

THE "KNOWN" CRIMINAL: NON-STRANGER CRIME AND THE CRIMINAL COURTS
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AND THE CRIMINAL COURTS

by
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CHAPTER 1

THE PROBLEM OF NON-STRANGER CRIME

"Marriage," a drawing by expressionist George Grosz, is hardly an idyllic image of that venerable institution. In it, a man and woman are shown grasping each other by the throat, faces dark with rage. By contrast, the American image of violence between husbands and wives, and between people who know each other generally, is a benign one. From the fights of Ma and Pa Kettle to those of Mr. and Mrs. Dithers, vicious fighting between married couples is considered trivial and even humorous. The fights between Herb Woodley and Dagwood Bumstead are "neighborly spats," a few harmless blows between friends. When Curly is beaten by Moe in vintage episodes of the "Three Stooges," the audience laughs.

Non-stranger violence, however, is hardly a laughing matter. Its reality is reflected in Grosz's art and in grim statistics. A majority of criminal homicides are committed by people known to the victim. The analysis of the National Crime Survey data shows that non-stranger crime is more likely to involve the use of a weapon and is more likely to result in serious injury to the victim. The Vera Institute found that 35 percent of all arrests



for property offenses involved prior relationships between the victim and the offender. Far from the portrayal of non-stranger violence as "harmless," the examination of its reality conveys an image of brutality and misery.¹

Crimes involving non-strangers are also serious because of the huge demand they place on the resources of the police and the criminal courts. A large number of police calls involve "domestic disturbances." Subin's study of the municipal court of Washington, D.C. and the Vera Institute study of felony courts in New York City show that a large proportion, if not a majority, of all cases handled by these courts involve parties known to each other.²

Interestingly, what little evidence there is about the treatment of non-stranger cases by the criminal courts suggests that these cases are treated differently from those involving strangers. Not only that, but there are

¹Vera Institute, Felony Arrests: Their Prosecution and Disposition in New York City's Courts, rev. ed. (New York: Longman, Inc., 1981); Marvin E. Wolfgang, Patterns in Criminal Homicide (Philadelphia: University of Pennsylvania Press, 1958), pp.203-209; Hans von Hentig, The Criminal and His Victim (New Haven: Yale University Press, 1948); Lynn Curtis, Criminal Violence: National Patterns and Behavior (Lexington, Mass.: Lexington Books, 1974); Michael J. Hindelang, Michael R. Gottfredson, James Garofalo, Victims of Personal Crime: An Empirical Foundation for a Theory of Personal Victimization (Cambridge, Mass.: Ballinger Publishing Co., 1978), pp. 46-47.

²Harry I. Subin, Criminal Justice in a Metropolitan Court (Washington, D.C.: U.S. Department of Justice, Office of Criminal Justice, 1966), p.53; Vera Institute, Felony Arrests, p. 19.

indications that these cases are treated less seriously than those which involve strangers.³ This research is about the way the criminal courts handle non-stranger crime, why they handle it the way they do, and the consequences of this treatment for the victims of these crimes.

Research Perspectives on Non-Stranger Crime

The subject of non-stranger crime has been approached from a number of different perspectives. One perspective is that of the sociologist or victimologist. In a number of studies using quantitative data, they focus on the characteristics of non-stranger crime and its victims. Questions like, "Who is most likely to be assaulted by a family member?" and "When is the assault likely to take place?" are addressed. These questions are examined using exhaustive analysis of crime statistics, including victimization surveys.⁴

³Subin, Criminal Justice; Vera Institute, Felony Arrests, Barbara Smith, Non-Stranger Violence: The Criminal Court's Response (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1982).

⁴For example, see Curtis, Criminal Violence, Michael J. Hindelang, Criminal Victimization in Eight American Cities: A Descriptive Analysis of Common Theft and Assaults (Cambridge, Mass.: Ballinger, 1976); Michael J. Hindelang, Michael R. Gottfredson, and James Garofalo, Victims of Personal Crime; For examples of victimization studies which focus on particular offenses, see: Menachem Amir, Patterns of Forcible Rape (Chicago: University of Chicago Press, 1971); Murray A. Straus, Richard J. Gelles, and Suzanne K. Steinmetz, Behind Closed Doors: Violence in the American Family (Garden City, New York: Anchor Books, 1981). Besides these works, a number of others have been

A second perspective on non-stranger crime is reflected in studies that have been engendered by the feminist movement. This perspective is characterized by an exclusive focus on crimes involving women, i.e., rape and women battering. The methodology most often used is qualitative, and only rarely statistical.⁵

The third and most recent perspective on non-stranger crime is one that looks at the problem from the standpoint of the legal system. This approach is concerned with the response of legal institutions, like the police and the courts, to the problem of non-stranger crime. This perspective is also quantitative, relying on

produced using the National Crime Survey data. For a description of this study, see Hindelang, Criminal Victimization in Eight American Cities, chaps. 2-4.

⁵A number of studies of women-battering have been published. The classic is Del Martin, Battered Wives (New York: Pocket Books, 1976). Other works include: Roger Langley and Richard C. Levy, Wife Beating: The Silent Crisis (New York: Pocket Books, 1977); Maria Roy (ed.), Battered Women: A Psycho-Sociological Study of Domestic Violence (New York: Van Nostrand Reinhold, 1977); Lenore E. Walker, The Battered Woman (New York: Harper Colophon, Harper&Row Books, 1979); Emerson R. Dobash and Russell Dobash, Violence Against Wives: A Case Against the Patriarchy (New York: The Free Press, 1979); Mildred Daley Pagelow, Woman Battering: Victims and Their Experiences, Sage Library of Social Research, vol. 129 (Beverly Hills: Sage Publications, 1981).

