

Rape and Attrition in the Legal Process:  
A Comparative Analysis of Five Countries

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## **Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries**

### **ABSTRACT**

This paper draws on over 90 empirical studies from Australia, Canada, England & Wales, Scotland, and the United States on the legal response to rape and sexual assault from 1970 to 2005. It is supplemented by victimization surveys, police statistics, and court data from these countries. The findings are that despite legal reforms, we see little improvement in police, prosecutor, and court handling of rape and sexual assault. In the past 15 years in the countries studied, victimisation surveys show that 14 percent of sexual violence victims report the offense to the police. Of these, 30 percent proceed past the police to prosecution, 20 percent are adjudicated in court, 12.5 percent are convicted of any sexual offense, and 6.5 percent, of the original offense charged. In the past 35 years, average conviction rates have declined from 18 percent to 12.5 percent, although they have not fallen in all countries. Significant country differences are evident in how cases are handled, and where in the legal process attrition is most likely. There is some good news: a victim's "good" character and credibility, and stranger relations are less important than they once were in police or court outcomes. However, evidence of non-consent (witness evidence, physical injuries to the victim, suspect's use of a weapon) remains important over time. We call for a shift in the priorities of legal reform and for pursuing alternative pathways of participation and support for victims, offenders, and others affected by sexual offenses.

## **Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries**

In 1978, the first studies of police and court responses to rape, written in English, were published. As of September 2007, over 90 attrition studies have reported findings for Australia, Canada, England & Wales, Scotland, and the United States from 1970 to 2005.<sup>1</sup> Some analyze the same dataset, and the findings from others can be combined; thus, the unique set of cases reduces to 75. Our paper analyzes this body of research from five countries<sup>2</sup> to identify patterns in the police, prosecutor, and court handling of rape and sexual assault cases. It is contextualized by victimization surveys, police statistics, and court data from the countries examined. We also explore the factors associated with conviction and attrition such as the victim's character and credibility, prompt reporting of the offense, victim-offender relations, and evidence of non-consent.

Our project began with a more simple aim: to summarize studies of rape case handling by the police and courts that were written in English. However, we soon discovered that there were widely varying estimates of attrition and conviction in the literature. Authors cited different studies or selected findings, or focused on some jurisdictions or countries. Conviction rates were given, but it was not clear if they were to any offense or the original offense charged; and researchers calculated estimates and defined outcomes in different ways.

Research on the prevalence of rape and its legal handling is highly politicized and contested. Victim advocates are criticized for providing "widely inflated estimates" of sexual

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<sup>1</sup> Since September 2007, New Zealand has completed a rape attrition study (Triggs et al. 2009). Other studies that are planned or underway include the Irish Rape Attrition Project (2008); a rape attrition study of 11 UK and European countries (Child and Woman Abuse Studies Unit 2008); the Understanding Attrition in Rape Cases Project in Sussex (McMillan and Thomas 2008); and a rape attrition study planned for South Africa (Gender, Health and Justice Research Unit 2008). Johnson, Ollus, and Nevala (2008) report estimates from the International Violence Against Women (IVAW) survey that we cite when relevant.

<sup>2</sup> We initially combined England & Wales and Scotland, but then decided to treat them separately because their rape law and criminal procedures differ, as do their attrition rates over time. In Scotland, unlike England & Wales, the definition of rape is still gender specific, although this is changing. The Scottish criminal justice system includes an additional stage, that of the Procurator Fiscal, who takes on some duties of the police and the prosecution (Burman, personal communication, January 2008).

victimization (Gilbert 1997, p. 101), and skeptics can be criticized for not understanding sexual violence in more fluid terms, as a continuum (Kelly 1988). Legal definitions of rape have changed in the last three decades, but the more consequential change is social and political. This was encapsulated in early feminist challenges to the “real rape” construct, that rape is carried out by a stranger, using a weapon, and with serious victim injury (Estrich 1987), when the more typical rape is by a known person, without a weapon, and without physical evidence of non-consent. As legal definitions and socio-political understandings of rape widened and as advocacy for victims grew from the 1970s onward, research on rape has been caught up in a politics of rape. Debates initially focused on rape prevalence (e.g., was it an epidemic or not?). In the past decade, debates have matured, but governments have been called upon to do more. Low or declining conviction rates, faulty or questionable police investigations, and poor treatment of rape victims have put pressure on governments to review rape laws and legal procedure, not for the first time, but yet again.

As our research progressed, the need to create an authoritative and comprehensive record of what is known about rape and its handling in the legal process became clear. Reviews by Bryden and Lengwick (1997), Kelly (2001), Lievore (2004), Koss (2006), and Du Mont and White (2007) consider the prevalence and contexts of sexual victimization, victims’ reporting patterns, and justice system responses. However, ours is the first study to assemble and harmonize the relevant body of research to estimate rates of conviction and of case attrition at different stages of the legal process, and to identify factors associated with case attrition or retention. To provide a comparative context and understanding of the patterns that may emerge, we also review rape law reform and compare police statistics and court outcomes in the five countries studied.

A note on definitions. Rape is “unwanted oral, anal, or vaginal penetration against consent through force, threat of force, or when incapacitated” (Koss 2006, p. 208). It includes

sexual intercourse with children (typically at law, under 16). “Rape” differs from “sexual assault” and “all sexual offenses.” Sexual assault refers to a wider set of offenses, including penetrative (i.e., rape) and non-penetrative (e.g., indecent assault) offenses that touch the body sexually. “All sexual offenses” include rape, sexual assault, and “no touch” offenses (e.g., indecent behavior or sexual exposure). Although most attrition research is concerned with the socio-legal response to rape (i.e., forced penetrative sex), victimization surveys, attrition studies, and official police and court data may include a broader set of offenses and victims of varied age groups.<sup>3</sup> For simplicity of expression, we use victim and offender throughout the paper, without the “alleged” preface; and we use victim rather than survivor or victim-survivor.

Here are the study’s major findings. Of sexual offenses reported to the police during the past 35 years, the overall rate of conviction to any sexual offense is 15 percent.<sup>4</sup> Comparing an early period (1970-1989) with a later period (1990-2005), this rate has declined significantly<sup>5</sup> from 18 to 12.5 percent. Significant decreases have occurred in England & Wales, Canada, and to a lesser degree in Australia; but not in the United States or Scotland. Across the three decades, the overall rate of conviction to any sexual offense is a bit higher in samples of child/youth victims, than those of mixed age, or adults only. Significant decreases in conviction rates over time are evident in samples of mixed age and child/youth victims, and across all types of sexual offenses.

In describing *where* attrition occurs in the legal process, the following are averages across countries for the more recent period. Of sexual offenses reported to the police, 30 percent proceed past the police to prosecution, 20 percent are adjudicated in court, 12.5

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<sup>3</sup> Because the composition of offenses varies, depending on the study or official data source, we use the more generic terms “sexual victimization” or “sexual offenses.”

<sup>4</sup> The terms “overall rate of conviction” or “overall conviction rate” refer to the proportion of cases that are convicted of any sexual offense, of cases reported to the police.

<sup>5</sup> When saying “significantly” here and elsewhere in discussing the results, the reference is to statistically significant differences.

percent are convicted of any sexual offense, and 6.5 percent, of the original offense charged. Few cases go to trial (8 percent) and are convicted at trial (4.5 percent). Attrition is greatest at the start of the socio-legal process: from victimization surveys, an average 14 percent of victims report the offense to the police. Once reported, a minority of cases proceed past the police to the prosecutor's office; and this occurs for a variety of reasons. Suspects cannot be identified or located, victims withdraw complaints, and the police believe there is insufficient evidence to charge a suspect or the victim's story lacks credibility. Attrition averages do not tell the whole story and can be misleading because there are significant differences by country and time period in the police and court handling of cases.

One explanation for decreasing conviction rates is that as more sexual offenses are reported to the police, they contain a higher share of known relations and rape contexts that do not accord with the "real rape" construct. At the same time, police, prosecutorial, and court decisions continue to operate with the "real rape" construct in mind. We find that this explanation applies best to England & Wales, but is less evident in other countries. Of the four countries with sufficient research, the United States is an anomaly with no change in conviction rates over time. There is no one pattern of conviction and attrition in the countries studied.

We recognize that legal reforms of the past several decades may have helped some victims, but all commentators agree that the gains have been modest. We call for a shift in the priorities of legal reform—away from the trial and toward mechanisms of encouraging admissions to offending—and for pursuing alternative pathways of participation and support for victims, offenders, and others affected by sexual offences.

## I. Attrition Research in Comparative Context

To understand patterns of rape case attrition over time and across different jurisdictions requires attention to a wider social and legal context. Since the 1960s and 1970s, with the rise of second-wave feminism, the legal definitions and social meanings of rape began to change. Major challenges were raised by feminist scholars about the veracity of official data and the harsh treatment of victims in the legal process.

### A. *Was It Rape? Reporting Rape to the Police and Legal Responses*

Estrich's (1987) review of the literature up to the mid-1980s analyzed the inter-relationships among victims' experiences of rape, sample survey estimates of victimization, victims' reports to the police, and how cases were handled by the police and courts. She coined the term "real rape," drawing from Kalven and Ziesel's (1966, p. 252) term "aggravated rape." Real rape has one or more of these elements: stranger relations, multiple assailants, weapon use, and evidence of serious physical injury. Or as Estrich (1987, p. 8) says, the image is of an "armed man jumping from the bushes." By contrast "not real" rape (also termed "simple" rape) has none of these aggravating elements: the offender is a lone man, whom the woman knows (a neighbor, acquaintance, a date), with no weapon use, and leaving no physical injuries or bruises on a victim.<sup>6</sup> Estrich argued that in simple rape contexts, questions about a woman's character, credibility, and believability were especially likely to be raised. Although "real rape" was reported to the police by victims and treated seriously by the criminal justice system, simple rape was "far more common, vastly underreported, and dramatically ignored" by the police and courts (Estrich 1987, p. 10).

From early victimization surveys in the United States (the National Crime Surveys [NCS] conducted during 1973-1982), the Bureau of Justice Statistics (1985) estimated that 52

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<sup>6</sup> Although Estrich (1987) draws from Kalven and Zeisel's (1966) work in defining real rape, her analysis focuses mainly on different responses to stranger and known relationship cases.

percent of rapes (both attempted and completed) were reported to the police. It soon became apparent that the NCS had grossly underestimated the prevalence of rape and overestimated the likelihood of victim reports to the police because of the way in which the survey questions were asked. Other studies in the United States appeared at the time (e.g., Russell 1975; Williams 1984; see Estrich 1987, pp. 11-14), showing that women who were sexually assaulted by persons they knew (acquaintances, friends, neighbors, or relatives) were far less likely to report the offense to the police, *and* to victim survey interviewers, compared to women who were assaulted by strangers.

The Sexual Experiences Survey, developed by Koss and colleagues in the mid 1980s (Koss and Gidycz 1985; Koss, Gidycz, and Wisniewski 1987), broadened the behaviors associated with rape. Using this instrument, the authors found that the rate of rape was at least ten times greater than that estimated from the NCS (see Johnson, Ollus, and Nevala 2008, pp. 10-14).<sup>7</sup> In 1992, the NCS sexual and domestic violence victimization questions were re-designed, and special modules were introduced in the British Crime Survey in 1994 to elicit respondents' experiences with rape and sexual assault. Both led to significant increases in the estimated rates of sexual victimization. In 1993, Statistics Canada fielded the first national survey of women's experiences of sexual and physical victimization, which used more sensitive approaches to elicit information and conduct the interviews (see review of methods used in Johnson and Sacco 1995; Johnson 1996;); and their approach was adopted in other countries during the 1990s. The International Crime Victim Survey began to gather victimization data in 1989 from 60 countries (now numbering 70 countries), but it was not designed to elicit an understanding of female experiences of sexual or physical victimization. To address this problem, the International Violence Against Women (IVAW) project was established as an

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<sup>7</sup> Although Koss and colleagues were criticized by Gilbert (1997) for overestimating prevalence, a more recent study of victimization on United States college campuses vindicates Koss's point that estimates change dramatically, by ten times, when questions are asked differently (see Fisher, Cullen, and Turner 2000, pp. 11-14).

international comparative survey of women's experience of sexual and physical violence, and of criminal justice responses. After pilot studies in 2001 and 2002, the first survey was carried out during 2003 to 2005 in 11 countries of the developed and developing world. Publications are now emerging (see, e.g., Mouzos and Makkai 2004 for Australia; and Johnson, Ollus, and Nevala for the entire sample), which present a complex picture of victimization and reporting patterns, with an analytical emphasis on partner and non-partner violence.<sup>8</sup>

Several observations can be made. Reliable estimates of female sexual victimization, and associated estimates of reports to the police, are recent. Such estimates depend on how the questions are asked and the degree to which the interview context is supportive of participants. As methodologies improve to elicit the frequency, types, and contexts of rape and sexual assault, and the estimated incidence of sexual victimization increases, the rate at which women tell survey researchers that they reported the offense to the police decreases. Thus, when victimization surveys capture a larger share of "non-traditional" rapes (simple rapes and those involving known relations), the rate at which victims say to interviewers that they reported the offense to the police goes down. Likewise, the composition of reports received by the police may have an increasingly larger share of "non-traditional" rapes over time because there are more supports and services for victims, coupled with a changed consciousness about rape, to bring these incidents to police attention.

Table 1 itemizes the major surveys of sexual victimization conducted since 1992 in four countries that are the subject of this study. It shows that across all the surveys, the rates of report to the police range from 6 percent (the first victim-friendly survey in Canada) to a high of 32 percent (a standard victimization survey in the United States, albeit with re-designed questions). Excluding the latter unusually high estimate, the average rate of victim report is 14

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<sup>8</sup> Where relevant, we draw on the IVAW findings. However, just one of the five countries in our study (Australia) participated in the IVAW survey.

percent.<sup>9</sup> By country, rates of report are 15 to 19 percent (United States), 14 to 18 percent (England and Wales), 12 to 20 percent (Australia), 6 to 19 percent (Canada), and 12 percent (New Zealand).

[Table 1 about here]

For age, surveyed victims are typically 16 or older, and the youngest age group (16 to 24 years) has the highest rate of sexual victimization. Where data are available, however, the highest rate of sexual victimization is found for those 10 to 14 years (Snyder 2000; Australian Institute of Criminology 2008). In research on child and youth victims (those 12 to 17 years), the rate of reporting sexual victimization to the police ranges from a high of 30 percent for “violent sexual assault” from the NCVS (Finkelhor and Ormrod 1999), to 13 percent for “sexual assault” (Kilpatrick and Saunders 1997), and a low of 3 percent for “sexual victimization” (Finkelhor and Dziuba-Leatherman 1994, cited in Finkelhor, Wolak, and Berliner 2001, p. 18). Although the number of studies is small (and all are from the United States), they suggest a somewhat lower likelihood that child and youth victims report sexual victimization to the police, compared to adult victims.

Why, on average, do 86 percent of victims not report rape and sexual assault to the police? The reasons given by victims, often in combination, are not viewing the assault as rape or not thinking that others will view it as rape; fearing that others will disbelieve or blame her, including family members or friends; fearing or distrusting the police and court processes; fearing threats or further attacks by the offender or his family and friends; and having divided loyalties when reporting a family member or ex-partner (Kelly 2001, pp. 9-10; Lievore 2003). Because many victims are unsure about what to do or may blame themselves, they may delay their report to the police. The police, in turn, may interpret delay as a sign that the assault was

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<sup>9</sup> By comparison, estimates of report to the police for non-partner sexual violence, drawing from the IVAWS, are somewhat lower: ranging from 4 percent (Poland), 6 to 8 percent (Costa Rica, Denmark, Australia, and the Czech Republic), to 13 percent (Mozambique) (Johnson, Ollus, and Nevala 2008, fig. 6.12, p. 147; table III.12, p. 210).

not serious or that a victim is not being fully truthful. Young women's potential for victimization is high in social occasions where alcohol or illegal drugs are used. These contexts heighten a risk of what is termed "acquaintance" rape, although the assaults may be viewed by victims, general members of society, and legal authorities as non-traditional forms, not as "real" rape.

