

Spohn_CTA

Sat, 6/11 2:34PM 1:08:07

SUMMARY KEYWORDS

cases, sexual assault, victim, rape, police, prosecutor, sexual assault cases, arrest, decision, report, crime, detectives, charging, suspect, people, research, reforms, kinds, outcomes, result

SPEAKERS

Cassia Spohn, Jenn Tostlebe, Jose Sanchez



Jose Sanchez 00:03

Hi everyone. Welcome back to The Criminology Academy podcast where we are criminally academic. My name is Jose Sanchez.



Jenn Tostlebe 00:09

And I'm Jenn Tostlebe.



Jose Sanchez 00:11

Today we have Professor Cassia Spohn on the podcast to talk with us about sexual assault specifically on sexual assault cases.



Jenn Tostlebe 00:20

Cassia Spohn is regents director in the school of criminology and criminal justice at Arizona State University. One of her main areas of research focuses on examining the response of the criminal justice system to the crime of sexual assault. She has examined prosecutors decisions to charge or not in these cases, and most recently completed a comprehensive study of police and prosecutorial decision making in sexual assault cases in Los Angeles. She also is a member of the Department of Defense Advisory Committee on the investigation, prosecution and defense of sexual assault in the armed forces. Thank you so much for joining us, Cassia. We're excited to have you.




Cassia Spohn 01:00

Of course, my pleasure.

 J Jose Sanchez 01:03


Okay, so a brief overview of what this episode is going to look like. So, again, as usual for us here, we're going to begin with some broader questions surrounding sexual assault and some of the issues surrounding sexual assault, then we're going to get into a paper that was authored by our guest Cassia. And then finally, we're going to discuss some of the work that's done. Once we get into the court system with sexual assault, and maybe some things that we can do to help or aid with some of the myths and beliefs that surround sexual assault. With that being said, Jenn, why don't you go ahead and get us started?

 Jenn Tostlebe 01:52

All right, thanks, Jose. Um, so first off, we'd like to start off by acknowledging that sexual assault is under reported to the police. That is people choose not to report their victimization to the police. Cassia, can you tell us about what percentage of sexual assaults go unreported? And if possible, can that be broken down by women and men?

 C Cassia Spohn 02:15

So, if we look at data from the National Crime Victimization Survey, which is a national, nationally representative survey, in which individuals indicate whether they've been victimized by personal or household crime, and if so whether they reported the crime to the police, we see that in 2018, only 25% of all rapes and attempted rapes were reported to the police. And this is actually a decline from 2017 when the figure was closer to 40%. But regardless of whether the real rate of unreported or reported rapes is 25%, or 40%. The reporting rape rate for rape is substantially lower than it is for other violent crimes. For example, the rate in 2018 was 63% for robbery and 60% for aggravated assault. There's very little data on reporting by male victims of sexual or sexual violence. But there is some data on reporting sexual assaults that occur among members of the military. And this data shows us that 43% of the female victims, but only 10% of the male victims, reported the crime. And so although you can't necessarily extrapolate from data on the military to data on non-military installations or just regular citizens civilians, I think we can pretty confidently say that that men are less likely than women to report for various reasons.

 Jenn Tostlebe 04:10

Yeah, those numbers are so low and the drop between 2017 and 2018 is interesting. Is there any reason that's for that drop?

 C Cassia Spohn 04:23

Well, it might be due in part to the fact that the estimated number of victims of rapes and sexual assault was about 350,000 in 2018 compared to only 209,000 in 2017. And so we could have had more victims, being willing to acknowledge to the interviewer is that they had been victimized, but at the same time, just not still not willing to report that crime to the police.



Jenn Tostlebe 05:00

So, what are some of the reasons that we know of for why people are so reluctant to report to the police?



Cassia Spohn 05:07

Again, if we look at the National Crime Victimization Survey, they do ask that question. And other research has also asked survivors, you know, why don't you report? Why did you not report the crime to the police? And survivors cite several reasons, some fear of retaliation by the perpetrator, or his family or friends. Others believe that it's a private matter. And perhaps it's something that they're embarrassed or ashamed about. There's a belief that the police can't do anything about it, that even if they report the crime, and are willing to cooperate in the investigation and prosecution of the suspect, that the odds of seeing the perpetrator brought to justice are relatively low. So it's sort of like what's the point. Another reason that victims sometimes cite is that they didn't want to get the perpetrator in trouble that they didn't believe that the incident was serious enough to justify labeling the perpetrator as a sex offender and all that that entails and possibly taking away his freedom. We also know that people who are assaulted by strangers are much more likely to report the crime to the police than those who are reported by are who are assaulted by friends, acquaintances, and intimate partners. And these are actually the most common types of sexual assaults that is non stranger sexual assaults. And victims in these types of cases are more likely to blame themselves for what happened to fear retaliation, and to believe that successful prosecution is unlikely. So there really are many reasons that victims give for not going to the police.



