspect age differentials affected charging decisions, victim age was dichotomized to capture young teen victims (13-16 years old) and young suspects (21 or younger). The predicted probabilities for three victim-suspect combinations are presented in Table 7: young teen victim and young suspect, young teen victim and older suspect, and older victim and older suspect. Prosecutors were less likely to file charges against young offenders who assaulted young victims (.58) than they were to file charges against older offenders who assaulted young victims (.84). Charges were least likely to be filed in cases with older victims and older offenders (.45).

The probabilities presented in Panels 3 and 4 of Table 7 are based on the "liberation hypothesis" as posited by Kalven and Zeisel (1966). This hypothesis suggests that the influence of personal beliefs and value systems is inversely related to case seriousness. Considered another way, the liberation hypothesis suggests that the influence of extralegal characteristics will be confined to less serious sexual assault cases and will have little or no effect in more serious cases. To test this hypothesis, predicted probabilities were calculated for weak (or less serious) and strong (or more serious) sexual assault cases. More serious cases involved the suspect's use of a weapon or injury to the victim and a timely report by the victim. The two extralegal variables of interest in these two panels are victim-offender relationship and questions about the victim's moral character. Predicted probabilities for each victim-offender relationship were calculated in combination with the presence or absence of information regarding the victim's moral character, resulting in a total of six comparisons in each type of sexual assault case.

The predicted probabilities in Panels 3 and 4 provide some support for the liberation hypothesis. In weak cases, questions about the victim's moral character have substantially stronger effects on the probability of charging in both acquaintance or relative and intimate partner sexual assault cases. For example, in weak sexual assault cases between victims and offenders

who are acquaintances or relatives, questions about the victim's moral character decreases the probability of charging by 38%. Similarly, the probability of charging in weak sexual assault cases between intimate partners decreases 22% in cases with questions about the moral character. On the other hand, in strong sexual assault cases, the effect of victim's moral character nearly diminishes when the victim and offender are acquaintances or relatives (3% difference) or intimate partners (3%).

This differential effect of moral character in weak cases, however, is confined to nonstranger cases only. This is not surprising given that in weak cases, stranger cases without questions about the victim's moral character have only a 9% probability of resulting in charges, compared to a 3% probability if there are questions about the victim's moral character. In strong cases, conversely, the presence of information relating to the victim's moral character decreases the likelihood of charging by 16% (from 89% to 73%, respectively).

## DISCUSSION

Contrary to our prediction regarding specialized prosecution of sexual assault cases, the findings of this study indicate that prosecutors' charging decisions in Kansas City and Miami are nearly identical. Prosecutors filed charges in 57.5% of all sexual assault cases in Kansas City and in 58.6% of cases in Miami. Furthermore, interviews with prosecutors revealed that prosecutors in both jurisdictions based their filing decisions on a standard of proof beyond a reasonable doubt. Although this finding is contrary to predictions, it is consistent with Albonetti's (1987) research that suggests that prosecutorial decision making reflects an overall desire to avoid uncertainty. More specifically, the results of the analysis confirm that prosecutors select cases with a high probability of conviction and reject charges in cases in which conviction is unlikely.

We speculated that final case dispositions would vary between the two jurisdictions. The analysis of final case dispositions provided support for our hypothesis; Kansas City prosecutors operate under what Jacoby (1976, 1980) termed a *trial sufficiency* policy and Miami prosecutors follow what Jacoby termed a *system efficiency* model of prosecutorial decision making. Moreover, our analysis of fully prosecuted cases revealed important differences in final case dispositions among fully prosecuted cases. Prosecutors in Kansas City were more likely to take cases to trial, whereas prosecutors in Miami were more likely to dispose of cases through plea bargaining. Thus, the findings from the analysis provide support for the research

conducted by Jacoby and her colleagues (Jacoby, 1976, 1980; Mellon et al., 1981). Furthermore, we speculate that the Sex Crimes Unit prosecutors' greater willingness to take cases to trial would produce sentences in Kansas City that are consistent with rape law reformers' expectations. Given that cases taken to trial would be less likely to receive discounts associated with plea negotiation, we would expect conviction charges to be more severe and prison sentences to be longer in tried cases than in those cases disposed through plea bargaining.