### *B. Real Rape and Victim-Offender Relations*

An important question for attrition research is whether the relative composition of aggravated and simple rapes, or of stranger rapes, reported to the police has changed over time. In England & Wales, attention has been drawn to the growing gap between women's reports to the police and a diminished rate of court convictions (Kelly, Lovett, and Regan 2005, p. 25). One explanation is an increasing share of "non-traditional" rapes is being reported to the police, which are more difficult to prove in court.

Evidence from varied jurisdictions over time is lacking on victim-offender relations and reporting patterns, but two studies are relevant. Baumer's (2004) analysis of the NCS for 1973-1991 finds that of the 51 percent of rapes that victims said they reported to the police, half involved known persons. Data from the redesigned NCVS for 1992-2002 show that of the 30 percent of rapes that victims said they reported to the police, 84 percent involved known persons. From multivariate analyses, Baumer finds that in the 1970s and 1980s, women were less likely to report being raped by a known person than by a stranger, but by the early 1990s, victim-offender relationships had no effect on the likelihood that victim reported rape offenses to the police. He suggests that increases in victims' reports of non-stranger rapes can be attributed to changing perceptions of and broadened definitions of rape that include acquaintances and intimates. The second study, by Harris and Grace (1999) compares British

Home Office data for 1985 and 1996 on the stranger share of cases reported to the police. They find a drop in the stranger share from 30 percent to 12 percent (see also Grace et al. 1992).

To pursue this question further, we identified a sub-sample of cases from our attrition sample that examined victim-offender relations as an attrition factor, and then re-read each to determine the stranger relationship share of offenses reported to the police. A dataset of 27 studies was initially assembled, but the number was reduced to 13; these clearly specified the stranger share of cases *reported to police*.<sup>10</sup> The 13 studies were mainly from the United States and England & Wales, with one each from Australia and Canada. Our mini-study found that stranger relations *were* a significantly higher share of cases reported to the police in the 1970s and 80s (48 percent) than in the 1990s forward (26 percent). Although the sample size is small, the findings confirm that the stranger relations share of rapes reported to the police has decreased over time.

### *C. Legal Reform and Its Impact*

When comparing rape case handling by country, a key element is variation in legal reform. There are several dimensions to consider. First, is country differences in the timing and scope of rape law reform. Second, are the elements that are typically part of rape law reform. Third, is research on the impact of rape law reform on the police and court handling of cases. A complicating factor is that rape law reform likely affects victims' reporting patterns to the police. As our discussion above suggests, one consequence of rape law reform is that a higher share of reported rapes involve known relations, and this may result in decreased convictions.

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<sup>10</sup> The excluded studies were those that began with police "founded" or "crimed" cases, offenses cleared by arrest, cases referred to prosecution, or defendants in court. All of these are affected by victim-offender relations, and especially the latter three, in the profile of suspects who can be identified.

Country differences exist in the timing and scope of rape law reform. Reform emerged in the mid 1970s in the United States and Australia, soon followed by Canada in the early 1980s. Legal change came much later to England & Wales and Scotland. Some amendments were made to English law during the 1970s and 1990s, but no comprehensive legislative change occurred until 2003, with the passage of the *Sexual Offences Act 2003*. In Scotland, some reform was introduced in the mid-1980s, and again in 2002, but comprehensive reform has not yet been introduced.<sup>11</sup>

Before rape law reform, a victim's character, behavior, and sexual history were relevant and lawful factors in decisions; and there needed to be witness corroboration of a victim's statement, and substantial evidence of victim resistance and injury. Rape was defined as forced vaginal intercourse only, and husbands were exempt from prosecution. When legal reforms were introduced, the aim was to shift attention away from a victim's character and sexual history to an offender's behavior, to eliminate the witness corroboration rule and other stringent physical evidence requirements to prove non-consent, and to expand the definition of rape.

In the United States, all the states enacted rape law reforms by the mid 1980s (Futter and Mebane 2001) although these varied in scope and comprehensiveness. They include rape shield laws that restricted using evidence at trial about a victim's sexual history; elimination of the corroboration rule; and in some states, elimination of evidence of physical resistance. The definition of rape expanded from the single offense of rape (vaginal intercourse with the penis) to a series of graded offenses that were associated with aggravating circumstances and acts. Sexual intercourse was broadened to include oral and anal penetration, and male victims. By 1993, marital rape was criminalized in all states (Bergen 2006).

Frohmann and Mertz (1994, p. 831) suggest that legal reform had dual goals of efficacy (i.e., increasing the likelihood of conviction) and process (i.e., "attention to women's

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<sup>11</sup> We schematize developments in rape law reform. Evidence for and definitions of "consent" (or non-consent) in rape law are complex and have been evolving in the past decade; they are not addressed in detail here.

perceptions and experience of the process itself”), but these goals did “not always coincide.” For example, a prosecution may result in conviction, “but also devastation for the victim.” Drawing from Spohn and Horney’s (1992) key work, they concluded that with some exceptions, legal reforms had little or no impact on rates of reporting rape, prosecution, and conviction. Despite the good intentions of professionals, organizational or professional priorities often trumped victims’ needs (Frohmann and Mertz, 1994, pp. 832-35). Reviewing the impact of legal reform in the United States 15 years later, Koss (2006, p. 217) said that although feminist and victim movements “achieved spectacular success by the standards of social change,” reforms had positively affected only a small number of women, drawing from Bryden (2000), Seidman and Vickers (2005), and Bublick (2006) (see also Schulhofer 1998, chap. 2).

In Australia, like the United States, major legal reforms were introduced in all the states, beginning in the mid 1970s, although they varied in scope and intensity (Bargen and Fishwick 1995; Heath 2005). Legal reform addressed key areas of a victim’s sexual history, witness corroboration, physical resistance (and associated definitions of consent), and definitions of rape and sexual intercourse. Like the United States, several Australian studies on the impact of legal reform (Brereton 1994; NSW Department for Women 1996) found that older practices continued, despite legal change. During the early 2000’s, major reviews of rape law and procedure were undertaken in most states, including Victoria, New South Wales, South Australia, and Western Australia.

In Canada, comprehensive legislative change was introduced in 1983, with reforms aimed at encouraging victims to report rape to the police and limiting the introduction of evidence on a woman’s sexual history. Rape was redefined as a type of assault with varying degrees of seriousness, and it included marital rape and male victims. Roberts (1996) reports that between 1983 and 1994, rape reporting to the police increased by 130 percent, with much

of the increase occurring in the years immediately following the introduction of legal reform. However, Tang (1998, p. 263) suggests that for Canada, “sexual assault is still under-reported; victims fear the system is biased against them. Founding, charging, and conviction rates remained low.” Gunn and Linden (1997) attempted, but were not able, to confidently estimate conviction rates in the pre- and post-reform years.

In England & Wales, several amendments were made to the *Sexual Offences Act 1956* to redefine rape. In 1976, a shift was made from “against her will,” with evidence of physical resistance required, to “without her consent;” and in 1994, rape definitions were broadened to include male and marital rape (see Temkin 2002). The *Sexual Offences Act 2003* consolidated what had been piecemeal changes up to that time, and it introduced two major areas of change: widening the definition and scope of rape and sexual offenses; and changing the definition of consent. Like Australia and Canada, the recent legislation in England & Wales provides a statutory definition of consent, including a list of circumstances when consent is not possible (see Temkin and Krahe 2008, pp. 26-27).

Legal reform came last to Scotland. Changes to the rape shield laws were first introduced in 1986 and extended in 1995 and 2002. Brown, Burman, and Jamieson (1993) and Burman et al. (2007, p. 8) conclude that the 1986 and 1995 legislation was “largely ineffective;” indeed, after the 2002 Act, Burman et al. (2007, p. 7) find that “*more* sexual history and character evidence [was being introduced than before].” Scotland’s rape law includes only female victims, and its corroboration rule is still in place, although it applies to all offenses, not just rape (Burman, personal communication 2008).

Of the 75 cases analyzed in our study, just 12 (or 16 percent) were carried out before any legal reform in that jurisdiction, and an additional 11 percent were conducted in jurisdictions after some reform. Of the 12 pre-reform cases, most (nine) are from United States jurisdictions; two, from Canada; and one, Scotland. Thus, studies of the police and court

response to rape are largely of practices *after* the introduction of reforms in specific jurisdictions or countries.

Rape law reform is a long-term process of efforts to change legal culture, organizational and professional practices, and attitudes toward and beliefs about men's and women's sexualities, culpabilities, and responsibilities for sexual victimization. There is a long line of actions and interactions between the passage of a law and changes in people's attitudes and behaviors that give effect to that law; and as Smart (1989) suggests, the law is itself resistant to change. Although virtually all commentators suggest that there has been little or no significant impact of legal reform, we hypothesize that countries initiating reform earlier (the United States, Australia, and Canada) would show different conviction patterns than England & Wales and Scotland, which initiated reform much later. At the same time, we recognize that legal reform, coupled with research infrastructure and support services to victims, has likely affected *victims* more than criminal justice officials or legal practices. This is evident from several studies of victim reporting patterns (Harris and Grace 1999; Baumer 2004), including our mini-study. To explore this matter further, we turn to an analysis of crimes reported to the police over time by country.

#### *D. Rape and Sexual Assault Recorded by Police*

In reviewing official police data, our aims are three-fold: to determine if there is a relationship between the emergence and consolidation of legal reform and rates of reported rape and sexual assault to the police, to identify country differences or patterns, and to consider how official police data may inform our analysis of attrition research.

It is widely recognized that official police data do not accurately reflect the actual incidence of rape or sexual assault, or increases and decreases over time. However, our aim is to glean general patterns from the data (see Table 2). An immediate problem in attempting to make comparisons is that countries count different types of sexual offenses. As detailed in the table notes, the United States counts rape only; Australia counted rape in the 1980s, but then shifted to the broader category of sexual assault in the 1990s; and Canada, England & Wales, and Scotland count sexual assault. To compare recent patterns, we focus on rates of increase or decrease from 1996 to 2006.

[Table 2 about here]

In the United States, rates of reported rape to the police remained steady in the 1980s (after major increases in the 1970s); they peaked in the early 1990s and began to decline, with a 15 percent rate of decline from 1996 to the present. For Canada, rates of reported sexual assault increased during the 1980s. Like the United States, they peaked in the early 1990s and began to decline in 1994-95 and have declined since then (25 percent rate of decline from 1996 to the present). For Australia, rates of reported rape increased substantially in the 1980s. Unlike the United States or Canada, rates of reported sexual assault in Australia increased somewhat from 1996 to 2004 (16 percent rate of increase), with a suggestive decreasing trend to 2006. The picture for England & Wales differs markedly. During the 1980s and to the mid 1990s, there were small, but steady increases each year in reported sexual assault, but from 1996 to 2006, the rate of increase grew substantially (a 53 percent rate of increase).<sup>12</sup> Available data for Scotland show up-and-down fluctuations of reported sexual assault from 1996 to the present, with a suggestive upward trend.

These data suggest a relationship between rates of reported rape or sexual assault and the rise and consolidation of significant legal reform. Early reform countries (the United States,

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<sup>12</sup> Although England & Wales experienced a large rate of increase from 1996 to 2006, its rate of reported sexual assault in 2006 was about the same as Australia's.

Australia, and Canada) do show substantial increases coinciding with legal reform, although these occurred earlier in the United States (in the 1970s) than in Australia and Canada (in the 1980s). By comparison, in England & Wales, a later reform country, rates of reported sexual assault did not begin to rise substantially until the late 1980s and have since shown a high rate of increase. In Scotland, where legal reform is still underway, rates of reported sexual assault were not counted until 1989; from then to 2006, there is a small increase.

There are also notable country differences. In the United States and Canada, after peaking in the early 1990s, rates have since declined. In Australia, rates increased slightly from the mid-1990s to 2004, but have since stabilized or declined somewhat. By contrast, England & Wales is exceptional in its large rate of increase in reported sexual assault from 1996 to 2006.

Based on these data, we would expect to see distinctive patterns in attrition research for England & Wales. With strong increases in reported sexual assault, there would be significant pressure on police organizational resources and routines to process cases, with one result being higher rates of attrition at the police stage. Making inferences from a country's police data to the findings from its attrition research is, of course, tenuous. Police data are gathered for an entire country (and three of the five countries are very large and geographically dispersed), whereas attrition studies come from selected cities or states, which may vary greatly in police and court practices.

#### *E. Published Court Data*

Attrition is smaller at the court stage, but it is at this stage when victims are most visibly subject to a second victimization by the trial process (NSW Department for Women 1996;

Tempkin and Krahe 2008). There are problems comparing countries' court data, but the statistics may offer broad clues about court culture and organizational practices.<sup>13</sup>

Three problems arise in comparing the court data. First, the published statistics for England & Wales do not show the number or percent of "other outcomes" (i.e., cases that are dismissed, withdrawn, or not proceeded with) when all the other countries do. With these cases excluded, the conviction rate for England & Wales is inflated and not comparable to that of other countries.<sup>14</sup> Second, with "other outcomes" excluded in the British data, the trial rate also cannot be compared with that of other countries. Third, Canada and Scotland do not report the number of cases that go to trial or trial outcomes.

Table 3 presents the available court data on conviction rates, trial rates, and conviction at trial. In the first column, "type of adjudication," we see that in the United States and South Australia, 31 percent of cases are not proceeded with, dismissed, or withdrawn. However, the share of guilty pleas is much higher in the United States (61 percent) than in South Australia (37 percent). In the second column, the "trial rate" is calculated two ways. First, is the trial rate, the percent of all cases in court (including "other outcomes") that go to trial;<sup>15</sup> and then, in parentheses, is the *comparison* trial rate, which is calculated as:  $N$  of cases going to trial / ( $N$  of guilty pleas +  $N$  of cases going to trial). We can use this second figure in comparing the British trial rate with that in other countries. In the fourth column is the conviction rate for trial cases and for total cases (i.e., the denominator includes "other outcomes").

[Tables 3 and 4 about here]

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<sup>13</sup> Some have asked if attrition for rape is any different than that for murder or robbery (see, e.g., Myers and LaFree 1982; Galvin and Polk 1983). The answer is we do not know when the base is crimes reported to the police. We analyzed the countries' court data for 2001-2006 and found that once cases are in court, conviction for rape is ranked third or tied in second place with homicide/murder or robbery. In no country is conviction for rape ranked in first place. Garner and Maxwell's (2009) analysis of attrition for intimate partner violence finds an overall average conviction rate of 16.4 percent. Their paper can be read as a companion piece to ours.

<sup>14</sup>The same approach is taken by the Australian Bureau of Statistics (2007) in its compilation of Australia-wide court data; for that reason, we do not rely upon that source, but use more complete data from South Australia.

<sup>15</sup> This definition of the trial rate is also used in our analysis of attrition research; see Table Appendix II(A).