Jenn Tostlebe 07:19

Okay, and I'm sure that there are plenty more on top of everything that you mentioned, as well. But so that being said, that kind of gets at why people may not report to the police. So let's talk about some of the issues that may come up when people do report their victimization to the police. We know based off of the paper, we're going to discuss in a couple of minutes that there are a variety of gatekeeping decisions that the police must make when receiving a report of rape. Can you tell our listeners what gatekeeping decisions are, what some of them may look like, and then why they may result in a police report being being filed or a case not being referred to the prosecutor?



Cassia Spohn 08:05

Sure. So, we often think of prosecutors as the gatekeepers of the criminal justice system in the sense that a case cannot proceed unless the prosecutor decides to file charges. But I would argue that in sexual assault cases, the police are the real gatekeepers. And this is because so few cases result in an arrest. For example, Katharine Tellis, and I examined police and prosecutorial decision making in Los Angeles. And one of the questions we asked was, how much attrition is there in sexual assault cases? And more importantly, what's the locus of that attrition? Where does it where does it occur? And what we found was that from 2005 to 2009,

there were more than 5,000 cases of rape and attempted rape reported to the Los Angeles Police Department. of these cases, only 594 Fewer than 12% resulted in the arrest of an adult suspect. And then 486 of these cases, resulted in the filing of charges by the prosecutor, and 390 resulted in the conviction of the defendant. So, the locus of case attrition is clearly the decision to arrest. There were 5,031 cases reported and only 594 even resulted in an arrest and obviously, if the case doesn't result in arrest and an arrest, it's not going to proceed into the criminal justice system. And we found a very similar pattern for the Los Angeles County Sheriff's Department. So, that's an important, gatekeeping function that the police perform in fact, probably the most important function. Another important decision that the police make is how thoroughly to investigate the crime, whether to interview potential witnesses whether to visit the crime scene and collect evidence, whether to obtain videotapes that might confirm the victims allegations, whether to obtain text messages from the victim's phone or to conduct pre text phone calls with the suspect and so on.

C Cassia Spohn 10:38

And if the police believe that the report is false or baseless, they also can unfound the report. When this happens, the report is not counted as one of the crimes that the law enforcement agency has to report through the Uniform Crime Reports. In essence, the incident disappears from the crime statistics. And we know that in sexual assault cases, many police departments abused this process. For example, in 2010, the Baltimore Sun reported that the Baltimore Police Department led the country in the number of cases that were sexual assault cases that were unfounded, that were deemed to be false or baseless, and thus, were unfounded. And according to the to the report, from 2004 to 2009, about a third of the rapes reported to the Baltimore Police Department were unfounded. A rate that was three times the national average. And so, I mean, it's it's almost mind boggling to think that a third of the cases reported to the police would be false or baseless, and therefore should be unfounded. And one other thing we discovered in Los Angeles that really structured, how we did the rest of our research, is that the police there often present the case to the prosecutor for what we called a pre-arrest charge evaluation, before they made an arrest. In other words, they had probable cause to make an arrest but the case was problematic in some way. Perhaps the victim's allegations were inconsistent. Perhaps the victim and the suspect were in an intimate relationship, and there was evidence of a motive to lie, or the victim was under the influence of alcohol or drugs and therefore could not clearly articulate what happened. So, in these kinds of situations, they would present the case to the district attorney and ask whether the case would be filed, if they made an arrest. If the DA said no, the police would not make an arrest. So, clearly, there's a whole series of decisions that the police make in terms of this gatekeeping function. They decide whether to arrest, they decide how much how much time and resources to devote to the investigation, whether to unfound the case. And then in Los Angeles and some other jurisdictions whether to use this pre-arrest charge evaluation, rather than make the arrest and present the case to the district attorney.

J Jose Sanchez 13:43

So, you touched on these, some of these cases have been unfounded, because maybe they were found to be false. And so we wanted to talk to you about false accusations. And one of the issues that comes up when we hear about a sexual assault being reported, and this is primarily from what we see with like high profile athletes or actors or celebrities. The big one was with

Deshaun Watson right now, the quarterback for the Cleveland Browns. And one of the things that we tend to see especially on social media is this automatic assumption that people make that because somehow this person has a lot of money, these allegations must be false for some type of financial gain. But I've seen or I've heard that false accusations are pretty rare. And can you tell us more about whether this is accurate and how rare exactly are false accusations?

C Cassia Spohn 14:55

So, allegations that women are lying about being sexually assaulted are not new. But it is one of the common rape myths that we encounter. Whether we're looking at police or prosecutor decision making or public attitudes towards sexual assault that women frequently lie about being sexually assaulted. We can go back to the 18th century and an English Judge Sir Matthew Hale, opined that rape is an accusation easily to be made, and hard to be proved and harder to be defended by the party accused, though never so innocent. But estimates of the number of false reports vary widely. One researcher reported that about half of the sexual assaults reported to a Midwestern Police Department were false. And another reported that the rate of false reporting was only 1.5%. But a comprehensive review of research published in the United States, the United Kingdom, Australia, Canada and New Zealand, noted that estimates vary from this low of 1.5% to a high of 90%. And these variations reflect differences in the way false reports are defined and measured, as well as differences in the reliability and validity of the research designs used to evaluate false reports. And according to one group of experts, if you look at only the more methodologically rigorous research, estimates for the percentage of false reports begin to converge around 2 to 8%. And my own research in Los Angeles concluded that the rate of false reports there was just under 5%. So, the rape myth that women frequently lie about being sexually assaulted, notwithstanding the rate of false reports is actually very low.