Our third prediction, that legally irrelevant characteristics would have less of an effect on charging decisions in Kansas City than in Miami, was not supported. The findings from the logistic regression models indicated that prosecutors' charging decisions in both jurisdictions reflected a combination of legal and extralegal variables. Consistent with past research, the Miami model revealed that prosecutors' charging decisions are based primarily on legally relevant characteristics such as the seriousness of the offense (i.e., victim injury, the suspect's use of a weapon) and evidentiary issues (i.e., prompt report by the victim). Also consistent with past research, both logistic regression models revealed that prosecutors' charging decisions reflect overtly extralegal victim characteristics. In Kansas City, the likelihood of charging was decreased if there was information in the case file to suggest that the victim had engaged in some kind of risk-taking behavior (i.e., walking alone at night, hitchhiking, being in a bar alone, using alcohol or drugs, willingly accompanying the suspect to his residence, or inviting the suspect to her residence). Similarly, in the Miami model, information that called into question the victim's moral character (i.e., prior sexual activity with someone other than the suspect, out-of-wedlock pregnancy or birth, pattern of alcohol and/or drug abuse, prior criminal record, employment in a disreputable career) decreased the likelihood of charging.

This finding was substantiated by the interview data. Many of the prosecutors, when asked what the typical juror is looking for in a sexual assault case, commented that jurors have a hard time relating to certain types of victims. Their remarks echoed the importance of having a "pristine victim upon whom the jury can place no blame." As one prosecutor commented,

Above all, the jury wants a victim they can like. This is unique to sex crimes. They can give something—their vote—to a victim they like. They don't want to give their vote to a victim who they don't like, a victim they don't trust or believe. The more, and I put quotes around this, "innocent" the victim, the better. (Kansas City Prosecutor #7)

A second prosecutor's comments confirm Frohmann's (1997) contention that prosecutors' downstream concerns with convictability compel them to consider how a jury will react to the victim. In this prosecutor's opinion,

A typical juror is looking for a young, pretty victim who played absolutely no role in her assault. That is in essence the standard we use. Do I have enough evidence to overcome what the jury wants? Although she did something stupid, do I have evidence to convince a jury otherwise? In cases where the victim and suspect know each other or cases in which the victim "contributed to" or put herself in the situation, or did something stupid, that takes evidence. (Kansas City Prosecutor #3)

These comments appear to validate the predicted probabilities generated from the Kansas City model. The presence of risk-taking behavior had a more pronounced effect in cases without physical evidence. More specifically, the probability of charges being filed in a case without physical evidence was reduced 41% if there was information in the case file to suggest that the victim had engaged in risk-taking behavior (a change from 57% to 16%), compared to a 38% probability change in cases with physical evidence (a change from 86% to 48%).

A second interesting pattern that emerged in the predicted probabilities merits comment. Questions about the victim's moral character had substantially stronger effects on the probability of charging in cases where the evidence was weak and the assault less serious. In weak sexual assault cases, questions about the victim's moral character decreased the probability of charging by 38% in acquaintance or relative cases and 22% in intimate partner cases. In strong sexual assault cases, questions about moral character only decreased the probability by 3% in nonstranger cases. This finding provides support for Kalven and Zeisel's (1966) liberation hypothesis.

The fact that the amplified effect of moral character is confined to weak cases among nonstrangers also supports prior research related to defense strategies used in sexual assault cases. As Bryden and Lengnick (1997, p. 1204) observed, in stranger rape cases, the defendant concedes that the victim was assaulted. His defense is that the victim has misidentified him as the attacker. He has no need to persuade the jury that the victim "was asking for it" or that she "led him on" in any way because he denies that he has had sexual intercourse with her. As a result, questions about the victim's moral character are not issues in these types of cases. Conversely, in sexual assaults between nonstrangers, the defense usually used by the defendant is

that the victim consented to the sexual encounter. As such, with a consent defense, the victim's moral character is inevitably an issue.