Table 3 suggests that court processes vary by country. First, the conviction rate of total rape cases (rape or rape and unlawful sexual intercourse [USI]) is higher in the United States (67 percent) than in South Australia, Canada, and Scotland, where it ranges from 47 to 52 percent. Second, the trial rate for the United States is lower than that for South Australia (respectively, 8 percent and 32 percent), but the rate of conviction at trial is higher (respectively, 74 percent and 47 percent). In the Scottish data, the conviction rate for indecent assaults (non-penetrative offenses) is higher than it is for rape (78 percent and 47 percent, respectively). Offense and age-based differences in conviction rates are explored further in the next table.

Table 4 assembles data from New South Wales and Victoria to determine if trial rates and rates of conviction vary by the age of victims and type of offense. Turning first to New South Wales, for offenses against children (defined as under 18 years), the trial rate is 33 percent, the rate of conviction at trial is 45 percent, and the conviction rate for the total cases charged is 62 percent. However, for offenses against adults, the trial rate is higher (42 percent), the rate of conviction at trial is lower (35 percent), as is the conviction rate for total cases (43 percent). A similar age-based pattern is evident when comparing rape and USI. The latter offense is relevant only to younger-aged victims, whereas rape can include victims of all ages.<sup>16</sup> For rape, the trial rate is 46 percent, the rate of conviction at trial is 48 percent, and the conviction rate for all cases charged is 65 percent. By comparison, for USI, the trial rate is lower (34 percent), conviction at trial is higher (58 percent), as is the conviction rate for total cases (74 percent). These data suggest that cases involving adult victims and charges of rape face more hurdles in the legal process than those involving younger-aged victims and charges of USI. The results for age confirm patterns noted by Harris and Grace (1999, p. 32) for

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<sup>16</sup> The precise victim age for USI varies by jurisdiction, but typically, it is less than 16 years. Further legal distinctions are made for USI with victims under 12 or 13 years, which is legally more serious. The key legal point is that non-consent is not relevant in USI cases. Cases may initially be charged with rape, but a defendant may be permitted to plead to USI when the state's evidence of non-consent is weak.

England & Wales: highest rates of conviction are for younger-aged victims (under 13 years); and the lowest, for women over 25.

Examining the *comparison trial rates* for rape and rape and USI (Table 3), England and Wales has a most unusual pattern of a high trial rate (69 percent) and a very low conviction rate at trial (29 percent). The comparison trial rate for the United States is 12 percent; South Australia, 47 percent; and Victoria, 52 percent (rape) and 39 percent (USI); and all have a much higher rate of conviction at trial than England & Wales.

#### *F. Which Victims Are More Credible?*

A contentious area of rape case handling, in law and legal practice, is that inferences are drawn about a suspect's culpability, or a defendant's guilt or innocence, that are based on victim-offender relationships, along with a victim's "character," "credibility," and "conduct." Estrich's (1987) analysis of 19<sup>th</sup> and 20<sup>th</sup> century rape cases (up to the mid 1970s) in the United States shows a general "distrust" toward women victims, particularly those who knew an offender. Such distrust continued, she argued, in the 1970s and 1980s after the introduction of rape law reform.

In a classic early work, Kalven and Ziesel (1966, pp. 249-257) pointed out that in rape trials, a jury does not focus solely on the question of consent. Rather, "it closely, and often harshly, scrutinizes the female complainant and is moved to leniency ... when there are suggestions of contributory behavior on her part" (p. 249). Such contributory behavior or a victim's "assumptions of risk" includes drinking or going home from a bar with the defendant or having been in a previous relationship with the defendant.<sup>17</sup>

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<sup>17</sup> Kalven and Ziesel (1966) also say that although a jury is likely to acquit a defendant when there is perceived "contributory fault" by the victim, if it has the option of convicting on a lesser offense, it will do so: "The jury's stance is not so much that involuntary intercourse under these circumstances is no crime at all, but rather that it does not have the gravity of rape" (p. 250).

Thus, according to these authors, attention to a victim's character and credibility will emerge more often in some cases (simple rape) than others (aggravated rape). With some exceptions (e.g., Horney and Spohn 1996), few researchers have directly tested this proposition. Rather, they identify elements that distinguish "genuine" from other victims (Spears and Spohn 1996, p. 192) or "traditional" from "non-traditional" rape victims (La Free 1989). "Genuine" victims are those having a "good" moral character (e.g., no history of drug or alcohol abuse, of previous offending, or of working in the sex industry); who did not engage in risk-taking behavior before the offense (walking alone at night, hitchhiking, at a bar alone, going home with an offender); who screamed and physically resisted an assault; and who reported the offense right away. LaFree (1989, p. 51) distinguishes "traditional" *women* who conform to traditional gender roles from those who do not. Like Spears and Spohn (1996), he considers two dimensions of a women's character and behavior in rape cases: general "lifestyle" and reputation, and what occurred just before the offense. Traditional rape victims dress modestly, are not sexually active outside marriage, and do not work in "disreputable" occupations; and leading up to the offense, they do not engage in risk-taking behaviors (of the sort already noted).<sup>18</sup>

There is an age base to constructions of "genuine" and "traditional" victims, and "aggravated" and "simple" rape: they apply to adults, not children. As Spears and Spohn (1996) find in analyzing prosecutors' charging decisions, elements of a child's moral character and reputation, or of risk-taking, are not relevant. Few child victim cases can be classified as "aggravated" since most involve a lone person the child knows, without a weapon or serious physical injury. Based on their research, the child victims who are believed are those for whom there is a witness to the offense.

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<sup>18</sup> LaFree's terminology of "traditional" and "non-traditional" *rape victims* differs from how others distinguish traditional and non-traditional *rape*, with the latter referring to victim-offender relations and offense elements.

However, in adult victim cases, a woman's character and risk-taking do affect police, prosecutor, court, and jury decisions (see citations to studies up to the mid-1990s by Horney and Spohn 1996, pp. 135-36). Believable and credible adult victims have a "good" moral character and sexual reputation, and they have not engaged in perceived risk-taking behavior before the incident. Credibility is enhanced when the offense is reported right away rather than some time later and when the accused is someone the victim has never met. In addition to these elements are case and evidence factors, which reinforce (or undermine) a complainant's credibility (as well as the ability to positively identify a suspect). They include witness and forensic evidence, physical injury to the victim, and use of force or a weapon.

## II. Questions, Hypotheses, and Doubts

Our study raises questions about conviction rates and their variability, attrition (or retention) rates at different stages in the legal process, and the factors associated with police and court decisions. They are:

- Q1: With victims' reports to the police as the base, what is the overall rate of conviction (by plea or trial) to any sexual offense and to the original offense?
- Q2: Do overall conviction rates vary over time, by country, by age of victim, or by type of offense?
- Q3: What are the attrition rates at each stage of the legal process?
- Q4: What is the trial rate and the conviction rate at trial?
- Q5: For those pleading guilty or found guilty, what percent receive a detention sentence?
- Q6: What factors are associated with police and court decisions at different stages of the legal process? We examine victim's age, character and credibility, and promptness

in reporting the offense; victim-offender relations, the suspect's criminal history, physical/forensic evidence, victim injury, and use of force or weapon.

In addition, we test claims about the changing nature of rape cases reported to the police and the implications this may have for changes in conviction rates. Our review shows that countries vary in when legal reform began, in trends of reported rape and sexual assault to the police, and in how courts handle cases. We test relationships that flow logically from these dimensions of law and legal process. Lastly, we test the strength and durability of the factors associated with the "real rape" construct, as we define it, in adult victim cases. Specifically, we test the degree to which stranger relations, victim character and credibility, and evidence factors are related to police and court decisions. Although we expect these factors to play little or no role in child victim cases, we are interested to determine what factors do play a role. We put forward these hypotheses:

H1: The overall rate of conviction has decreased over time.

H2: Countries that initiated legal reform earlier (the United States, Australia, and Canada) have higher overall conviction rates than England & Wales and Scotland, which initiated reform later.

H3: Attrition is greatest in England & Wales, where rates of report to the police have steadily increased over time, comparison trial rates are highest, and conviction at trial, low.

H4: The "real rape" construct is relevant to police and court decisions in adult cases, but not child victim cases.

Hypothesis 1 is derived, in part, from research in England & Wales, which suggests that rising rates of reported sexual assault to the police, which likely contain more "non-traditional" cases (known relations and simple rape), has led to reductions in the conviction rate (Harris and Grace 1999; Kelly 2001). It is supplemented by our mini-study, for which we found a higher

share of stranger relations in study samples from the 1970s and 1980s than in those from the 1990s onwards.

For Hypothesis 2, most commentators say that legal reform has had little or no effect on increasing rates of conviction. However, we might expect some organizational change to have occurred in countries where comprehensive legal reform has been in place for some time, which facilitates higher conviction rates. It is also possible that just the opposite is occurring. Early reform countries may have increasing rates of victims' reports to the police that are not adequately responded to, which result in lower conviction rates.

Hypothesis 3 is generated from police reports and published court data on trial rates and conviction at trial. Unlike other countries, England & Wales has seen a sharp increase in reported sexual assault to the police during the 1990s and continuing into the early 2000s. Such increases have likely put pressure on organization routines and resources in police departments, which have resulted in greater attrition at this stage of the legal process. In addition, British court data suggest a high trial rate, but a low conviction rate at trial. In other countries and especially the United States, a greater share of cases is settled by guilty plea, with a lower trial rate, and a higher rate of conviction at trial. For Hypothesis 4, we have every reason to suspect that the "real rape" construct remains relevant in police and court decisions in adult victim cases.

Doubts may be raised by the ambitiousness and scale of this research. Virtually all rape case attrition studies focus on one jurisdiction (a city, state, or country) or perhaps several cities or states. None has examined multiple countries or a time frame of 35 years. None has attempted to relate attrition research findings to trends in published police or court data. Few compare findings from adult and child victim samples, or more generally, explore the role of victims' ages in police and court decisions. There are good reasons that researchers have taken their course of action, and not ours. They are better able to specify the legal contexts,

organizational constraints, and workgroup practices in the jurisdictions studied. They are better able to separate samples or exclude cases by victim's age or offense types (although as we shall see, such precision is often lacking in attrition studies). They can be more precise and may have fewer doubts about what they are finding.

In our study, many interpretive doubts flow from using a country level of aggregation, broad time frames, and country-or state-level police and court data that are not strictly comparable. Countries' data may count different things (e.g., rape, USI, both rape and USI, sexual assault); and they may exclude vital clues about legal culture and organizational processes (e.g., the trial rate, conviction at trial, other court outcomes). The attrition studies themselves are not a representative sample of jurisdictions from the five countries, but are likely to reflect biases of place (more often urban areas) and researchers' access.

Conviction and attrition rates in rape and sexual assault cases are created from a complex mix of victims' decisions to report certain kinds of cases; police decisions and abilities to locate suspects and proceed with certain cases; and prosecutorial decisions to adjudicate or withdraw certain cases, take pleas or go to trial. This complexity is occurring within a changing and charged political and social environment where it is likely that a more heterogeneous set of rape and sexual assault cases is being reported to the police in the last decade or so, compared to three decades ago. Comprehensive legal reform may be associated with increasing *or* decreasing conviction rates, depending upon the level of resources, enlightenment, and readiness required for justice officials and members of society to change. Finally, as Frohmann and Mertz (1994) suggest, improving conviction rates is one goal of legal reform; another is changing processes with a more respectful treatment and better understanding of rape victims. Despite these complexities and interpretive doubts, there is much to be gained by exploring broad trends and taking a comparative perspective in understanding the legal response to rape.

### III. Study Methods

#### A. *Inclusion Criteria and Search Strategies*

Our search began by identifying all English-language journal articles, book chapters, reports, and books, which investigated the police and court handling of sexual offenses in the legal process. The main countries were the United States, Australia, Canada, England & Wales, and Scotland. We would have wanted to include studies from continental Europe written in English, but only two from Scandinavian countries (Helweg-Larsen 1985; Pentillä and Karhunen 1990) appeared in the search process. As the research progressed, we decided for comparative purposes to examine only common law countries; thus, these two studies were dropped. Ultimately, the body of work we are describing is limited to practices in common law, English-speaking countries of the developed world. The findings may provide a platform for future comparative work on common law and civil law countries, and in nations of the developing world.

Our search considered all published work up to 1 September 2007, with an open start time because we wanted to include the earliest studies. We discovered two types of studies. One is the *flow study*, which tracks cases through all the stages of the criminal justice system, that is, police, prosecution, and court stages, and presents an overall rate of conviction from report to the police to final court outcome. A second is the *snapshot study*, which analyzes attrition at one or more stages of the legal process and provides the proportion or number of cases that proceeded past the police or past prosecution or resulted in conviction in court. Most flow studies also examined attrition at each stage of the legal process. We used both to estimate overall rates of conviction and attrition at each stage of the legal process, and to identify the factors associated with attrition.

Four search strategies were used:

1. Consulting major academic sources (e.g., Bryden and Lengnick 1997; Kelly 2000, 2001; Lievore 2003; Koss 2006; Du Mont and White 2007), government sources and reviews (e.g., HM Crown Prosecution Service Inspectorate 2002; NSW Legislative Council 2002; Queensland Crime and Misconduct Commission 2003; NSW Criminal Justice Sexual Offences Taskforce 2005; South Australia Legislative Review Committee 2005), and bibliographies on legal responses to rape and sexual assault.

2. Searching on-line databases for study content and well-known authors.

Databases that covered a range of disciplinary areas were searched, including criminology, law, social science, and health in English-speaking jurisdictions.

3. Searching government, research center, and victim advocacy websites.

For each country, websites of justice and health departments, leading criminology research organizations (e.g., Australian Institute of Criminology), and victim advocacy websites (e.g., National Center for Victims of Crime) were searched.

4. Reviewing early works on rape and the criminal justice system for citations to other early studies that typically did not surface in electronic searches.

### *B. Cases in the Study*

Over 90 published and unpublished studies met our criteria. Upon closer inspection, we found that authors may have published the results of the same dataset in two or more outlets, or that two published studies could be combined as one case in our dataset. Thus, the initial number of studies reduced to 75 unique cases.<sup>19</sup> These are sorted alphabetically by author surname in Appendix I, which lists the study context, offenses analyzed, data collection period, sample size, and type of attrition and conviction data.

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<sup>19</sup> The original list of studies and finalized set are available for those interested. We thought we had identified all the studies meeting our criteria, but recently learned that we had overlooked an early United States attrition study (McCahill, Meyer, and Fischman 1979). That study's overall conviction rate, reported below, is within one percentage point of our estimate for the United States in the early period.

Several studies and reports were considered but dropped. Kelly and Regan (2001; see also Regan and Kelly 2003) provided attrition figures supplied by European government departments; but some figures were doubtful, or it was unclear how they were generated. Other studies considered, but not included are Heenan and Murray (2006) and Brown, Hamilton, and O'Neill (2007), who tracked cases from police reports to charging or court proceedings, but did not give court outcomes, and Hanly (2007), who focused solely on jury trials.<sup>20</sup>

### *C. Assembling the Dataset and Making Estimates*

There were many technical challenges in assembling the dataset and estimating conviction and attrition rates. We highlight what we did, but further information is contained in Appendix II.

*1. Coding the Studies.* We developed a coding schedule with qualitative and numerical information. The variables included the study's aim, date and length of data collection, jurisdiction, sample size and selection, offense types studied, age and sex of victims and offenders (when given), the number and percent of cases at each legal stage (police, prosecution, court, trial), overall conviction rate, factors linked to police and court decisions, study quality score, and a summary of the major findings.