J Jose Sanchez 17:22

Okay, I mean, it's crazy to think that the range could be so.

C Cassia Spohn 17:28

So big Andy, yeah. 1% to 90%. Yeah,

J Jose Sanchez 17:32

yeah. Something else that has come up somewhat recently, with, you know, with the me too movement is people that seem to be against the metoo movement have claimed that, because of it, we are now seeing an increase of false accusations. Is there anything at all that validates or gives some merit to that claim?

C Cassia Spohn 17:59

Well, I've heard about this as well. The idea that the @metoo movement may have led to an increase in false accusations and coupled with the quote, start by believing campaign in which

increase in false accusations and coupled with the quote, start by believing campaign in which the assumption that is that all women who make allegations of sexual violence or sexual harassment should be believed, there may have been an increase in false allegations. But I say may have been, because there are no national data on false reports, and certainly no data on trends over time. And so I don't know that we can reach any definitive conclusions about this. We know that victims sometimes recant their allegations, not because the crime did not occur, but because they're afraid of retaliation. They may have reconciled with the alleged perpetrator or for some other reason. And there's a recent book by Alan Dershowitz called "Guilty by Accusation: The Challenge of Proving Innocence in the Age of @metoo", but that's one case, one potential case of a false allegation. And it does not speak at all to national numbers or to trends over time. So I would hate to reach any sort of definitive conclusion about this.



Jenn Tostlebe 19:31

Okay. So, kind of moving away from today and thinking about the past and what has occurred surrounding reforms about rape. We know that a variety of reforms occurred in the 1970s and 1980s. Can you key us into what the driving force behind these reforms was? And can you elaborate on just one or two of the more significant reforms that occurred?



Cassia Spohn 20:00

So, the rape reform movement emerged in the mid 1970s, in response to the publication of several very influential books about rape. For example, in 1975, Susan Brown Miller wrote a detailed and very sobering account of rape. Its origins, the myths surrounding it and the ways in which the laws and practices made it likely that only a few of those who committed this crime of violence would be held accountable, and that those who were held accountable would not be representative of the many, many people who engaged in this type of criminal behavior. 12 years later, Susan Estridge, she was a law professor and the author of *Real Rape* reached a similar conclusion. Like Brown Miller and others, she argued that all rapes are not treated equally. And that the response of the criminal justice system is predicated on stereotypes and myths about rape and rape victims, and that the most serious dispositions are what are reserved for what she called "real rapes" involving "genuine victims". These feminist critics and there were many others as well argued that under traditional rape law, it was the victim who was often placed on trial. So, criticisms such as these led to the rape reform movement that, as I said, emerged in the 1970s and quickly became a key item on the feminist agenda. Women's groups led by the National Organization of Women's Task Force on rape, lobbied state legislatures to revise antiquated rape laws that too often placed the blame for the crime on the victim. And then we're joined in their efforts by crime control advocates, notably police and prosecutors, who were alarmed by dramatic increases in reports of rape during the 1960s and early 1970s. And who urged rape reform as a method of encouraging more victims to report the crime and to cooperate with law enforcement officials. And together these groups formed a powerful, although perhaps ill matched, coalition for change. And by the mid 1980s, nearly all states had enacted some type of rape reform legislation. And not all states enacted comprehensive legislation the state of Michigan did. But many states enacted different reforms at different times. I would say the most common changes adopted during the reform movement were redefining rape, and replacing it with a series of graded offenses that were defined by the seriousness of the crime and the presence or absence of aggravating circumstances and these are gender neutral statutes. So instead of rape, which is carnal knowledge of a woman by force and against her will, we had sexual assault or sexual abuse,

crimes that talked about individuals and did not differentiate by gender. Many states also eliminated the requirement that the victim must physically resist her attacker in order to get a conviction, and that the victim's testimony must be corroborated, in some way. Rape was the only crime for which there was a corroboration requirement. Other states eliminated the marital exemption for rape, which was enshrined in the traditional Carnal Knowledge definition of rape carnal knowledge of a woman, not one's wife. And then the final prong of the reform movement was the passage of rape shield laws that prevented the defense attorney from introducing evidence about the victims past sexual behavior during during a trial for sexual assault, and these were significant reforms, at least on paper, but research has shown that their impact was primarily symbolic as opposed to instrumental. They did not have the dramatic instrumental effects that reformers had hoped they would. And there's, there's reasons for that as one, as one attorney told me during an interview, well, you can change the law, but you can't necessarily change people's attitudes about sexual assault and sexual assault victims.