## CONCLUSION

Legal scholars maintain that there are several advantages to processing sexual assault cases through a specialized prosecution unit. One of the potential advantages to prosecution in a specialized unit is the use of one attorney with continuous case responsibility, which, as reported by Abadinsky (1988, p. 125), provides a possible benefit of victim retention and precludes the victim from having to discuss the case anew with multiple attorneys at each stage of the process. Second, attorneys in some specialized units, including those in the Sex Crimes Unit in Kansas City, may become actively involved in the case as early as the police investigation, a practice which could potentially enhance both case development and victim retention. Third, prosecutors specializing in sexual assault cases accumulate experiences and skills in handling those cases. This facilitates case assessments, enhances prosecutors' abilities to anticipate and respond to defense tactics, and improves prosecutors' rapport with sexual assault victims (Battelle Memorial, 1977).

These potential advantages of specialization notwithstanding, the results of this study reveal that there are very few differences between the Sex Crimes Unit in Kansas City and the nonspecialized office in Miami. Despite the variations in departmental policies and the associated patterns of final case dispositions, the end result is the same. Over half of the cases in each jurisdiction were not prosecuted, and only 49% of the cases in Kansas City and 47% of the cases in Miami resulted in prosecution. Also, in each jurisdiction, an overtly extralegal victim characteristic (risk-taking behavior in Kansas City and the victim's moral character in Miami) emerged as a significant predictor of prosecutors' decisions to file charges.

Considered together, these findings call into question all of the aforementioned predicted benefits of specialization as well as two additional assumptions that are often associated with specialized prosecution: (a) that disparity will be eliminated, and fewer personal factors will influence charging decisions; and (b) that specialized units will embody a more aggressive organizational posture toward sexual assault than will nonspecialized units.

One plausible explanation for the patterns of results in the specialized unit is related to prosecutors' concerns with convictability (Albonetti, 1987). As indicated in the analysis of case outcomes, Kansas City prosecu-

tors appear to be operating under the trial sufficiency (Jacoby, 1976, 1980) model of prosecutorial decision making. As such, prosecutors in the specialized unit make filing decisions based on a standard of proof beyond a reasonable doubt. This practice of filing for trial is inconsistent with the aggressive organizational stance that is assumed to distinguish specialized units from nonspecialized units. Therefore, prosecutors' concerns with convictability could be precluding the predicted benefits from emerging in the specialized unit. As Loh (1980) observed more than 20 years ago in his study of rape law reform,

Convictability . . . is a standard that does not leave much room for the exercise of discretion. So long as the fact patterns of the complaints are essentially the same, and prosecutors rely on these facts to the same extent before and after the reform, the filing outcome can be expected to stay the same. Prosecutors today might be more solicitous of and sensitive to the needs of victims than their predecessors, but this attitudinal change does not necessarily translate into a filing change if the record is bereft of the evidence needed to prevail. (p. 603)

A second plausible explanation for why the results of the analysis do not reflect the predicted benefits of specialization is that the specialized unit is symbolic in form and function (Edelman, 1964). That is, the specialized unit, similar to many of the rape law reforms from which it emerged, may serve as only a symbolic representation of reform and may change nothing in the actual practices of sexual assault charging decisions (Edelman, 1964). This explanation, however, is purely speculation.

Taken together, the findings from this study confirm that prosecutors' charging decisions, like judges' sentencing decisions, are guided by a set of "focal concerns" (Spohn et al., 2001; Steffensmeier et al., 1998). The quantitative analyses revealed that prosecutors are more likely to file charges when the evidence is strong (i.e., physical evidence, prompt report by the victim) and when the offense is serious (i.e., victim injury, suspect's use of a gun or knife). More important, the findings from the study reveal that regardless of whether decisions are made in a specialized unit or not, victim credibility is a real focal concern of the prosecutor in sexual assault cases. Prosecutors were less likely to file charges in cases in which the victim had engaged in "risk-taking" behavior or in which there were questions about the victim's moral character. The importance of victim credibility was further confirmed in the interviews with prosecutors. Prosecutors in both jurisdictions indicated that jurors have concerns about the victim's character, reputation, and behavior at the time of the incident.