Study samples were gathered in different ways. Most flow studies drew their samples from cases reported to the police. However, the entry points for some studies of child sexual assault were cases reported to a children's hospital or child protection unit; and for adult victims, some drew samples from hospital emergency rooms or sexual assault crisis centers. Problems in sample selection bias, if any, were noted.

Studies varied in clarity and precision. At times, it was not clear what the initial base of cases was (e.g., all reports to the police or smaller set) nor at what exact stage of the legal

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<sup>20</sup> Studies that examined factors associated with police or court outcomes, but did not examine conviction or attrition rates were not included (e.g., a well-known study by Kerstetter 1990).

process the official file was obtained. This posed problems in estimating conviction and attrition rates accurately, but each problem was resolved by using a consistent set of rules for including or excluding cases. The character and composition of sexual offenses studied varied; and at times, it was not clear which offenses were studied. This was important to code as accurately as possible because as offense categories move from rape and penetrative offenses, to broader categories of sexual assault, and all sexual offenses, we can expect to see an increasing rate of conviction. This is apparent in countries' court data (Tables 3 and 4) and research on sex offences (Daly 2006).

The most frequent flaw in the studies was a lack of detail on victims' ages and inconsistency in defining age ranges. As a result, we could not create discrete age categories. Some studies had victims of all ages, but the authors did not specify the range of ages; in others, the youngest victim age was given, but it ranged from 10 to 18. We ultimately decided on three categories: "adult only" has victims 16 years and older; "mixed age" has victims of all ages; and "child and youth victim only" has victims under 18. Although the adult only and child/youth categories overlap a bit (which reflect distinctions at law for age of consent and offender age classifications), this is of less concern than the omnibus "mixed age" group. There was nothing we could do about this problem: it reflects how researchers have carried out their studies.

2. *Estimating Attrition and Conviction.* Once a case is reported to the police, there are four major sites of attrition: whether or not it moves past the police to prosecution (i.e., an arrest is made and charges are laid); whether or not it moves past prosecution to court (i.e., the case is listed for adjudication in court); whether it remains in court or is dismissed or withdrawn; and whether or not the defendant pleads guilty or is found guilty at trial. More detail on the stages of attrition and how each was calculated is shown in Appendix II.

A key feature of our study is harmonizing conviction and attrition estimates across studies that have employed differing counting and estimation rules. Appendix II shows how this was accomplished and the rules we used; it describes how we pooled estimates from the flow and snapshot studies to achieve a more stable overall conviction rate, and how statistical tests of significance were carried out. We highlight several points. The attrition estimates for the police and prosecutorial stages are somewhat rubbery because administrative practices can vary across and within countries, particularly when there are specialized rape and sexual assault units. We estimate conviction rates in two ways: to any sexual offense and to the original sexual offense. Although some argue that attrition occurs when a conviction is to a less serious sexual offense than that charged (e.g., Kelly 2001, p. 31), we do not define attrition this way. Charge or sentence bargaining is an inevitable feature of the criminal court process, although it may be practiced to a greater degree in some countries than others.

3. *Assessing Study Quality.* Studies varied in quality and precision; and for this reason, we spent considerable time determining whether they should be weighted differently. Although the literature on study quality focuses mainly on meta-analysis and randomized experiments (e.g., Farrington 2003), this was not applicable to our review. Rather, drawing from Khan et al. (2001, p. 5), we are analyzing a set of “case studies.” Appendix II describes a study quality score, and conviction and attrition results with an unweighted sample and two types of weighted samples. There were nil or negligible differences between the three samples; thus, we use the unweighted sample.

#### IV. Findings on Conviction, Attrition, and Factors Affecting Outcomes

##### A. *Study Descriptors*

Of the 75 study cases, about half (48 percent) are from the United States (see Table 5, middle column). Over half (53 percent) analyze penetrative offenses only (rape, attempted

rape, and USI); the rest, a broader array of sexual offenses. Over half (54 percent) have victims of mixed ages; 17 percent, adults only; and 29 percent, child and youth victims only. In an analysis not shown in the table, we found a much higher share of child/youth victim cases was associated with a broader set of sexual offenses (94 percent) compared age victim (32 percent) or adult only victim (22 percent) cases.

[Table 5 about here]

The year of data gathering ranges from 1970 to 2005. When viewing the distribution of studies, we saw a clustering of estimates in two phases: earlier (1970-1989 data) and later (1990-2005 data). These two phases also correspond to older and newer ways of researching sexual victimization. Thus, it seemed logical to use these indicators to draw a temporal line in our analysis. These earlier and later phases do not coincide with pre- and post-legal reform because all five countries had some type of legal reform by the end of the 1980s, although some had gone substantially further than others. Rather, the more recent period (1990 forward) can be viewed as a time when legal reform matured, when there was a more developed consciousness by victims (and victim support groups) of expanding definitions of rape, and when more research attention was given to sample surveys of physical and sexual victimization, using more sensitive methods. Studies from the earlier period are mainly from the United States (63 percent), whereas those from the later period have a better mix (United States 32.5 percent, Australia 35 percent, Canada 11 percent, England & Wales 16 percent, and Scotland 5.5 percent).

Other descriptors, not shown in the table, are as follows. Data gathering ranges from 2 months to 12 years; but in most cases, it is a 12- to 24-month time frame. For Australia and the United States, which are governed by state-level legislation, most of the Australian cases are from New South Wales (47 percent) or Victoria (29 percent); for the United States, the

jurisdictions are more dispersed, often with multiple states or cities studied.<sup>21</sup> Canadian criminal law is the same across the provinces, although most attrition studies are from Manitoba (40 percent) and British Columbia (30 percent).

### *B. Overall Conviction Rates*

Table 6 displays the overall rates of conviction to any sexual offense and to the original sexual offense, based on estimates generated from the flow and snapshot studies.<sup>22</sup> Turning first to the averages across all countries (top rows), we see that across three decades, the average (mean) overall conviction rate is 15 percent, and to the original offense charged by the police, 9 percent.<sup>23</sup> Disaggregating by time period, the overall rate of conviction to any sexual offense in the early period is 18 percent, but reduces significantly to 12.5 percent in the later period. The corresponding figures for conviction to the original sexual offense are 11 percent and 6.5 percent, respectively.

[Table 6 about here]

For conviction rates by country across time (the two left-hand columns), the mean rates are somewhat lower for the United States (13 percent), Australia (13 percent), and England & Wales (15 percent), compared to Scotland (17.5 percent, an estimate based on only three studies),<sup>24</sup> and Canada (21 percent). These averages belie a more complex story of variability

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<sup>21</sup> For the United States, the majority of the studies were conducted in states in the Northeast, Midwest, and Southwest and West. No studies were from states in the South.

<sup>22</sup> For all estimates of conviction and stage attrition, the decision was taken to exclude Case #59 (Patterson, 2005) because it tested a special emergency room program (the SANE program) that produced unusually high rates of conviction; however, this study is included in the analysis of factors. However, Case #59 is included in the analysis of factors associated with attrition.

<sup>23</sup> Here and in all tables, we report all conviction and stage attrition rates to .5 of a percent. Results that were xx.3 percent or less were rounded down; results that ranged xx.4 to xx.6 percent were reported as xx.5 percent; and results that were xx.7 percent or up were rounded up.

<sup>24</sup> The Scottish estimate of 17.5 percent is an average of one snapshot and two flow studies that gives more weight to the flow studies; it not a straight arithmetic average. See Appendix Table II(B).

by country and time period, which is shown in Table 8 (two right-hand columns). This is visualized in two ways: Figure 1 shows overall conviction rates for all studies, as a scatter plot; and Figure 2 gives the best fitting line for by country (excluding Scotland which has too few cases). For the United States, the overall conviction rates are nearly identical in the earlier and later time periods (13 and 14 percent, respectively). By contrast, the rates for Australia, Canada, England & Wales, and Scotland (a four-country average) decreased significantly: from 23 to 12 percent.<sup>25</sup> The generally low rate of conviction for the United States, although unusual in the earlier period, is typical of the rates for England & Wales, Canada, and Australia in the later period. From 1990 onwards, there is less dispersion in conviction rates for the five countries.

[Figures 1 and 2 about here]

Drawing from Kelly's (2001) analysis, several commentators have noted a large drop in conviction rates in England & Wales (e.g., Lievore 2004; Koss 2006). Based on our analysis, there is a considerable drop, but how much of a drop depends on which studies are used and what is defined as the "conviction rate" (i.e., to any sexual offense or the original sexual offense). Some may rely only on the inflated statistic initially reported by Grace, Lloyd, and Smith (1992) of 34 percent (since corrected by the authors to 27 percent; see Harris and Grace 1999) and San Lazaro, Steele, and Donaldson's (1996) estimate of 35 percent. However, another British study, which is on the cusp of the early and later period as we define it (Gregory and Lees 1996, data period midpoint 1989), found an 11 percent conviction rate. For the earlier period, then, we calculate the average attrition rate from three British studies to be 24 percent. Because the United States and Canada have more studies from the earlier period, we can be somewhat more confident of temporal trends from these two countries.

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<sup>25</sup> We include Scotland in this average, although its pattern of conviction differs from the three other countries. If Scotland is excluded, a three-country average is nearly the same: 23.5 percent and 11.5 percent in the early and later period, respectively.

Summarizing the findings, overall rates of conviction for rape and sexual assault have remained the same in the United States (13 to 14 percent over time).<sup>26</sup> Studies from Canada show a significant decrease in rates of conviction from the early and later periods (26.5 to 14 percent). Those from Australia also show a significant decline (from 17 to 11.5 percent),<sup>27</sup> although not as large as Canada's. For England & Wales, overall conviction rates have dropped significantly, from 24 to 10 percent. Averages for Scotland remain stable over time (18 and 17.5 percent), but there are just three estimates. Countries' average conviction rates are more dispersed in the earlier period (ranging from 13 to 26.5 percent) than in the later period (10 to 14 percent, excluding Scotland).

For victim's age and types of offense (Table 7), across the three decades, overall rates of conviction are somewhat higher in samples of child/youth victims (18.5 percent) than those of mixed age (15 percent) or adults only (12 percent). Over time, there is a significant drop in conviction for mixed age (16.5 to 13 percent) and child/youth victim cases (22 to 13 percent). Significant differences in conviction are evident by type of offense, both across time and in the more recent time period, with an expectably lower rate for rape and penetrative offenses (13 percent), compared to a broader range of sexual offenses (17 percent).

[Table 7 about here]

### *C. Attrition by Stage of the Legal Process*

Data from the flow and snapshot studies were joined to estimate attrition at each stage of the criminal process (Table 8). Across all time periods and five countries, after cases are reported to the police, 65 percent are dropped; in other words, 35 percent proceed past the

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<sup>26</sup> The overall rate of conviction in McCahill, Meyer, and Fischman (1979) was 12 percent.

<sup>27</sup> In Triggs et al.'s (2009) study of adult victim "sexual violation" cases in 2005-07 for New Zealand, the overall rate of conviction to any sexual offense was 14 percent, which falls within the 10-14 percent range found in our study.

police to the prosecution. From the prosecutor's desk, 66 percent proceed to court. Once in court, 66 percent of cases are convicted of any sexual offense; and 42 percent, of the original sexual offense. On average, 38 percent of cases go to trial, and 58.5 percent are found guilty at trial. Of those convicted, 60 percent are sentenced to incarceration, but we do not know what percent actually served time because studies do not report suspended or partially suspended sentences. The average across time and countries for our measure of "case flow into court" (the product of police and prosecutor decisions) is 23 percent.

[Table 8 about here]

Table 9 gives selected findings by age of victim and offense type across time. Case flow into court is higher for child/youth cases (26 percent) than mixed age (23 percent) or adult cases (21 percent).<sup>28</sup> Of cases in court, conviction is significantly less likely in samples of adults only (53 percent) compared to those of mixed age (67 percent) or child/youth (70.5 percent). Trial rates are significantly lower in child/youth cases than mixed age or adult cases, but conviction at trial is similar across age groups. The likelihood of an incarceration penalty is significantly lower in child/youth cases (49.5 percent) compared to adult (73 percent). The findings for age are linked to the types of offenses analyzed. Rape and penetrative offenses have a significantly higher rate of cases going to trial (43 percent) than the broader category of all sexual offenses (29 percent), and they attract a higher rate of detention. The trial and detention rates for adult and mixed age victims are based largely on analyses of rape and penetrative offenses only, whereas those for child/youth victims are based on a wider set of sexual offenses. We acknowledge that these analyses by victim's age and offense type are not entirely satisfactory: except for "adult only" and "rape and penetrative offenses only," the age and offense categories are not discrete, but overlapping. Future research needs to take better care in coding and analyzing victims' ages and types of offenses.

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<sup>28</sup> We use "case flow into court" here and in Table 10 because, in part, the police and prosecutor figures are variably measured, and in part, to simplify presentation of the data.

[Table 9 about here]

*D. Attrition at Police and Court Stages by Country and Over Time*

Table 10 arrays the stage outcomes by time and country, and it shows that the story of attrition is again more complex than one average across one time period or place. We reiterate that these estimates are *averages* derived from the available body of research studies, not from a sample of jurisdictions. For all countries combined, there is a reduction in case flow into court from the early to later period (from 26 to 20 percent); this arises from significant reductions in the rate that cases proceed past the police and prosecution into court. This average masks important country differences.

[Table 10 about here]

For the United States, there is no change over time in the case flow into court (about 20 percent in both periods), but a significant increase in conviction to any sexual offense once cases are court (from 69 to 82 percent). The rate at which cases go to trial has declined from the early to later period (32.5 to 20 percent), and the rate of conviction at trial has increased significantly (68.5 to 82 percent). Canada evinces a different pattern: a significant decrease in case flow into court, although it remains relatively high (from 35 to 26 percent), and a significant drop in conviction, once cases are in court (from 72 to 53 percent). (There are too few studies to calculate trial rates or convictions at trial for Canada.) The pattern is different, yet again, for Australia. In the earlier period, the flow into court, court conviction, and trial rates and outcomes are comparable to those of the United States. Yet, in the later period, there is a significant decrease in conviction, once cases are in court (from 74 to 61 percent). The rate of cases going to trial increases somewhat (from 36 to 45 percent), but the rate of conviction at trial drops significantly (60 to 41 percent).<sup>29</sup>

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<sup>29</sup> The figures for Australia are nearly identical to those reported in Johnson, Ollus, and Nevala (2008, p. 148) for Australia from the IVAWS: of non-partner sexual and physical violence cases reported to the police, 23 percent resulted in charges laid (“case flow into court”); and once in court, 63 percent resulted in conviction. The findings are based on what victims recalled during an interview.

The pattern for England & Wales is similar to Canada's, although its reduction in case flow into court is more dramatic, dropping significantly from 34 to 17 percent. Data not shown on the table show that this drop is caused mainly by a significant reduction in cases proceeding past the police (from 45 to 27 percent), more so than a reduction in cases proceeding past prosecution into court (from 75 to 63 percent). Once cases are in court, the rate of conviction declines from the early to later period (68 to 57 percent). For the later period, the trial rate and conviction at trial are similar to Australia's.<sup>30</sup>

To summarize, studies from the United States and Australia show a stable pattern of high rates of attrition at the police and prosecution stages over two time periods (80 percent of cases dropped). However, rates of court conviction have increased significantly in the United States, but decreased significantly in Australia. Canada has a relatively high case flow into court; however, this has decreased significantly over time, and court conviction has dropped sharply. For England & Wales, case flow into court has decreased significantly, and like Australia and Canada, court conviction has declined, although not as sharply.