Jenn Tostlebe 25:29

Yeah, this, I was like reviewing different crime definitions for a class that I'm teaching over the summer, and just how the definition of rape and sexual assault has changed over time, it has to be like one of the most, you know, continuously changing definitions, and also one of the hardest to study and get people to interpret things the same way. It just has to be really challenging.



Cassia Spohn 25:55

Exactly.



Jose Sanchez 25:57

Yeah. And are we still sort of writing this way from the 70s and 80s? Or have we seen some significant reform over the last 10-15 years or so?



Cassia Spohn 26:09

You know, there was kind of a law after the passage of all of these reforms in the late 1970s, and through the 1980s. But recently, we've seen a number of states take some what I would call baby steps toward doing some things designed to make it easier to prosecute these kinds of cases. So, some states have lengthen the statute of limitations for sexual assault, and have raised the age of consent in sexual assault cases. For example, Minnesota recently raised the age of consent from if you can believe it, 13 to 14, 14 seems awfully young as well, some states. And again, this is a reform that happened in Minnesota as well closed a loophole in statutes regarding sexual assault of an intoxicated person. So, under the old laws, you could prosecute someone for sexually assaulting an intoxicated person, only if you could prove that the victim was intoxicated as a result of drugs or alcohol, that were administered to the victim without her consent. And so this precluded the prosecution of individuals who sexually assaulted someone who willingly ingested alcohol or illegal drugs. And so the law was changed

and, and it is now illegal to have sex with someone who was so intoxicated that they can't consent. And many other states have now had a change the law so they have a sexual assault of an intoxicated person as well. So, those are just some of the things that that I've seen. Come come down the pike recently.



Jenn Tostlebe 28:23

And hopefully not just symbolic, but I guess time will tell.



Cassia Spohn 28:27

Exactly.



Jose Sanchez 28:28

Yeah. Okay, I think we can start moving into the paper that we're going to discuss today. Like we mentioned up top, it was authored by our guest, Cassia Spohn and her colleague, Katharine Tellis. It's titled Sexual Assault Case Outcomes: Disentangling the Overlapping Decisions of Police and Prosecutors. It was published in Justice Quarterly in 2019. And the study argues that police and prosecutorial decisions should not be made in isolation as they are intertwined. The main purpose of the paper was to disentangle this relationship. The study uses data on sex crimes that were reported to the Los Angeles Police Department and the Los Angeles Sheriff's Department. The study focused on cases involving female victims over the age of 12 in 2008, and only cases involving charges of rape or attempted rape, were included. A total of 543 cases were obtained from the Los Angeles Sheriff's Department. And 401 were used from the LAPD, the Los Angeles Police Department, which was then narrowed down to 650 total cases that met that chart criteria. I'd also like to point out that 401 were used from the LAPD, but the number you received was much much higher, so much so that you had to actually narrow it down a little bit correct?



Cassia Spohn 29:57

That's correct. And we only looked at cases with in which there was an identified suspect, since we're looking at arrest and you can't make an arrest if you don't have a suspect,



Jose Sanchez 30:08

Correct, yes. Okay. So, with that being said, our first question is, what was the motivation behind writing this paper?



Cassia Spohn 30:20

Well, I think the motivation for writing this paper stemmed from our discovery during interviews with detectives in Los Angeles, that there was actually overlap between decisions made by the

police and prosecutor in sexual assault cases. What was happening in this jurisdiction was, as I mentioned a moment ago, that the police would often ask the district attorney for what was essentially a charging decision before they made an arrest. In other words, if the detective investigating the case had probable cause to make an arrest, but the case was problematic or weak in some way, the detective would present the case, the case file to the district attorney, and ask whether it was likely that they would file charges and prosecute the suspect. If the DA said no, as was usually the case, the detective would not make an arrest, but would close the case and clear it by exceptional means. These so called problematic cases, then never got to the prosecutor's office for a formal charging decision. We also found that there were some cases particularly those reported to the LAPD in which the police made an arrest. But then changed the case clearance type from cleared by arrest to cleared by exceptional means if the prosecutor refused to file charges. We couldn't really understand why they were doing that since it reduced their arrest rate for reporting purposes. So, we wanted to dig into this, to see if we could identify what motivated detectives to present cases to the DA when they had probable cause to make an arrest. Rather than going ahead and making the arrest and then presenting the case to the prosecutor for a formal charging decision. And so I think this, this illustrates the importance of using a mixed methods approach in this kind of research. Because if we hadn't conducted more than 100 interviews with detectors, we wouldn't have known that this was occurring. It wasn't obvious from the data. And so this this seemed like something that hadn't been identified in previous research. And it was something that we thought could potentially be important.



Jenn Tostlebe 33:04

Yeah, so you just discussed kind of how these overlap. And it sounds like in the past, they've very much been studied separately. And may it may be obvious, but can you just elaborate a little bit on what the problems would be studying these separately given the overlap that you're seeing?