APPENDIX  
U.S. Census Bureau Data—2000 Demographic Profiles

	<i>Jackson County</i> <i>(Kansas City), Missouri</i>	<i>Miami-Dade County</i> <i>(Miami), Florida</i>
Population		
Total population	654,880	2,253,362
Persons per square mile	1,082.7	1,157.9
Race (%)		
Asian	1.6	1.8
Black	24.2	21.6
Native American or Alaskan	1.3	.4
Native Hawaiian or Pacific Islander	.3	.2
White	71.9	72.3
Other	3.2	7.6
Ethnicity (%)		
Hispanic or Latino	5.4	57.3
Median age	35.2	35.6
Age (%)		
Under 5	7.0	6.5
5-9	7.2	7.0
10-14	7.3	7.1
15-19	6.8	6.9
20-24	6.5	6.4
25-34	14.8	15.0
35-44	16.2	16.1
45-54	13.2	12.5
55-59	4.7	4.8
60-64	3.7	4.3
65-74	6.5	7.2
75-84	4.4	4.4
85 and older	1.6	1.7
Sex (%)		
Male	48.2	48.3
Female	51.8	51.7
Poverty (%)		
Persons below poverty level	11.9	18.0
Employment (% population 16 years and older)		
Unemployed	3.8	5.0
Housing (%)		
Owner-occupied units	62.9	57.8
Renter-occupied units	37.1	42.2
Median household income	\$39,277	\$35,966
Household income (%)		
Less than \$10,000	10.1	13.9

## APPENDIX (continued)

	<i>Jackson County (Kansas City), Missouri</i>	<i>Miami-Dade County (Miami), Florida</i>
\$10,000-\$14,999	6.3	7.5
\$15,000-\$24,000	13.7	14.4
\$25,000-\$34,000	14.4	13.0
\$35,000-\$49,999	17.5	15.7
\$50,000-\$74,999	19.6	16.7
\$75,000-\$99,999	9.6	8.1
\$100,000-\$149,999	6.0	6.2
\$150,000-\$199,999	1.4	2.0
\$200,000 or more	1.4	2.7

SOURCE: U.S. Census Bureau (2000a, 2000b).

NOTE: Because of rounding errors, percentages do not total to 100%.

## NOTES

1. Sexual battery is defined by Florida statutes as "oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object" (Florida Statutes § 794.011 (1)(h)). Depending on the presence of aggravating circumstances, sexual battery is either a capital felony, a life felony, a first-degree felony, or a second-degree felony (Florida Statutes § 794.011 (2) (3) (4) (5)). If the offender is 18 or older and the victim is less than 12, and if the offender injures the victim's sexual organs, the crime is a capital felony; if the offender in this situation is under 18, the crime is a life felony. Nonconsensual sexual battery involving a victim 12 years of age or older and an offender who either uses or threatens to use a deadly weapon or uses physical force likely to cause serious personal injury is a life felony. Nonconsensual sexual battery on a person 12 years of age or older is a first degree felony under the following circumstances: the victim is physically helpless to resist; the offender threatens to retaliate against the victim or any other person and the victim believes that the offender has the ability to carry out the threat; the offender administers any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim; the victim is mentally defective and the offender has reasons to believe this or has actual knowledge of this fact; the victim is physically incapacitated; or the offender is in a position of control or authority as an agent or employee of the government. A person who commits nonconsensual sexual battery on a person 12 years of age or older and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree.

2. We limited our analyses in both jurisdictions to cases involving female victims and male suspects, and 17 cases with male victims and 4 cases with female suspects were eliminated.

3. The Missouri statutes define forcible rape as sexual intercourse with another person by the use of forcible compulsion (RSMo § 566.030). Forcible sodomy is defined as deviate sexual intercourse ("any act involving the genitals of one person and the mouth, tongue, or

anus of another person or a sexual act involving the penetration, however slight, of the male or female sex organ or the anus by a finger, instrument, or object”) with another person by the use of forcible compulsion (RSMo § 566.060). First-degree statutory rape is defined as sexual intercourse with another person who is under 14 years old (RSMo § 566.032), and first-degree statutory sodomy is defined as deviate sexual intercourse with a person who is under 14 years old (RSMo § 566.062). All four of these offenses are ungraded felonies for which the authorized term of imprisonment is life or a term of years not less than 5. In cases with aggravating factors (e.g., the actor inflicts serious physical injury or displays a deadly or dangerous instrument in a threatening manner, or subjects the victim to intercourse with more than one person), however, this minimum incarceration length is a period of years not less than 10.