#### *E. The Journey of 100 Cases Reported to the Police*

A staple item in the rape attrition literature is a chart displaying the journey of 100 cases reported to the police. This is constructed from a selected set of studies, typically from one country, and often with little attention to the years of data gathering. Now that we are aware of country and temporal variation, it will be difficult to construct just one journey. Figure 3 illustrates the attrition process for the five countries combined in the later period.

[Figure 3 about here]

The largest source of attrition is a victim's decision to report the assault to the police or not, with 14 percent on average reporting offenses. For every 100 sexual offenses reported,

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<sup>30</sup> For England & Wales, the later period estimate of conviction at trial from our attrition study (46 percent) is considerably better than that given in British court data for 2005 (29 percent, see Table 3 above).

there are over 600 instances of sexual victimizations not reported. Of 100 reported cases, 70 do not go further than the police stage. The reasons are many: not being able to identify or locate a suspect, victims withdrawing complaints, and police judgements that the case will be difficult to prosecute for a range of reasons. Once the case has been referred to the prosecutor's office, the rate of attrition decreases. About one-third of cases are dropped before reaching court because prosecutors have doubts of securing a conviction at trial, or a victim is unwilling or unable to continue as a witness, among other reasons. Of the 100 reported cases, 20 are adjudicated in court. Of cases in court, eight go to trial, eight are settled by guilty plea to the same or less serious offense, and four are withdrawn or dismissed. Just over half the trial cases are convicted of a sexual offense. Of 100 cases reported to the police, 12.5 percent are convicted of a sexual offense.

#### *F. Factors in Police and Prosecutorial/Court Outcomes*

Of the 75 studies, 43 (57 percent) analyzed one or more factors associated with police or prosecutorial/court decisions to drop cases or proceed with them, and ten of the 43 were of child/youth victims only. Typically, the studies coded information in police, prosecution, and court files. It is unlikely that any factor was used in arguments in open court, although this was not explicitly mentioned. We sought to determine if the set of 75 studies differed along key variables from the 43 that analyzed factors. Our analyses revealed no differences in conviction and attrition rates; thus, we are satisfied that our results can be generalized.

1. *Coding the Factors.* The nine factors studied were constructions of the victim and the offense (age, sex, character and credibility, promptness in reporting, and victim-offender relations); the suspect's background (criminal history); and strength of evidence (forensic and

witness evidence, victim injury, suspect's use of force or weapon).<sup>31</sup> Table 11 lists the factors, their definition and content, and coding decisions taken. Initially, we had intended to investigate three decision contexts of police, prosecution, and court. However, most studies did not make precise distinctions between prosecution and court decisions; thus, we combined them as one outcome context. The coding notes on Table 11 (two right-hand columns) show decisions taken in the analysis and, where relevant, coding decisions in child/youth victim cases.

[Table 11 about here]

For the 33 studies of adult and mixed age victims, the most frequently investigated factors are victim-offender relations, victim injury, and victim age (about 80 to 88 percent); next is witness or physical evidence, weapon/use of force, and victim character and credibility (about 60 to 67 percent), followed by promptness in reporting (42 percent), and suspect's criminal history (33 percent) (see Table 11, middle column). About half the studies each are from the early and later period. About half are from the United States; Canada and England & Wales each contributes nearly 20 percent, and Australia the rest.

2. *From Studies to Observations.* Because the studies analyze police or prosecution/court decisions, and often both, it is important to distinguish these and to see each as an "observation" from the study. The 33 studies produced a total of 281 observations of positive, negative, or no relationship to the factor: 38 percent from the police stage, and 62 percent from prosecution/court. By taking as our focus an analysis of observations, we can increase the number of findings for each factor and can explore similarities and differences in the strength and direction of the factors for police and prosecution/court decision-making. Each observation was coded according to the direction of the effect: positively, negatively, or no

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<sup>31</sup> We did not analyze the impact of racial and ethnic classifications of victims or offenders on outcomes. Eleven studies (all from the United States) presented data about the race/ethnicity of a victim or offender, but the impact on outcomes was not recorded in a comparable manner. Sex is relevant to studies of child/youth victims, but not other age groups.

association with the case proceeding past the police, prosecutor, or convicted in court.

Appendix III displays the outcomes of the factors for the 43 studies, with Appendix III(A) for the adult and mixed age studies, and Appendix III(B), child/youth studies. A plus indicates a positive correlation; a minus, a negative correlation; and the ellipses (...), no relation. When the area is shaded, the factor was not considered in the study.

3. *Impact of Factors on Case Outcomes for Adult and Mixed Age Cases.* Table 12 shows the impact of seven factors for the early and later period for adult and mixed age victim cases (the victim's age is discussed below, and the victim's sex is considered only in the child/youth studies). Turning first to the results for the early period and with both stages combined, the factor evincing the most consistent effect on police and court decisions is the victim's character and credibility (89 percent). Next is the presence of injuries (67 percent) and the suspect's criminal history (58 percent). Close to half the observations show that stranger relations (48 percent), use of force or weapon (47 percent), and forensic or witness evidence (45 percent) affected legal outcomes. Based on the research literature, we might have expected to see an even greater influence of stranger relations in the earlier period; but this dichotomy may fail to capture a range of relationships that affect police and court decisions.

[Table 12 about here]

In the later period with police and court/prosecution stages combined, the picture changes significantly for two factors: the influence of victim character and credibility decreases significantly (from 89 to 38 percent) as does stranger relations (from 48 to 25 percent).<sup>32</sup> Forensic or witness evidence, injury, and weapon factors increase somewhat (by 5 to 9 percentage points), although it is not statistically significant. There are too few studies to analyze country and temporal variation; but we combined Australia, Canada, and England &

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<sup>32</sup> With small N sizes, we consider relationships significant at  $p < .10$  level.

Wales, and then compared their combined results with the United States for each time period. We found the same pattern of results for the two groups.

When the data are disaggregated by police and court/prosecution decisions, we see a similar temporal pattern. The impact of the victim's character and credibility is strong in the early period for police (100 percent) and prosecution/court (82 percent) decisions, but drops significantly in the later period for both. The drop in the impact of stranger relations is significant for prosecution/court decisions, but not police decisions. Just one factor had differential effects for the police compared to prosecution or court: forensic or witness evidence differentiated prosecution/court outcomes, but not those for the police, and only in the early period. In the later period, this factor had a similar influence on police and prosecution/court outcomes. Although not statistically significant, the impact of the forensic or witness evidence at the police stage increases by over 35 percentage points from the early to the later period.

The 33 studies suggest that the "real rape" construct, as we define it, is more strongly evinced in the earlier period, but attenuates somewhat in the later period, with a significant reduction in the effect of a victim's character and credibility, and stranger relationships, on police and prosecution/court decisions. At the same time, the continued strength of the three evidence factors suggests that independent evidence of non-consent (e.g., a third party witness, physical injuries, weapon present) and specific kinds of evidence (i.e., marks on the victim's body) are required. Whereas socially constructed notions of "good" and "bad" victims may have relatively less influence in decision-making in the more recent period, the legal requirement for physical evidence of non-consent remains. Across the two time periods, a victim's prompt reporting affects one-third of cases; there are no police/court differences and no change over time. This aspect of victim credibility plays some role in officials' decision-making, but not as strongly as other factors. Across the two time periods, the suspect's having

a criminal history does affect police and prosecution/court outcomes. This factor receives relatively less attention in the literature, but our study suggests that constructions of “good” and “bad” offenders are also relevant in understanding attrition, with the latter group more likely to be retained in the criminal process or convicted.

Of the 33 studies, 26 analyze the victim’s age, and there are 43 observations from police and court decisions. Age is a difficult factor to assess because studies contain victims of varied age ranges, results are reporting imprecisely, and the age relationship is itself complex. Of the 43 observations, a substantial minority (42 percent) show a positive relationship between younger-aged victims and police proceeding or prosecution/court outcomes. “Younger-aged” includes victims termed simply “younger,” “teenagers,” and under the ages of 18, 16, and 13. However, in about half the cases (N=22), the victim’s age did not differentiate decisions; and for three, the direction of the relationship appeared to be opposite what we expected.<sup>33</sup>

4. *Impact of Factors on Case Outcomes for Child/Youth Victims.* For the ten child/youth victim studies, the typical factors analyzed are the age of victim, stranger victim-offender relations, physical evidence, and the victim’s sex (see Table 11 and Appendix III[B]). Of 13 observations for age, an age threshold can be discerned in five: cases with victims aged 5 to 10 years are more likely to proceed past the police or prosecuted/convicted than those younger. In two, prosecution or court conviction is more likely when victims are “younger” (with no age cut-off given), but in six, there is no effect of age. The ten observations for the victim’s sex show no consistent pattern of cases proceeding: there is no effect in five; three show effects for female victims, and two, male victims. Of 12 observations for stranger relations, just one had an effect, with non-stranger cases more likely to be convicted (this is explained by a higher guilty plea rate for intra-familial offenses). Of ten observations for

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<sup>33</sup> Cases #41 and 43 have positive court outcomes for victims *over* 6 and 13 years of age. For case #47, a negative sign for police outcomes (not proceeding with the case) is explained by the fact that both victims were under 18 and the offense was between peers.

forensic or witness evidence, just three were related positively to police and prosecution/court decisions.

Several points can be drawn. First, it is important to distinguish the handling of cases by victims' age. As we expected, for younger victims, the "real rape" construct is irrelevant: neither the victim's character or credibility nor stranger relations bears on legal outcomes, and the role of forensic or witness evidence is relatively less influential. Second, when there is an effect of victim's age, it is complex. Across all 43 studies, most observations (about 55 to 60 percent) show no or contrary effects of age; for adult and mixed age samples, effects are evident for those cases with "younger victims," or younger than 13 to 18; but for child/youth victims, cases with victims older than 5 to 10 years are more likely to proceed or be convicted. Future research can be improved in these ways: by analyzing the *age gap* between victim and offender, not just the absolute age of victims and offenders; being mindful of an "age threshold" below which victims may be considered "too young" for police or prosecutors to proceed; and being more precise in describing victims' ages. Third, for adult and mixed age samples, there appears to be a positive development in the more recent period with a reduction in the effect of a victim's character and credibility and stranger victim-offender relations on police and prosecution/court decisions. It is not clear how this finding relates to the significant decline in overall conviction in three countries, but stability in two others. The continuing (and increasing) importance of the evidence factors for adult and mixed age samples suggests that independent proof of non-consent (injuries, another witness, use of weapon) remains important for successful prosecution and conviction of cases.

## V. Taking Stock of Attrition Research: Questions and Hypotheses Reprised

This study is the first to systematically review and assess three dimensions of rape case attrition in the legal process: estimates of the overall conviction rate, estimates of case attrition at

different stages of the legal process, and the factors associated with conviction and attrition. We assembled, analyzed, and harmonized the findings of 75 studies from five common law countries over three decades. To contextualize and understand variation in conviction and attrition rates by country and over time, we introduced comparative material on the emergence and consolidation of legal reform, victims' reporting patterns from victimization surveys, police statistics on reported rape, and published court data on rape and sexual assault.

Our review is comprehensive and synthetic, but it is prudent to note its limitations. The estimates of conviction and attrition, along with the factors associated with attrition, are not derived from a representative sample of jurisdictions from the five countries. Rather, they come from places that permitted researcher investigation, perhaps places that were proximate to researchers' universities or government departments; and they describe the police and court handling of rape in largely, although not exclusively, urban areas. Thus, our claims about the temporal and country variation in rape case attrition are made from *the information available*, and the number of cases is not large. The range of percents for overall conviction rates and attrition rates at different stages of the legal process should also alert readers to the fact that in many jurisdictions, outcomes often stray from the averages. Variation by region, state or province, or local area *within* countries, including remote and reserve areas of Indigenous and Native peoples (Amnesty International 2007), especially in the United States, Canada, and Australia, is likely to be considerable; but until there are more studies and data available, we are unable to say more than this.

The initial impetus behind this study—to identify the “average rate of conviction” to sexual offenses of those reported to the police—was, in hindsight, naive. As our investigations progressed, we learned why. Conviction estimates and rates of attrition depend on *when and where* research is conducted, *types of offenses*, and the *age of victims*. Average rates may tell us something, but they mask temporal, country, and other sources of variability.

Our study began with six questions and four hypotheses. Q1 to 5 were about the overall rate of conviction for sexual offenses reported to the police and attrition at particular stages of the criminal justice system. Averaging across three decades in five countries, the overall rate of conviction to any sexual offense is 15 percent, and to the original offense, 9 percent. Conviction and attrition rate *averages* can be misleading, however, because they vary over time and by country.

The overall conviction rate in the earlier period (1970 to 1989) is 18 percent, but drops to 12.5 percent in the later period (1990 to 2005). The United States and Scotland are unique among the five countries in showing no decline, although the number of Scottish cases is small. Of all countries, England & Wales and Canada have the largest decline in conviction (14 and 12.5 percentage points, respectively). In Australia, the decline is less dramatic (5.5 percentage points). Changes in countries' overall conviction rates reflect different patterns of case attrition. For England & Wales, there is a large drop in the case flow into court, coupled with a relatively high trial rate; for Canada, there is a slight drop in case flow into court, but a large drop in court conviction; and for Australia, there is a decline in court conviction only. In the later period, England & Wales and Australia show a similar pattern of high trial rates (45 to 51 percent), but low conviction rates at trial (41 to 46 percent) (unfortunately, trial data are lacking for Canada and Scotland). By comparison, in the later period, the United States has a low trial rate, higher conviction at trial, and overall higher court conviction rate.

Conviction rates are also sensitive to the ages of victims and offense types. Averages across time and country show that child/youth victim cases are more likely to result in conviction than adult victim cases (18.5 percent compared to 12 percent, respectively); and that rape and penetrative offenses are less likely to be convicted than a broader set of sexual offenses (13 percent and 17 percent, respectively).

Hypothesis 1, that there is a decline in conviction rates over time, is confirmed when using aggregated conviction rates, but it does not hold when disaggregated by country. Rates of conviction decreased in England & Wales and Canada, and to a lesser degree, in Australia, but not in the United States. Compared to the earlier period, overall conviction rates are more similar in the later period, ranging from 10 to 14 percent, for four countries (excluding Scotland).

Hypothesis 2, that the early reform countries would have higher overall rates of conviction than the later reform countries, is not confirmed because no consistent pattern emerges. Overall conviction rates for the later period are somewhat higher for two of three early reform countries (the United States and Canada at 14 percent) and lower for one of two later reform countries (England & Wales at 10 percent). However, the hypothesis is not supported with conviction rates for Australia and Scotland.

Hypothesis 3, that England & Wales would show the highest degree of attrition over time, is supported. Unlike other countries, England & Wales has seen an unusually high rate of increase in reported sexual assault to the police, from 1996 to the present. We cannot be sure why such increases are occurring; but among other reasons, we suspect that recent, more comprehensive legal reform and victim supports have contributed to more victims coming forward with complaints. We can see that the flow into court percentage has dropped from the earlier to later period (34 to 17 percent), the largest of any country. This may reflect, in part, increased caseload pressure on police resources and organizational routines, and in part, a changing composition of sexual assaults reported to the police in England & Wales.

Of the five jurisdictions studied, just one—England & Wales—evinces a clear pattern between increases in the rate of reporting sexual assault to the police, decreases in the flow of cases into court, and decreases in the overall rate of conviction. For Australia, we see some increases in rates of reporting sexual assault, with a decrease in the overall conviction rate, but

no change in the flow of cases into court. The other countries do not evince any of these relationships. In Canada, the reported rate of sexual assault has decreased, and so too has the flow of cases into court and the overall conviction rate. In the United States, the reported rate of rape has decreased, but the overall conviction rate has stayed about the same. In Scotland, which has just three studies, there are some increases in reported sexual assault, but no change in conviction rates.