Cassia Spohn 33:25

Sure. Well, I think it could be problematic if as was the case in Los Angeles, police asked the prosecutor for an informal, pre arrest charge evaluation before making an arrest. Now, typically, policing researchers operationalize the decision to arrest based on whether the case was cleared by arrest. That's the designation that you find in in police records in in police records. And prosecutors and researchers examining prosecutors charging decisions, examined on data on cases that resulted in an arrest and were then presented to the prosecutor for a charging decision. This is what I did in my own research prior to this study in Los Angeles, I did some work on prosecutors charging decisions in Miami, Kansas City and Philadelphia. And that's how we operationalize the charging decision. There was an arrest and the case was presented to the prosecutor for a charging decision. But well, but what we found in LA was that a substantial proportion of the cases in which a suspect were was arrested, were not cleared by arrest, and that a significant number of cases were evaluated and rejected by the prosecutor, prior to the arrest of the suspect. So defining the decision to arrest as cases that were formally cleared by arrest, and operationalizing the charging decision as cases that were evaluated following the arrest of a suspect is misleading. As doing so undercounts both types of cases, at least in Los Angeles, the decision to arrest a suspect was not solely in the hands of the police. In difficult or problematic cases, prosecutors played a key role in determining whether the suspect would be arrested or not. And so, in that sense, you know, we argued that these

decisions overlap and what we were trying to do is, can we disentangle those decision decisions and see whether different factors affect different kinds of outcomes, depending on how you operationalize the dependent variable.



Jenn Tostlebe 36:05

Yeah, it's so interesting. Do you know if that kind of dual decision making happens elsewhere or?



Cassia Spohn 36:13

So, I've asked that question a lot of people who do research in this area and also of people of law enforcement officials in various jurisdictions, and it appears that it's more common in Los Angeles than it is in other jurisdictions. And it's also important to point out that this only occurred in sexual assault cases. This pre-arrest charge evaluation was not something they did in other kinds of cases. Now, they told us they might do it in a in a domestic violence case, but it was really something that that was confined to sexual assault cases.



Jose Sanchez 36:58

That is interesting. Yeah. Okay, so, in this paper, you put forward two theoretical perspectives regarding police and prosecution decision making. The first perspective was Black's sociological theory of law. And the second is the focal concerns perspective, which was developed to explain judges sentencing decisions. Can you briefly tell us what these are exactly and how they apply to decision making in sexual assault cases?



Cassia Spohn 37:36

Yeah, so let me focus on the focal concerns perspective, which as you said, was developed to explain judges sentencing decisions. And according to this perspective, judges, decisions regarding the appropriate sentence are based on what Ulmer, Steffensmeier, Ulmer, and Kramer referred to as three focal concerns, the blameworthiness or culpability of the offender, their desire to protect the community from dangerous or threatening offenders, and then what they call the practical considerations or social costs of punishment decisions, particularly the decision to incarcerate. So, we argue in this paper, and I argued in a previous paper that looked more closely at unbounding, that this perspective is also relevant to police and prosecutorial decision making. I think that the focal concerns that guide these decisions are similar, but not identical to the focal concerns that judges have when determining the appropriate sentence. Like judges, police and prosecutors consider the seriousness of the crime, the degree of injury to the victim, the blameworthiness of the offender, the dangerousness of the suspect, but I think their concerns about the practical consequences, or social costs of their decisions focus more on the odds of conviction, then the costs of incarceration. Police have a downstream orientation to prosecutors, and thus are reluctant to make arrests in cases that are not likely to be successfully prosecuted. We often don't think about the police as motivated by concerns about conviction, but at least in sexual assault cases, I think they are. I think they're reluctant to send a case forward to the prosecutor if they are have have serious concerns about the

likelihood of conviction. Prosecutors similarly have a downstream orientation to judges and juries, they're concerned about if I filed charges, will the judge or the jury be willing to convict and so they're similarly reluctant to file charges unless they believe that the case can be successfully prosecuted.

J Jose Sanchez 40:23

Okay. All right. So I think we've laid a really good foundation for the paper. So we'd like to start getting into the results, or your findings with this paper, again, looking at decision making by the police in Los Angeles and prosecutors. Can you tell us about what you found descriptively regarding case outcomes of sexual assault cases?

C Cassia Spohn 40:49

Sure. So, we examined for this paper, we only examined the 491 reports of rape and attempted rape in which there was an identified suspect since as I said, before arrest is only possible if you have an identified suspect. And among these cases, we found that about 47% resulted in the arrest of a suspect. Thus, more than half of the cases in which the police were able to conclusively identify a suspect did not result in the arrest of a suspect. And I think that's pretty shocking. We also found that about a fourth of the cases that resulted in an arrest, were not actually cleared by arrest. And this occurred when the DA refused to file charges. And the police then changed the case clearance type from cleared by arrest to cleared by exceptional means. And there were 357 cases in which the prosecutor was asked to make a charging decision. 147 of these were cases that were presented to the prosecutor before the police had made an arrest. In these cases in which the police did have probable cause to make an arrest, the prosecutor filed charges in only 9 cases. So, in other words, 94% of the cases that were evaluated by the DA before the police made an arrest, were rejected for prosecution, and the police did not make an arrest. And so this is how these decisions are overlapping and why it's important that they not be studied completely separately. By contrast, there were 210 cases presented to the DA after the suspect was arrested. And about half of these cases resulted in the filing of charges. And this is consistent with other research that generally shows that the rejection rate in sexual assault cases about is about 50%. Again, this suggests that detectives present weak or problematic cases to the prosecutor prior to making an arrest. And this was confirmed by our interviews in which we had detectives tell us that if the case is weak or problematic in some way, they take it to the district attorney to quote get a reject. And they then close the case.