Sexual assault is defined as sexual intercourse with another person without that person’s consent (RSMo § 566.040). In Missouri, felonies are classified within a four-category scheme (Class A, B, C, and D); authorized punishments range from most to least severe. Sexual assaults are classified as Class C felonies and carry a maximum incarceration term of 7 years. In aggravated cases, the maximum term of incarceration associated with a Class C felony increases to 20 years. Deviate sexual assault (deviate sexual intercourse with another person without that person’s consent) is similarly classified as a Class C felony and carries identical punishments.

4. Although there were more cases in which prosecutors initially filed but later dismissed charges than there were in Kansas City, an equality of means test revealed that this difference is not statistically significant ( $t = 1.07$ ).

5. Prior to the logistic regression analysis, Pearson correlations were calculated to assess collinearity among the independent variables. Second, ordinary least squares regressions were estimated to obtain collinearity statistics and diagnostics. All of the variance inflation factors associated with the independent variables were less than 4. Third, following the convention of Belsley (1991), a condition index greater than 30 and two or more variance decomposition proportions greater than .5 for any given independent variable indicates a collinearity problem. None of the independent variables in the two models exhibited collinearity.

6. The original plan for analysis included three variables that are not included in the equation: victim ethnicity, offender ethnicity, and offender’s prior record. Comparisons of ethnicity were precluded by the racial homogeneity of the samples. As such, White victims and offenders are compared to the omitted reference category of non-Whites, which includes both Blacks and Hispanics. There is no measure of the offender’s criminal record because this information was redacted from the Miami files. A Kansas City model, incorporating offender’s criminal record, was estimated. The inclusion of prior record did not affect the statistical significance of the other variables in the model. Although the variable attained statistical significance ( $b = .4455$ ,  $SE = .1361$ ,  $\text{Exp}(B) = 1.5613$ ,  $B_{RL} = .67716$ ), it is not displayed in Table 5 in an effort to maintain parity in the Kansas City and Miami models.

7. The risk-taking behavior variable was coded 1 if the case file indicated that the victim engaged in any of the following behaviors at the time of the sexual assault: walking alone late at night, hitchhiking, accompanying the offender to his residence, inviting the offender to her own residence, being at a bar alone, being in an area where drugs are known to be sold, or use of alcohol or illicit drugs.

8. The proportional semistandardized coefficient as developed by Roncek (1996) is reported for the statistically significant variables using the formula  $b * \sigma_x$ , where  $b$  denotes the regression coefficient and  $\sigma_x$  denotes the standard deviation of the respective variable.

9. The moral character variable was coded 1 if the case file included information about any of the following: prior sexual activity with a person other than the offender, a pattern of alcohol or illicit drug use, employment in a disreputable career (e.g., go-go dancer, professional masseuse, etc.), information stating or implying prostitution, an out-of-wedlock pregnancy or birth, or a prior criminal record.

10. The formula proposed by Paternoster, Brame, Mazerolle, and Piquero (1998) and used to calculate the  $z$  values is

$$z = b_1 - b_2 / \sqrt{(SE_{b_1})^2 + (SE_{b_2})^2}$$

where  $b$  denotes the coefficient and  $SE$  denotes the standard error of the estimate.

11. The nonsignificant  $z$  values were as follows: risk-taking behavior ( $z = -1.36$ ), victim age ( $z = -1.84$ ), moral character ( $z = -1.67$ ), prompt report ( $z = 1.17$ ), and weapon used ( $z = 1.21$ ).

12. The data for this analysis of offender's race and victim's race could not be partitioned into separate analyses for Kansas City and Miami as there were too few cases. The frequencies for the pooled data set are as follows: 114 cases with White offenders and White victims, 45 cases with Black offenders and White victims, 191 cases with Black offenders and Black victims, and 3 cases with White offenders and Black victims. The 3 cases with White offenders and Black victims were eliminated from the analysis.

13. Predicted probabilities of prosecutors filing charges were calculated using the following formula developed by Liao (1994):

$$\left( \exp(a + \sum bx) \right) / \left( 1 + \exp(a + \sum bx) \right)$$

where  $a$  denotes the coefficient associated with the constant and  $\sum bx$  denotes the sum of all of the statistically significant regression coefficients multiplied by the respective values of the independent variable. Unless otherwise specified, the statistically significant numeric variables in the Miami model (i.e., victim and offender age) were set at their respective means when predicted probabilities were calculated.

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