One problem in making sense of these complex relationships is that we are drawing from different levels of aggregation and sources of information, particularly for Canada, Australia, and the United States, for which trends in national rates of reported rape and sexual assault are being compared with the specific jurisdictions where attrition studies have been carried out, not a representative sample of jurisdictions by state or province.

Although victimization surveys in the United States, studies in England & Wales, and our mini-study show that more “non-traditional” types of rape and sexual assault (that is, those involving known relations) are being reported to the police from the early 1990s to 2005, a factor that may be associated with decreasing rates of conviction in the later period, our study does not have adequate information to tease out the complexities of this relationship across all countries with certainty. The relationship is not evident for Canada or the United States, where there is a clear decline in reported rape or sexual assault. It is possible, of course, that rates of reported rape and sexual assault can be decreasing at the same time that “non-traditional” rapes reported to the police are increasing.

For Q6, on the continued relevance of the “real rape” construct for adult and mixed age victim studies, there is mixed support. On the one hand, the main factors associated with cases proceeding past the police and prosecution/court outcomes in both time periods were evidence related (forensic or witness evidence, victim injury, and weapon present). On the other hand, whereas the victim’s character and credibility had a strong influence on police and court

decisions in the early period, this reduced significantly in the later period. Both this factor and stranger victim-offender relations had relatively less impact on outcomes in the later period. Evidence factors remain important over time; and from this, we may infer that the state's burden of proving non-consent remains a constant. In both time periods, the suspect's criminal history affected police and prosecutorial/court decisions, but a victim's promptness in reporting the offense was relatively less important.

As expected, the "real rape" construct has little relevance for child/youth victim cases. It appears that the standard factors used in attrition studies do not adequately differentiate police, prosecutorial, and court decisions in child/youth victim cases. Even factors that might differentiate outcomes (e.g., sex of the victim) were not associated in any consistent way. Future research needs to explore what does matter in police and prosecutor/court decisions in these cases.

We have answered questions about rape case attrition in the criminal justice system, but many more have been raised. We consider just two. Why do patterns of prosecution and conviction in United States courts differ from those in England & Wales, Canada, and to a lesser degree, Australia? What explains decreases in conviction rates in some countries, but not others?

The United States has a longstanding practice of plea-bargaining. Published court data and our analysis of attrition studies show that United States trial rates are lower, conviction rates at trial are higher, and most convictions are secured by guilty plea; and this is especially evident in the more recent period. Some decades ago, Polk (1985) showed that California court practices differed from those in England & Wales in having a lower case flow into court, but higher court conviction rates. This approach to prosecution in the United States (which is likely applicable to many offenses, not just to rape) has been a standard organizational practice for as

long as courts have been studied in that country. By comparison, England & Wales, Australia, and Canada came to plea-bargaining later, as an officially recognized practice.

From the early to later period in the United States, case flow into court rates did not change, and conviction by plea bargaining increased. There was a drop in the trial rate and an increase in the rate of conviction at trial. By comparison, in England & Wales, case flow into court dropped greatly over time to levels at and below that of the United States, but prosecutorial practices did not adjust. Rather, the standard organizational practice of going to trial continued, despite moderate levels of conviction at trial. Offense composition, in particular, an increasing share of “non-traditional” rapes, coupled with an increased press of cases on police and court resources, have likely played a role in reducing overall conviction rates in England & Wales. But in addition, compared to the United States, the greater emphasis in British court culture on adjudication and conviction by trial, rather than disposition by plea and sentence bargaining, has likely affected outcomes.

Rather than asking, why did the conviction rate in the United States not decrease over time, we may wonder why it was lower in the 1970s and 1980s compared to other countries. This is difficult to know. The pattern for the United States in the early period is quite similar to that of Australia: a low flow into court rate, similar rate of court conviction, and similar rate of cases going to trial and convicted at trial. However, Australia’s overall conviction rate is a bit higher in the early period; differences are more apparent in the later period in the court and trial conviction patterns of the two countries.

## VI. What Should Be Done?

In 2008 we began presenting these findings on conviction and attrition to many people at seminars and conferences. They ask us, what should be done? No one answer satisfies them. For some time, we have been conducting research on innovative responses to rape and sexual

assault, comparing court and conference (restorative justice) responses to youth sex offending in Australia (e.g., Daly 2006, 2008; Daly and Curtis-Fawley 2006; Bouhours and Daly 2007). We are now examining other contexts of sexual violence (e.g., in post-conflict societies). It is clear that an individualized model of prosecution and trial is not relevant or workable in these contexts; other social mechanisms must be identified. A global perspective is required that considers widely varying contexts of rape and sexual assault; for now, we consider any city in North America, Australia, or the United Kingdom.

First, working largely within the legal system, the focus of legal reform must shift *away from the rape trial* and its evidentiary hurdles, and toward mechanisms that encourage admissions by offenders (only those who are factually guilty, of course) at a very early stage. This includes, but is not limited to, more sophisticated police interviewing and better plea-bargaining skills of prosecutors and defense attorneys; there may also be a range of positive reasons to make very early admissions (such as no conviction recorded). Legal practitioners must re-assess their sources of professional status and success: rather than adversarial trial heroics, greater emphasis could be placed on negotiating skills and acumen (Daly 2008; see also Freiberg 2007). Many people do not like this component because they think it will result in coerced admissions, increasing criminalization, and rising incarceration. That is not what we envisage. Rather, a changed societal context is required, where “sex offenders” are less stigmatized and demonized, and where sexual offending is recognized *as being varied in seriousness* and not necessarily requiring a criminal law response. Rather than negative and punitive legal mechanisms upon conviction (such as offender registries), more socially inclusive and integrative approaches should be used. Many people do not like this component either, but for other reasons: they believe it may send the “wrong message” that sexual violence is not being taken seriously. Both components are required, however, if this innovation is to succeed.

Second, and again working within the legal system, victims, offenders, and others affected by sexual offenses could have greater participation and voice. A variety of sentencing and plea-taking alternatives is possible, but these can only be set in motion after an admission to offending. Restorative justice conferences as a supplement to court sentencing or as a pre-sentence activity, post guilty plea (Sherman et al. 2005), or part of a guilty plea (Combs 2007) could give victims a greater opportunity to describe the impact of an offense, for offenders to understand that what they did was wrong and harmful, and for others to check and challenge denials of wrong-doing (Daly and Curtis-Fawley 2006). Again, many people do not like this idea (see, e.g., Cossins 2008). Indeed, except for New Zealand and ad hoc practices in South Australia, all governments have ruled sexual offenses ineligible for adult pre-sentence conferences. (For youth offenders, it is an option only in New Zealand and some Australian jurisdictions.) Officials and policy makers do not want to risk a very small chance of scandal or the appearance of a “too lenient” response to sexual offenses.

Recall that Frohmann and Mertz (1994) identified dual goals of legal reform: “efficacy” (increasing convictions) and “process” (better treatment and understanding of victims). We have proposed ways to improve efficacy (although with an emphasis on admissions more than convictions) and to improve process with greater victim participation. The third set of proposals considers ways to improve processes for victims outside the criminal justice system or when reported cases are subsequently withdrawn from court adjudication. Less is written about these contexts, which is ironic because it is what the vast majority of victims experience.

There are a variety of circumstances to consider, among them: a victim may want to *disclose* an offense to someone, but not *report* it to the police; a victim may report a case and there is strong evidence, but the police are unable to locate a suspect; a victim’s case may not be strong legally, although the police and prosecutor believe her story. There are many groups

in civil society (e.g., rape crisis centers and faith groups) that already facilitate disclosure and assist victims. Their work could be widened to include informal justice activities. For reported cases that are subsequently withdrawn, informal justice activities could be used, such as restorative justice conferences without offenders or other types of meetings that can validate and vindicate a victim's story. Victim advocates now recognize that because "the wishes and needs of victims are often diametrically opposed to the requirements of legal proceedings" (Herman 2005, p. 574), more effective mechanisms of "social acknowledgment, support, validation from the community, and vindication" (pp. 574, 585) are needed. These may operate as informal justice processes within civil society or within criminal or civil justice, or as formal justice processes that do not rely on a standard criminal justice model of prosecution and trial.

The way forward, then, is identifying a menu of options for victims and offenders within and outside the legal system; having a more inclusive and less demonizing response to sex offending; giving greater attention to the earliest stages of the legal process (or even prior to a legal process) before a suspect's denials harden; allowing greater participation of victims and offenders during plea-taking and pre-sentence; and reducing an emphasis on trial heroics and adversarialism by members of the legal profession. We acknowledge Temkin and Krahé's (2008) proposal for further rape law reform and educational campaigns to change attitudes about sexual behavior. Their ideas have merit, but a more radical change agenda is required, with a focus on greater participation, social support, and societal inclusion of offenders, victims, and others affected by sexual offending and victimization. Incremental legal reform will not get us there.

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TABLE 1  
Rates of Reporting Sexual Assault Victimization to Police

Rate of report to police percent	Country	Survey year	Age of victim	Source & citation
32	USA	1992-2000	12+	National Crime Victimization Survey (NCVS) 2000 (Rennison 2002, p. 1)
20	Australia	2002	18+	Crime and Safety Australia 2002 (ABS 2003, pp. 28-29)
19	USA	1995-96	18+	National Violence against Women Survey (NVAWS) 1995-96 (Tjaden and Thoennes 2006, pp. 7, 33-4)
19	Canada	2000	16+	International Crime Victims Survey (ICVS) (van Kesteren et al. 2000, pp. 188, 194)
18	England & Wales	1998 & 2000 <sup>a</sup>	16+	British Crime Survey (BCS) (Myhill and Allen 2002, p. 1)
15	USA	2000	16+	International Crime Victims Survey (ICVS) (van Kesteren et al. 2000, pp. 189, 195)
15	Australia	1996	18+	Women's Safety Survey (ABS 1996, pp. 4, 32)
15	Australia	2000	16+	International Crime Victims Survey (ICVS) (van Kesteren et al. 2000, pp. 188, 194)
14	England & Wales	2000	16+	International Crime Victims Survey (ICVS) (van Kesteren et al. 2000, pp. 188, 194)
12 <sup>b</sup>	Australia	2002-03	18+	International Violence Against Women Survey (IVAWS) (Mouzos and Makkai 2004, pp. 2, 102)
12	New Zealand	2000-01	15+	New Zealand National Survey of Crime Victims 2001 (Morris & Reilly 2003, para 3.2)
8	Canada	1999	15+	General Social Survey on Victimization (Kong et al. 2003, p. 6)
6	Canada	1993	18+	Violence against Women Survey 1993 (WAVAW 2005)
<b>14</b>	<b>Mean rate of reporting to police<sup>c</sup></b>			

NOTES. <sup>a</sup> Because of the small number of females reporting sexual victimization, responses on sexual victimization of two waves of the BCS (1998 and 2000) were combined.

<sup>b</sup> This is the rate for sexual assault by non-partners; sexual assault by partners is 15 percent.

<sup>c</sup> Excludes the USA rate of 32 percent, which is an outlier.

TABLE 2

Rates of Rape and Sexual Assault Recorded by Police (per 100,000 population<sup>a</sup>)

Year	US Rape only <sup>b</sup>	Australia Rape only then sexual assault <sup>c</sup>	Canada Sexual assault <sup>d</sup>	E & W Sexual assault <sup>e</sup>	Scotland Sexual assault <sup>f</sup>
1971	20.5				
1975	increase ↓	5.6			
1980	36.8	8.8		37.0	
1981	36.0	10.2		34.2	
1982					
1983			54.7	slight increase ↓	
1984	little variation ↓	rape only: rates trebled in the 1990s ↓	up and down, but general increase ↓	39.9	
1985					
1986					
1987					
1988	↓		108.3	43.9	
1989	38.1				63.5
1990	41.2				little variation ↓
1991	42.3	↓		further increase ↓	
1992	peak 42.8	29.7	121.1		
1993	41.1		peak 121.1		
1994	39.3		109.2	↓	↓
1995	37.1		96.0	53.5	63.2
1996	36.3	78.9	90.4	57.5	63.2
1997					
1998					
1999					
2000					
2001	rate of decline ↓	rate of increase 16 percent ↓	rate of decline 25 percent ↓	rate of increase 53 percent ↓	Up and down, but slow increase ↓
2002	15 percent ↓				
2003		91.4			
2004					
2005	↓	89.0	↓	↓	↓
2006	30.9	88.0	68.0	87.8	76.4

## NOTES.

<sup>a</sup> Population includes males and females of all ages. For all countries except the United States, data include male and female victims.

<sup>b</sup> Data include only forcible rape of females and are from Bureau of Justice Statistics Data Online (2009).

<sup>c</sup> Data for 1974-92 include only rape and are from Walker (1994, pp. 6-7). Data for 1996-2006 include penetrative offenses (rape & USI) and non-penetrative offenses (indecent assault), and are from AIC (2008, p. 9). Rates for 1996-2006 calculated using population data from ABS (2002, Table 5.1 for 1996-2000) and ABS (2008, Table 7.1 for 2000-05).

<sup>d</sup> Data include penetrative offenses (rape) and non-penetrative offenses (indecent assault), and sexual offenses against children (Level 1, 2, & 3 sexual assault). Data for 1983-88 are from Roberts and Gebotys (1992, p. 563); for 1992-96, from Kong (1997, p. 15); for 1997-2001, from Savoie (2002, p. 14); and for 2002-06, from Silver (2007, p. 9). Rates for 1983-96 calculated using population data from Sustainability Report (2008).

<sup>e</sup> Data include penetrative offenses (rape & USI) and non-penetrative offenses (indecent assault). Data for 1979-89 are from Home Office (1989, p. 41); for 1990-95, from Home Office (1996, p. 58); for 1996, from Walker et al. (2006, p. 27); and for 1997-2006, from Sian et al. (2007, p. 37). Rates for 1979-95 calculated using population data from Office for National Statistics (1997, p. 51); for 1996-2006, National Statistics Online (2008, Table 1.2).

<sup>f</sup> Data include penetrative offenses (rape & USI) and non-penetrative offenses (indecent assault). Data for 1988-1996 are from Scottish Executive (1998, online table) and for 1997-2006, from Scottish Executive (2007a, p. 12). Rates for 1979-95 calculated using population data from Office for National Statistics (1997, p. 51); for 1996-2006, National Statistics Online (Table 1.2).