Jenn Tostlebe 43:34

Those numbers are pretty shocking.

C Cassia Spohn 43:36

But it really is. You know that only 9 out of 147 cases that the prosecutor evaluated prior to the police making an arrest were cases where they filed charges.



Jenn Tostlebe 43:51

Yeah. All right. So from here getting these descriptives you next looked at the predictors of police decision making, which were based in the sociological theory of crime and the focal concerns perspectives. Can you tell us about the key elements that went into police decision making?



Cassia Spohn 44:10

Sure, this is complicated by the fact that we operationalize police decision making in three different ways. But a key takeaway is that the decision to arrest the suspect, was arrest was affected, by all but one of our indicators of case seriousness. Suspect physically assaulted the victim, the suspect used a weapon, and the victim suffered some sort of collateral injury, these kinds of cases were more likely to result in an arrest. We also found that all four measures of the strength of evidence in the case affected the likelihood of arrest and that was whether the victim reported the crime within an hour. The number of witnesses, whether the victim was willing to cooperate, and the existence of physical evidence. One of the criticisms of the research that's been done to date on prosecutorial decision making in general, and on police and prosecutorial decision making in sexual assault cases, is that many of these studies did not have good indicators of the strength of evidence in the case, which is obviously an important factor. And so many of these earlier studies, I think, were or misspecified. Because if you rely on data from case management systems, you're not going to get the kind of detailed data you need to, to conduct a valid and reliable analysis of these decisions. There's no indicator in case management systems, which are used to track and monitor the outcomes of cases there's no indicators of what, was there any physical evidence? Was the victim engaged in a kind of risky behavior? Were there questions about her credibility? None of that is in the case management systems. And so I think this is one of the obstacles to research in this area is that you can't rely on electronic data management systems, you actually have to get the case files from the police. And that's what we did in LA, we they gave us redacted case files. Some of these case files were 80 or 90 pages long. And we use that those case files to code more than 200 variables on each case. You don't get that from an electronic data management system. So, that was, I think, you know, sort of big key takeaway is that the decision to arrest was determined primarily by what people would think of as legally relevant factors and indicators of the strength of evidence in the case. But when we looked at whether the detective investigating the crime presented the case to the DA for a pre-arrest charge evaluation, we found that whether the victim engaged in any type of risky behavior, such as walking alone, late at night, hitchhiking, drinking or using drugs, affected this outcome. In fact, cases in which the victim engaged in any kind of risky behavior at the time of the incident, were two times more likely to be presented to the DA prior to the arrest of the suspect. So again, this lends credence to this notion that the detectives know when they have a problematic case. And if they want to close that case, they can take it to the DA, the DA says no, we won't be filing charges, and then they can clear it by exceptional means.



Jose Sanchez 48:17

And the final results section that you have in your paper is about the prosecutors decision or charging decisions. Can you tell us what you found concerning predictors of charging decisions?

 Cassia Spohn 48:33

Again, this is complicated by the fact that we measured charging in two different ways. We measured it as the traditional indicator of charging, that is a formal charging decision after arrest. And then we also operationalize the decision as charging before or after the suspect was arrested, which we argue is the more valid indicator of charging, at least in this particular jurisdiction. What we found with was that the decision to charge after the arrest of the suspect was only affected by the victims age, charging was more likely in with younger victims, whether the victim had a motive to lie and whether the victim was willing to cooperate. But when we looked at this more inclusive definition of charging, which included charging decisions that were made before the suspect was arrested, we found that although all of these, each of these three indicators that I just mentioned, also affected this, this outcome or an outcome, this outcome operationalized this way, we also found that it was affected by the victims risky behavior, whether the suspect used a weapon and whether the crime was reported within an hour. So again, And the way that you measure the way you define and measure things, it matters to the conclusions that you're going to that you're going to reach about the predictors of these outcomes.



Jenn Tostlebe 50:14

Yeah, I feel like, I feel like that's something we continuously come back to in this podcast of how definitions and clarity is so important when doing the kind of research we do. Yeah. All right. So given the set of findings, some of which are pretty surprising based on prior research, and also pretty alarming. What kind of implications can we take from this study for research and then for policy and practice?

 Cassia Spohn 50:43

Well, I think in terms of research, I think you have to understand the decision making process and only as a result of our detailed interviews, well, both with the heads of these units, and with detectives and assistant district attorneys, you know, only through these interviews that we find out about this pre arrest, charging evaluation. And I think as you just said, Jess [Jenn], it's important to carefully and appropriately define and measure the deep in particular, you know, the outcomes that you're interested in terms of policy implications. We found that police in Los Angeles overuse, in fact misuse the exceptional clearance. The uniform crime reporting handbook is very clear on when cases can be cleared by exceptional means. And our interviews revealed that detectives did not understand these rules. They did not understand them, they misused the exceptional clearance in many, many cases. We also argue that pre-arrest charge evaluation has important policy implications. we contend in our paper that whether a suspect is arrested, should not be contingent upon whether the prosecuting attorney believes that the evidence needs their standard of proof beyond a reasonable doubt and that the case would therefore likely result in a jury conviction. This subjects the decision to arrest to a higher standard of proof than is required under the law, and effectively gives the prosecutor control over the decision to arrest in these cases. Because if the prosecutor says no, that's a case that we're not likely to file, then the police don't make the arrest in most cases. It also means that individuals who have committed a very serious crime are not held accountable and denies victims, it denies justice, I'm sorry, denies justice to victims, who made a very difficult decision to report the crime and to cooperate with police as the case moves through the system. We do

not suggest that there should be anything like a mandatory arrest policy in sexual assault cases. But we do believe that the police should make an arrest when there's probable cause to do so. And to not allow the prosecutor to veto their decision to make an arrest.



Jenn Tostlebe 53:48

Yeah, seems like an overlap between law enforcement and courts that we shouldn't have some.



Cassia Spohn 53:54

Absolutely. And, you know, I suspect though, I don't know of any other research like this and any other involving any other type of crime, but I suspect you would not find this in most other types of serious crimes. This kind of overlap.



Jenn Tostlebe 54:13

Right?



Jose Sanchez 54:14

Yeah, it definitely would be interesting to see. But yeah, my gut feeling would be that you're correct. But okay, so we want to spend the last few minutes that we have about 10 or so talking about, sort of, we've talked about police and prosecutors, but especially given some of the recent events like the one that has seemingly taken the world by storm is the Johnny Depp and Amber Heard trial. What do we know about judges and jury decision making when it comes to sexual assault cases?



Cassia Spohn 54:53

So, there's really very little research on decisions beyond police and prosecutorial decisions in sexual assault cases. Probably the most, the one that comes to mind it's actually from the 1960s. It's a book by Kalven and Zeisel in which they study the outcomes jury decision making in sexual assault cases. And they argued in that book that in cases in which the the the evidence is weak, or, you know, the juries have some concerns about problematic aspects of the case that they feel liberated to ignore the law and based decisions on their own beliefs, feelings, perceptions. So that's where the the so called liberation hypothesis actually came from is that 1966 book by Kalven and Zeisel. And they base their conclusions on interviews with jurors, and on observing jury deliberations. We couldn't do that today, because it's not allowed. And I don't think in any jurisdiction. So, you know, I know there's been speculation in the media that the the results of the defamation suit and involving Johnny have, Johnny Depp and Amber, Amber Heard that that's going to throw some cold water on the me to movement, but and that it really sends a sort of a warning message about the views that people have regarding domestic violence and sexual assault, because those were claims that she made in her allegations. Yeah.



Jenn Tostlebe 57:08

All right. So then, what are some possible solutions or efforts that can be made to better handle sexual assault cases, not just in policy, but also for us in the general public? What are some things that could be done?



Cassia Spohn 57:24

I think we have to start by recognizing that sexual assault is a crime that is strongly influenced by myths and stereotypes. And that most of these myths, if not all, of these myths are not true. For example, the real rape myth that is the idea that only sexual assaults involving a stranger who jumps out of the bushes and holds a gun to the victim's head or a knife to her throat. Those are the only kinds of real rapes that the rest are not legitimate. And in fact, when we were doing our interviews, the detectives would talk about legitimate rapes and righteous victims, which was pretty disheartening. Because this was, you know, in the second decade of the 21st century, that they were using this kind of terminology. So I think these are deeply ingrained attitudes that people have. And it affects every aspect of the criminal justice process, because we did, one of my doctoral students, and I did a study on looking at the interview data from Los Angeles. And we found all kinds of evidence that the police were basing their decisions on these myths, you know, that they too, bought into the notion that there are real rapes, legitimate rapes, and then there are the other kinds of rapes, they bought into the argument that victims somehow bring this on themselves, by the way that they behaved or how they were dressed. They were dressed provocatively or they behaved in a provocative manner. You know, I had one detective say to me, you know, there's a lot of self-victimization in these cases. And I was surprised and I said, well, what do you mean by that? And he said, it was a he, said very cavalierly, well, you know, girls who go into bars drink too much and make bad choices. And those sorts of attitudes are, I think, are deeply ingrained and I don't know how we disabuse you know how we counteract those kinds of myths and stereotypes. I think that one possible reform, and this would only work in larger jurisdictions is to have a specialized Sex Crimes Unit, both for police and for prosecutors. Because this results in detectives and district attorneys who have substantial experience with these kinds of cases, get comprehensive training about how to handle the cases, and how to establish rapport with victims how to effectively interview victims so that they can maintain the victims cooperation through the entire case. So, I think sex crimes units might be a solution in larger jurisdictions, although there's some evidence that outcomes are not really any different in jurisdictions that have them. But there's very little research that looks at that. Training, I think is important. In Los Angeles, in the police department. They have what are called tables, at least they did at the time that we were doing our research, and I think they still do. So, detectives would move from the robbery table to the assault table to the sex table, which is a horrible name, but and they might only stay a month, two months, six months, and they would move on to to another assignment. And all of the detectives, almost all of them told us that they did not receive adequate training in how to handle these kinds of cases, how to interview victims so that they could establish rapport. And so I think training is also critical. One of the things we recommended to the LAPD is that they have a week long training program. And they actually did institute that. And Kate Tellis, my colleague taught that first course. So now whether they maintain that or not, I don't know. But at least something that we recommended did seem to have an have an effect.