TABLE 3  
Court Cases and Conviction Rates for Rape

Charged offense	Type of adjudication	Trial rate (comparison trial rate) <sup>a</sup>	Guilty N	Conviction rate
<b>(A) UNITED STATES, 2002<sup>b</sup></b>				
<b>Rape &amp; attempted rape, N=760</b>				
Guilty plea (N=464)	61%	-	464	
Trial (N=61)	8%	8% (12%)	45	74% (at trial)
Other outcomes (N=235) <sup>c</sup>	31%	-	-	
Total N cases	760		509	<b>67% (all cases)</b>
<b>(B) SOUTH AUSTRALIA, 2001-2005<sup>d</sup></b>				
<b>Rape, attempted rape, &amp; unlawful sexual intercourse, N=463</b>				
Guilty plea (N=170)	37%	-	170	
Trial (N=149)	32%	32% (47%)	70	47% (at trial)
Other outcomes (N=144) <sup>c</sup>	31%	-	-	
Total N cases	463		240	<b>52% (all cases)</b>
<b>(C) CANADA, 2005-2006<sup>e</sup></b>				
<b>Rape &amp; attempted rape, N=3,145</b>				
Total N cases	3,145	no trial information	1,583	<b>50% (all cases)</b>
<b>(D) ENGLAND &amp; WALES, 2005<sup>f</sup></b>				
<b>Rape &amp; unlawful sexual intercourse, N=2,577</b>				
Guilty plea (N=802)	31%	-	802	
Trial (N=1,775)	69%	DNK (69%)	515	29% (at trial)
Other outcomes <sup>c</sup>	Not shown	-	-	
Total N cases	2,577		509	<b>cannot determine accurately</b>
<b>(E) SCOTLAND, 2005-2006<sup>g</sup></b>				
<b>Rape &amp; attempted rape, N=126</b>				
Total N cases	126	no trial information	59	<b>47% (all cases)</b>
<b>Indecent assault, N=108</b>				
Total N cases	108	no trial information	84	<b>78% (all cases)</b>

## NOTES

<sup>a</sup> The *comparison* trial rate is calculated as: N cases going to trial / (N guilty pleas + cases going to trial).

<sup>b</sup> Data from Cohen and Reaves (2006, p. 24). Ns were calculated or adapted from percentages given in the sourced material.

<sup>c</sup> Depending on the jurisdiction, other outcomes are not proceeded with, dismissed, diverted, deferred, or withdrawn cases, or defendant failed to appear or died.

<sup>d</sup> Data from Office of Crime Statistics and Research (2002-2006).

<sup>e</sup> Data from Statistics Canada (2007).

<sup>f</sup> Data from Office for Criminal Justice Reform (2006). Ns were calculated or adapted from percentages in the sourced material. Published data show a conviction rate of 51 percent, but this excludes cases dismissed or withdrawn, is inflated, and cannot be compared to the other countries.

<sup>g</sup> Data from Scottish Executive (2007b). Ns were calculated or adapted from percentages in the sourced material.

TABLE 4  
 Court Cases and Conviction rates for Sexual Assault by  
 (A) age of victim, NSW, and  
 (B) type of offense, Victoria

	Type of adjudication	Trial rate (comparison trial rate) <sup>a</sup>	Guilty N	Conviction rate
<b>(A) NEW SOUTH WALES, 2004-2006 <sup>b</sup></b>				
<b>Sexual assault and related offenses against children, N=827 <sup>c</sup></b>				
Guilty plea (N=390)	47%	-	390	
Trial (N=272)	33%	33% (41%)	122	45% (at trial)
Other outcomes (N=165) <sup>d</sup>	20%	-	-	
Total N defendants	827		509	<b>62 % (all cases)</b>
<b>Sexual assault and related offenses against adults, N=793 <sup>e</sup></b>				
Guilty plea (N=223)	28%	-	223	
Trial (N=331)	42%	42% (60%)	116	35% (at trial)
Other outcomes (N=239) <sup>d</sup>	30%	-	-	
Total N defendants	793		339	<b>43% (all cases)</b>
<b>(B) VICTORIA, 1997-1999 <sup>f</sup></b>				
<b>Rape, N=282 <sup>g</sup></b>				
Guilty plea (N=119)	42%	-	119	
Trial (N=130)	46%	46% (52%)	63	48% (at trial)
Other outcomes (N=33) <sup>d</sup>	12%	-	-	
Total N defendants	282		182	<b>65% (all cases)</b>
<b>Unlawful sexual intercourse, N=224 <sup>g</sup></b>				
Guilty plea (N=121)	54%	-	121	
Trial (N=77)	34%	34% (39%)	45	58% (at trial)
Other outcomes (N=26) <sup>d</sup>	12%	-	-	
Total N defendants	224		166	<b>74% (all cases)</b>

## NOTES

<sup>a</sup> The *comparison* trial rate is calculated as: N cases going to trial / (N guilty pleas + cases going to trial).

<sup>b</sup> Data are from NSW Bureau of Crime Statistics and Research (2007, p. 2). Ns were calculated or adapted from percentages given in the sourced material.

<sup>c</sup> Children are those under 18 years. Data include all penetrative offenses (rape, attempted rape, USI) and non-penetrative offenses (indecent assault and indecency).

<sup>d</sup> Other outcomes include not proceeded with, dismissed, withdrawn or defendant failed to appear or died.

<sup>e</sup> Includes the same offenses as Note c (above) except USI, which only applies to cases with a victim younger than 16 years.

<sup>f</sup> Data on rape are from Victoria Law Reform Commission (2001a, pp. 42, 194); on USI from Victoria Law Reform Commission (2001b, pp. 89, 94-5).

<sup>g</sup> Victims in rape cases are of all ages, but in USI cases, they are younger than 16 years.

TABLE 5

## Description of the Rape Attrition Study Sample

	All cases		Cases with an overall conviction rate <sup>a</sup>	
	percent (N)		percent(N)	
<b>Countries</b>				
US	48	(36)	41	(27)
Australia	23	(17)	25	(16)
Canada	13	(10)	15	(10)
England & Wales	12	(9)	14	(9)
Scotland	4	(3)	5	(3)
TOTAL	100	(75)	100	(65)
<b>Data periods</b>				
Early period: 1970-1989	51	(38)	52	(34)
Later period: 1990-2005	49	(37)	48	(31)
<b>Victims</b>				
Adult only (16+)	17	(13)	14	(9)
Mixed age	54	(40)	58	(38)
Child/youth victims only (<18)	29	(22)	28	(18)
<b>Types of offenses</b>				
Rape & penetrative offenses	53	(40)	52	(34)
All sexual offenses <sup>b</sup>	47	(35)	48	(31)
<b>Stages of attrition in the criminal justice system <sup>c</sup></b>				
	percent (N)			
Police	49	(36)		
Prosecution	54	(40)		
Court	81	(60)		
Trial	49	(37)		
Sentencing	28	(21)		

NOTES. <sup>a</sup> Pooled sample estimates come from the flow studies (N=38) and a portion of the snapshot studies (N=27) (excludes outlier Case #59).

<sup>b</sup> Includes penetrative, touch, and no touch sexual offenses.

<sup>c</sup> The percents adds to greater than 100 because a study may look at several stages of the CJS (excludes outlier Case #59).

TABLE 6

## Combined Overall Rates of Conviction from Flow and Snapshot Studies by Country

Time period	1970-2005	1970-2005	1970-89	1990-05	Diff percent
<b>Conviction to</b>					
	<b>any sexual offense</b>	<b>orig. sexual offense</b>	<b>any sexual offense</b>		
<b>All countries</b>	<b>N=65</b>	<b>N=22</b>	<b>N=34</b>	<b>N=31</b>	
Range percent	7-35	5-19	11-35	7-19	
Mean percent	15	9	18	12.5	-5.5 <sup>a</sup>
<b>original sexual offense</b>					
<b>All countries</b>			<b>N=11</b>	<b>N=11</b>	
Range percent	--	--	6-19	5-10	
Mean percent	--	--	11	6.5	-4.5 <sup>b</sup>
	<b>any sexual offense</b>	<b>orig. sexual offense</b>	<b>any sexual offense</b>		
<b>United States</b>	<b>N=27</b>	<b>N=6</b>	<b>N=20</b>	<b>N=7</b>	
Range percent	7-18	6-13	7-17	11-18	
Mean percent	13	8	13 <sup>c</sup>	14	+1.0
<b>Australia</b>	<b>N=16</b>	<b>N=7</b>	<b>N=4</b>	<b>N=12</b>	
Range percent	7-20	6-12	14-20	7-17	
Mean percent	13	10.5	17	11.5	-5.5 <sup>a</sup>
<b>Canada</b>	<b>N=10</b>	<b>N=1</b>	<b>N=6</b>	<b>N=4</b>	
Range percent	11-32	9	19-32	11-17	
Mean percent	21	--	26.5	14	-12.5 <sup>a</sup>
<b>England &amp; Wales</b>	<b>N=9</b>	<b>N=6</b>	<b>N=3</b>	<b>N=6</b>	
Range percent	7-35	5-19	11-35	7-12	
Mean percent	15	8.5	24	10	-14.0 <sup>a</sup>
<b>Scotland<sup>d</sup></b>	<b>N=3</b>	<b>N=2</b>	<b>N=1</b>	<b>N=2</b>	
Range percent	13-19	10-15	18	13-19	
Mean percent	17.5	14	--	17.5	--
<b>Four-country<sup>e</sup></b>	<b>N=38</b>	<b>N=16</b>	<b>N=14</b>	<b>N=24</b>	
Range percent	7-35	5-19	11-35	7-19	
Mean percent	16.5	9.5	23	12	-11.0 <sup>a</sup>

NOTES. <sup>a</sup> Sig. drop between early and later period,  $p < .01$ .

<sup>b</sup> Sig. drop between early and later period,  $p < .05$ .

<sup>c</sup> US conviction rate sig. lower than 4-country,  $p < .05$ .

<sup>d</sup> Like all the estimates, the Scottish estimates are based on an average of the snapshot and flow studies that gives more weight to the flow studies. See Appendix Table II(B).

<sup>e</sup> Australia, Canada, England & Wales, and Scotland.

TABLE 7  
 Combined Overall Rates of Conviction from Flow and Snapshot Studies  
 by Victim Age and Offense Type

Time period	1970-2005	1970-2005	1970-89	1990-05	Diff percent
	Conviction to				
	any sexual offense (N=65)	orig. sexual offense (N=22)	any sexual offense (N=65)		
<b><u>Rates by age of victims</u></b>					
<b>Adult (16+)</b>	<b>N=9</b>	<b>N=6</b>	<b>N=3</b>	<b>N=6</b>	
Range percent	8-18	6-15	11-18	8-13	
Mean percent	12	9.5	14	11	-3.0
<b>Mixed age</b>	<b>N=38</b>	<b>N=14</b>	<b>N=20</b>	<b>N=18</b>	
Range percent	7-29	5-19	7-29	7-19	
Mean percent	15	9	16.5	13	-3.5 <sup>a</sup>
<b>Child/youth (&lt;18)</b>	<b>N=18</b>	<b>N=2</b>	<b>N=11</b>	<b>N=7</b>	
Range percent	7-35	9-12	10-35	7-18	
Mean percent	18.5	11	22	13	-9.0 <sup>a</sup>
<b><u>Rates by type of offenses</u></b>					
<b>Rape &amp; penetrative</b>	<b>N=34</b>	<b>N=20</b>	<b>N=16</b>	<b>N=18</b>	
Range percent	7-29	5-19	7-29	7-17	
Mean percent	13 <sup>c</sup>	9	15.5	11	-4.5 <sup>a</sup>
<b>All sexual offenses<sup>b</sup></b>	<b>N=31</b>	<b>N=2</b>	<b>N=18</b>	<b>N=13</b>	
Range percent	7-35	11-12	10-35	7-19	
Mean percent	17	12	20.5	14	-6.5 <sup>a</sup>

NOTES. <sup>a</sup> Sig. drop between early and later period,  $p < .05$ .

<sup>b</sup> Includes penetrative offenses, touch, and no touch sexual offenses.

<sup>c</sup> Conviction rate for penetrative sig. lower than for all sexual offenses,  $p < .05$ .

TABLE 8

Proportion of Cases that Proceed past the Different Stages of the Criminal Justice Process  
across all Countries and Time Periods

CJS stage <sup>a</sup>	Cases that proceed		
	Range percent	Mean percent	
Of cases reported to police, those referred for prosecution (N=36)	15-56	35	Case flow into court: 23 percent (35 percent x 66 percent)
Of cases referred for prosecution, those referred to court (N=40)	33-87	66	
Of cases in court, those convicted of any sex offense (N=60) <sup>b</sup>	35-88	66	
Of cases in court, those convicted of original sex offense (N=21) <sup>b</sup>	25-67	42	
Of cases in court, those going to trial (N=33)	11-75	38	
Of trial cases, those found guilty at trial of any sex offense (N=37)	27-94	58.5	
Of cases sentenced, <sup>b</sup> those with incarceration imposed (N=21) <sup>c</sup>	22-97	60	

NOTES. <sup>a</sup> The Ns in parentheses refer to the number of studies that are in the denominator for the next stage.

<sup>b</sup> Includes those found guilty at trial and those who pleaded guilty.

<sup>c</sup> Incarceration imposed includes both suspended and non-suspended sentences.

TABLE 9  
Rates of Case Flow into Court, Court Conviction, and Sentencing Outcome  
by Victim Age and Offense Type (in percent)

	Flow into court	Court conviction to any sex offense	Cases going to trial	Trial conviction to any sex offense	Incarceration imposed
<b><u>Rates by age of victim</u></b>					
<b>Adult (16+)</b>		<b>N=9</b>	<b>N=7</b>	<b>N=8</b>	<b>N=5</b>
Range		35-76	18-74	27-94	46-97
Mean	21	53 <sup>a</sup>	46.5 <sup>b</sup>	55	73
<b>Mixed age</b>		<b>N=34</b>	<b>N=14</b>	<b>N=15</b>	<b>N=5</b>
Range		43-88	15-75	38-89	48-88
Mean	23	67	43	59	69.5
<b>Child/youth (&lt;18)</b>		<b>N=17</b>	<b>N=12</b>	<b>N=15</b>	<b>N=11</b>
Range		44-85	11-48	36-87	22-69
Mean	26	70.5	28	60	49.5 <sup>c</sup>
<b><u>Rates by type of offense</u></b>					
<b>Rape &amp; penetrative</b>		<b>N=32</b>	<b>N=21</b>	<b>N=22</b>	<b>N=6</b>
Range		35-88	15-75	31-94	48-97
Mean	21	64	43 <sup>d</sup>	59	73
<b>All sexual offenses<sup>e</sup></b>		<b>N=28</b>	<b>N=12</b>	<b>N=15</b>	<b>N=15</b>
Range		42-87	11-48	27-87	22-89
Mean	25	68	29	57.5	55

NOTES. <sup>a</sup> Rate for adult cases sig. lower than mixed age and child/youth cases,  $p < .05$ .

<sup>b</sup> Rate for adult cases sig. higher than child/youth cases,  $p < .05$ .

<sup>c</sup> Rate for child/youth cases sig. lower than mixed age and adult cases,  $p < .05$ .

<sup>d</sup> Rate for penetrative offense sig. higher than all sexual offenses,  $p < .05$ .

<sup>e</sup> Includes penetrative offenses, touch, and no touch sexual offenses.

TABLE 10

Rates of Case Flow into Court, Court Conviction, and Sentencing Outcome by Time and Country (in percent)

	Flow into court		Court conviction to any sex offense		Cases going to trial		Trial conviction to any sex offense		Incarceration imposed	
	1970-89	1990-05	1970-89	1990-05	1970-89	1990-05	1970-89	1990-05	1970-89	1990-05
<b>All countries</b>			<b>N=32</b>	<b>N=28</b>	<b>N=14</b>	<b>N=19</b>	<b>N=15</b>	<b>N=22</b>	<b>N=11</b>	<b>N=10</b>
Mean	26	20	69.5	62 <sup>b</sup>	34	41	64	54.5	63	57
<b>Countries<sup>a</sup></b>										
<b>United States</b>			<b>N=18</b>	<b>N=5</b>	<b>N=8</b>	<b>N=4</b>	<b>N=9</b>	<b>N=6</b>	<b>N=7</b>	<b>N=3</b>
Mean	20	19	69	82 <sup>b</sup>	32.5	20	68.5	82 <sup>b</sup>	62.5	77
<b>Australia</b>			<b>N=4</b>	<b>N=12</b>	<b>N=3</b>	<b>N=9</b>	<b>N=3</b>	<b>N=10</b>	<b>N=2</b>	<b>N=5</b>
Mean	20.5	20	74	61 <sup>c</sup>	36	45	60	41 <sup>c</sup>	52	41
<b>Canada</b>			<b>N=6</b>	<b>N=4</b>	<b>N=2</b>	<b>N=0</b>	<b>N=2</b>	<b>N=0</b>	<b>N=2</b>	<b>N=2</b>
Mean	35	26 <sup>c</sup>	72	53 <sup>c</sup>	31.5	--	62	--	74.5	65.5
<b>England &amp; Wales</b>			<b>N=3</b>	<b>N=6</b>	<b>N=0</b>	<b>N=5</b>	<b>N=0</b>	<b>N=5</b>	<b>N=0</b>	<b>N=0</b>
Mean	34	17 <sup>c</sup>	68	57	--	51	--	46	--	--

NOTES. <sup>a</sup> Rates for Scotland are not shown because there are too few cases for each time period. Range of conviction rates is shown in Table 6.

<sup>b</sup> Rates for later period sig. higher than those for early period,  $p < .05$  for court,  $p < .10$  for trial.

<sup>c</sup> Rates for later period sig. lower than those for early period,  $p < .05$ .

TABLE 11

Factors Related to Police and Prosecution/Court Decisions: Definitions, Coding, and Distributions

Factor	Definition	percent studies with factor <sup>a</sup>		Coding
<b><u>Factor relating to the victim and the construction of the offense</u></b>				
Victim's age	Age of victims to compare outcome for younger or older victims.	A/MA	79	<i>All studies:</i> Age or age range in years as reported in study.
		CY	100	
Victim's sex	Victim's sex (child/youth only) to determine if this matters.	A/MA	0	<i>Adult &amp; mixed age:</i> Not studied.
		CY	60	<i>Child/youth only:</i> Sex of victim as reported in studies.
Victim's good character and credibility	Characteristics that legal officials interpret as showing the victim's "good" moral character and credibility.	A/MA	58	<i>All studies:</i> Elements include the victim did not engage in risky behavior before the rape, did not use alcohol or drugs before the rape, never had consensual intercourse with the suspect before the rape; has little sexual experience, no criminal record, and story is consistent.
		CY	20	
<i>Child/youth only:</i> Relevant for adolescent victims only.				
Victim's promptness in reporting	Time between the sexual assault and the victim's report to the police. Delay in reporting may give rise to a suspicion that the victim made up the story; relates also to victim credibility.	A/MA	42	<i>All studies:</i> Hours between the assault and report to police, or indication of promptness as reported in studies.
		CY	50	
<i>Child/youth only:</i> Relevant for adolescent victims only.				
Suspect is stranger	Relationship between victim and suspect. Stranger relation is the main focus for adult victims; literature suggests that stranger cases are more likely to proceed and result in conviction.  (Note: For sexual victimization, relationships are variously coded as intra or extra familial, or biological or other relatives, but there is consistent approach taken.)	A/MA	88	<i>All studies:</i> Stranger vs known suspect (e.g., friend, acquaintance, work colleague, family member).  At police stage, suspect is stranger was coded as + or – related to laying charges only when, as far as could be determined, the relationship was not linked to the ability to identify a suspect, but to police decision-making to drop or proceed. For comparability, all studies were coded in the same way, regardless of victim age.
		CY	90	

Factor	Definition	percent of studies with factor <sup>a</sup>		Coding
<b><u>Factors relating to the suspect</u></b>				
Suspect has criminal history	Suspect's history of arrests or convictions. Suspects known to the police may more likely be arrested or prosecuted.	A/MA	33	<i>All studies:</i> Previous conviction for sexual or non-sexual offense; or the suspect is known to police, with a previous arrest or having been questioned.
		CY	20	
<b><u>Factors relating to evidence</u></b>				
Forensic or witness evidence	Elements or persons that corroborate or confirm the victim's story and identify a suspect.	A/MA	67	<i>Adult &amp; mixed age:</i> Elements such as forensic evidence of the offender's presence, the presence of semen in the victim's vagina, or a third party witnessing the sexual assault.  <i>Child/youth only:</i> See below.
		CY		
Victim's injury/victim resistance	Evidence such as injury or marks on the victim's body or verbal expression (screaming) seen as evidence of victim's non consent.	A/MA	88	<i>Adult &amp; mixed age:</i> Physical injuries to the victim, evidence of physical resistance, or verbal expression of non consent.  <i>Child/youth only:</i> Forensic or witness evidence and victim's injury coded as a single factor incorporating all elements because few studies examined these factors.
		CY	70	
Suspect's use of force/weapon	Evidence that the suspect forced or threatened the victim into sexual activity, seen as evidence of victim's non consent.	A/MA	67	<i>Adult &amp; mixed age:</i> Suspect used or threatened to use force or a weapon against the victim.  <i>Child/youth only:</i> Factor not studied.
		CY	0	

NOTE. <sup>a</sup> A/MA = adult and mixed age victims (N=33); CY = child/youth victims (N=10).

TABLE 12  
Impact of each Factor on Police and Court Outcome, by Time Period:  
Adult and Mixed age Victims

Factors Stages	V's good character & credibility %	V's promptness in reporting %	Suspect is stranger %	Suspect's criminal history %	Forensic/ witness evidence %	V's injury/ resistance %	Use of force/ weapon %
<b><u>Early period 1970-89</u></b>							
<b>All stages</b>	<b>N=18</b>	<b>N=9</b>	<b>N=21</b>	<b>N=12</b>	<b>N=20</b>	<b>N=24</b>	<b>N=15</b>
(+) effect	89	33	48	58	45	67	47
<b>Police</b>	<b>N=7</b>	<b>N=3</b>	<b>N=8</b>	<b>N=5</b>	<b>N=8</b>	<b>N=10</b>	<b>N=6</b>
(+) effect	100	33	38	80	13	70	50
<b>Prosec./ court</b>	<b>N=11</b>	<b>N=6</b>	<b>N=13</b>	<b>N=7</b>	<b>N=12</b>	<b>N=14</b>	<b>N=9</b>
(+) effect	82	33	54	43	67 <sup>a</sup>	64	44
<b><u>Later period 1990-2005</u></b>							
<b>All stages</b>	<b>N=13</b>	<b>N=12</b>	<b>N=28</b>	<b>N=3</b>	<b>N=16</b>	<b>N=25</b>	<b>N=22</b>
(+) effect	38 <sup>b</sup>	33	25 <sup>c</sup>	67	50	76	55
<b>Police</b>	<b>N=5</b>	<b>N=4</b>	<b>N=12</b>	<b>N=0</b>	<b>N=6</b>	<b>N=10</b>	<b>N=9</b>
(+) effect	40 <sup>d</sup>	25	41	--	50	80	67
<b>Prosec./ court</b>	<b>N=8</b>	<b>N=8</b>	<b>N=16</b>	<b>N=3</b>	<b>N=10</b>	<b>N=15</b>	<b>N=13</b>
(+) effect	38 <sup>c</sup>	38	13 <sup>d, e</sup>	67	50	73	46

NOTES. <sup>a</sup> Sig. stronger impact on prosecution/court than police outcome,  $p < .05$ .

<sup>b</sup> Sig. drop in later period,  $p < .01$ .

<sup>c</sup> Sig. drop in later period,  $p < .10$ .

<sup>d</sup> Sig. drop in later period,  $p < .05$ .

<sup>e</sup> Sig. stronger impact on prosecution/court than police outcome,  $p < .10$ .

FIGURE 1 Estimated Overall Conviction Rate to Any Sexual Offense: Each Study's Outcome

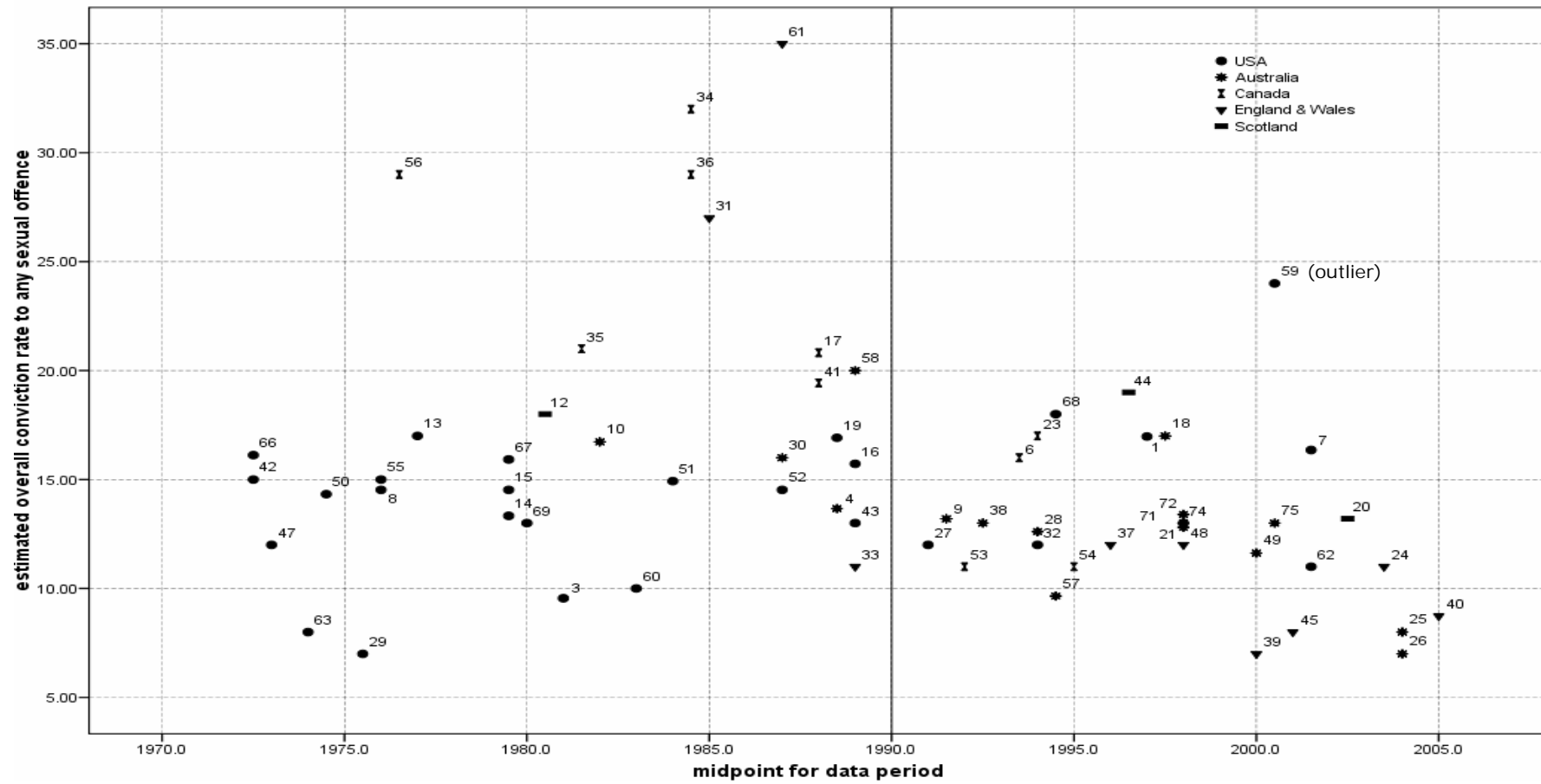


FIGURE 2 Estimated Overall Conviction Rate to Any Sexual Offense: Best Fitting Line by Country

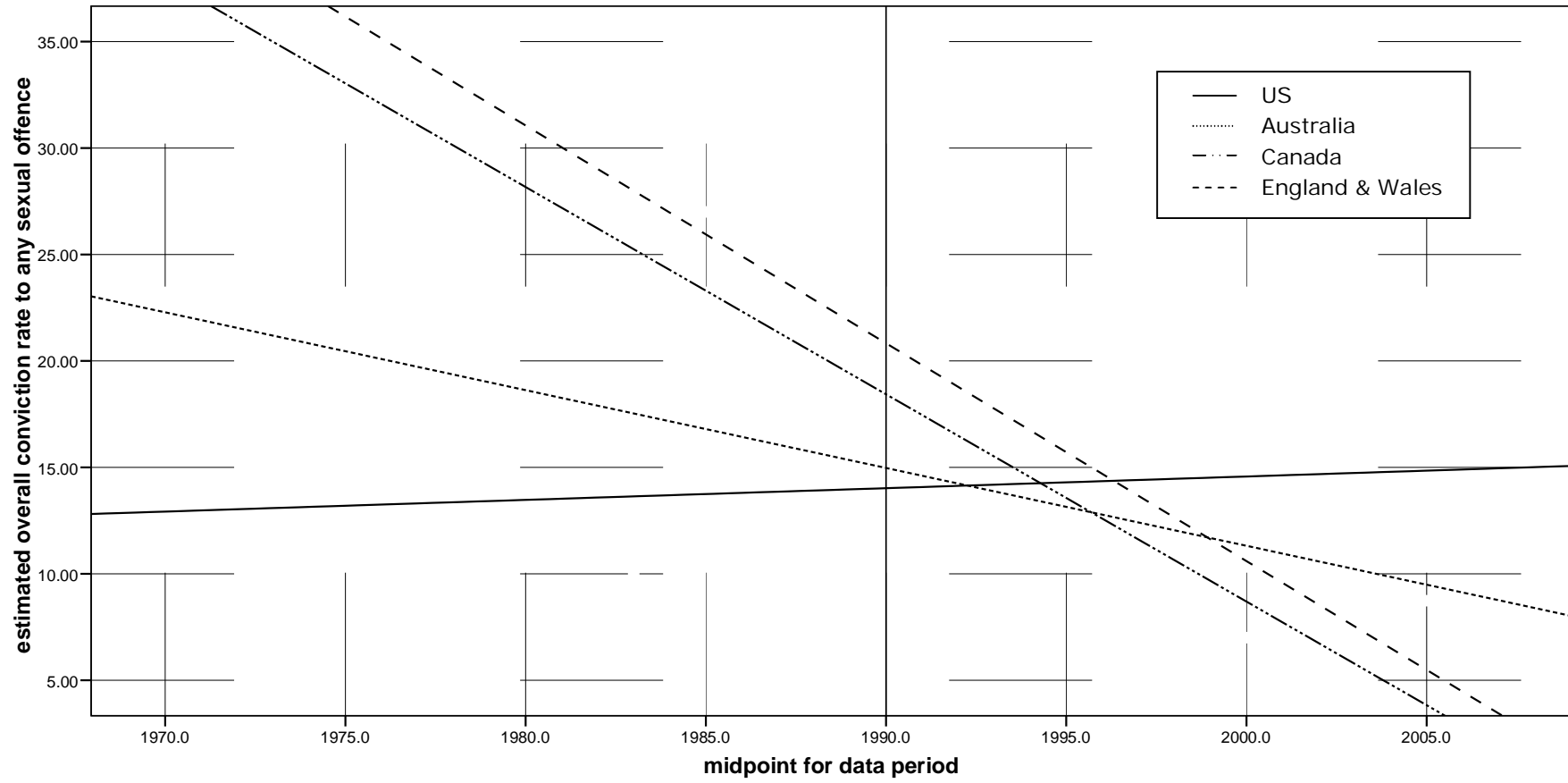


FIGURE 3

The Journey of 100 Cases Reported to Police, Five Countries, 1990-2005