Jenn Tostlebe 1:02:34

Yeah, that's great to see.



Jose Sanchez 1:02:37

Yeah, absolutely. Well, those are all the questions that we had for you today. Is there anything else you'd like to add? Maybe something that maybe we didn't touch on that you'd like to?



Cassia Spohn 1:02:48

So, one of the things people often ask me is, do we have a national database on outcomes in sexual assault cases? And the answer, of course, is no, we don't. And I think that, you know, here we are in the 21st century, and we have all kinds of data mining operations. And yet we can't somehow collect all of this data on a national on a national level so that we know what is happening to these cases. We know from the FBI Uniform Crime Reports, how many crimes there there are and how many arrests there are, or how many cases are cleared by arrest. But we don't know anything beyond that. We don't know how often prosecutors filed charges, how often judges or juries convicted what the sentences are in these kinds of cases. And we we desperately need that kind of national data, not just about sexual assault about all kinds of cases. And I know people are working to try to try to address that, Measures for Justice, for example, is trying to develop jurisdiction specific data on outcomes and performance measures. But yeah, I think that's I think that's a something that is desperately needed.



Jose Sanchez 1:04:26

Yeah, absolutely.



Jenn Tostlebe 1:04:27

And a culture shift somehow,



Cassia Spohn 1:04:31

Somehow, exactly. So, that the blame is not placed on the victim in these kinds of cases. And I find it I find it when I give talks like this, I find it shocking that in the 21st century, we're still talking about legitimate rapes and righteous victim, you know, we've had 50 years of reforms and attention that's being paid to sexual assault, and there was the Senate had a taskforce on the response of the criminal justice system to the crime of rape. And yet, we still are seeing the same patterns that we saw in the 1960s and the 1970s, with very few cases, resulting in arrest and, you know, miniscule numbers of cases resulting in conviction and punishment. So, the more things change, the more they stay the same.



Jose Sanchez 1:05:34

 Jose Sanchez 1:05:11

Yeah, I was just about to say that. My closing like, oh, well, thank you so much for taking time out of your day to talk with us about this very important and absolutely heartbreaking topic. It's really important that we know about what it is that's actually happening. And like you said, it seems like the more things change, the more they say, they seem to stay the same. Is there anything you'd like to plug anything we should be on the lookout for in the near future?

 Cassia Spohn 1:06:11


You mean, for another type of podcast?

 Jose Sanchez 1:06:14

Or like any publications, books? Any, anything that you might be doing that? In the future? Yeah.

 Cassia Spohn 1:06:25

You know, I've kind of moved on to some other types of issues. But, you know, I still am working with the Department of Defense on sexual assault in the military. And that is another very, very problematic area. In terms of outcomes in these kinds of cases.

 Jose Sanchez 1:06:51

I can only imagine. And then finally, where can people find you is, would email be the best way to contact you if anyone has any questions?

 Cassia Spohn 1:07:01

Absolutely. cassia.spohn@asu.edu.

 Jose Sanchez 1:07:07

Perfect. Awesome. Well, thank you again. It was great talking with you. We learned a lot and we thoroughly enjoyed speaking with you today.

 Cassia Spohn 1:07:17

Yeah, thank you for having me. It was my pleasure. And something I'm passionate about. So, I like talking to people about it. spreads and spread the word.

 Jenn Teetlebo 1:07:20



Jenn Tostlebe 1:07:29

Exactly. Yeah. All right. Great to meet you again. All right. Yeah. Bye. Bye. Bye.



Jenn Tostlebe 1:07:37

Hey, thanks for listening.



Jose Sanchez 1:07:39

Don't forget to leave us a review on Apple podcasts or iTunes. Or let us know what you think of the episode by leaving us a comment on our website, thecriminologyacademy.com.



Jenn Tostlebe 1:07:48

You can also follow us on Twitter, Instagram and Facebook @thecrimcademy. That's t-h-e-c-r-i-m-a-c-a-d-e-m-y.



Jose Sanchez 1:08:00

or email us at thecrimacademy@gmail.com See you next time.