An exception to the "non-quantitative" research on women-battering is the work done by Murray A. Straus, Suzanne K. Steinmetz, and Richard J. Gelles, Behind Closed Doors: Violence in the American Family (New York: Anchor Books, 1981); Richard J. Gelles, The Violent Home: Physical Aggression Between Husbands and Wives (Beverly Hills: Sage Publications, 1972).

analyses of police "call" statistics, court caseloads, and court records.⁶

Each of these perspectives has its limitations. Victimology, rooted in sociological research, grew out of the belief that the exclusive focus of the criminologist upon the behavior of the criminal was too lopsided to allow a full understanding of crime. It was posited by the early victimologists that victims, far from being "innocent," are major contributors to their own victimization. Thus, according to von Hentig,

[T]he relationships between perpetrator and victim are much more intricate than the rough distinctions of criminal law. Here are two human beings. As soon as they draw near to one another male or female, young or old, rich or poor, ugly or attractive-- a wide range of interactions, repulsions as well as attractions, is set in motion. What the law does is watch the one who acts and the one who is acted upon. By this external criterion a subject and object, a perpetrator and a victim are distinguished. In sociological and psychological quality the situation may be completely different. It may happen that the two distinct categories merge. There are cases in which they are reversed and in the long chain of causative forces the victim assumes the role of the determinant....

In a sense the victim molds and shapes the criminal....⁷

Thus, the concept of victim precipitation was born; it would later be elaborated by Wolfgang. In his classic work on criminal homicide, Wolfgang used the term, "victim

⁶See Subin, Criminal Justice; Vera Institute, Felony Arrests; Smith, Non-Stranger Violence.

⁷von Hentig, Criminal and His Victim, p.384.

precipitation" to refer to instances where the victim acted in such a way as to force the offender to commit the crime.⁸ An example of this would be the offender who commits murder in self-defense. From this precise and rather narrow meaning, the term has been broadened to include any action or attribute of the victim that makes the victim more prone to victimization. As a consequence of this development, the victim's status has become equivalent to that of the offender; that is, both parties are seen as equally responsible for the crime, and therefore, both are treated as deviants.⁹

There are two problems with the victimological perspective. The first problem is theoretical and substantive; the second is pragmatic. In the first place, the victimological perspective has failed to bring about an understanding of crime that is consistent with its theoretical concerns. The early pioneers of victimology were interested in looking at the interactions between the parties involved that led to the crime. As the field has developed, much knowledge about the characteristics of the victim and the offender, and even of the incident itself, has been developed. On the other hand, there is virtually no information about the kinds of interactions that result

⁸Wolfgang, Patterns of Criminal Homicide, p.252.

⁹The development of the concept of "victim precipitation" is discussed in Stephen Schaefer, The Victim and His Criminal: A Study in Functional Responsibility (New York: Random House, 1968), pp.39-58 and in Barkas, Victims.

in criminal behavior. Far from providing a dynamic picture of the parties before, during, and after the crime has occurred, the picture provided is a static one. We are provided with information about who is involved in the crime, the kinds of weapons used, and the time of the crimes, but we are no closer to understanding why the crime has taken place.

Thus, even the best studies of an important category of non-stranger crime, family violence, fail to provide an interactive picture of this violence. This is despite the fact that theories about family violence are focused on the relationships between members of the family. So, for example, Straus, Steinmetz, and Gelles, in their well-known study of family violence in this country, fail to ascertain the intent of violent acts, as well as the effect of those acts.¹⁰ Furthermore, they pay no attention to the situations that precede those actions. Therefore, their study shows that many married couples resort to violence when they argue, but there is no information about the extent to which this kind of violence leads to injury. Likewise, a controversy resulted from Steinmetz's own work on domestic violence, which suggested that husbands could also be the objects of attack by their wives.¹¹ Yet, this finding is itself based on information

¹⁰Straus, Steinmetz, and Gelles, Behind Closed Doors.

¹¹Suzanne K. Steinmetz, "The Battered Husband Syndrome," Victimology 2 (1978) pp. 499-509.

that did not include whether the violence resulted in any injury, or whether it was the wife who initiated the violence. Furthermore, there are no data about the reasons that someone in the family resorts to violence-- whether in self-defense, anger, or other reasons.

The second problem with the victimological perspective is the blurring of distinctions between degrees of victim culpability.¹² The theory of victim precipitation, and the more recent theory of victim lifestyle, both imply that the victim is the controlling party to his or her victimization, although the degree of responsibility is very different. According to the theory of victim precipitation, the victim takes an initiating role in the incident. A classic example of this type of victim would be the victim who was killed in self-defense. But the term has also been used to describe interactions where the victim has taken a much more passive role in initiating the crime. Examples of this type of victim precipitation might include cases where the victim possesses some kind of characteristic that brings about a violent response from the offender. For example, a wife's resemblance to her mother-in-law may lead her husband to

¹²For various discussions and definitions of the concept of victim-precipitation, see Schaefer, The Criminal and His Victim, pp.39-50, 79-83; Wolfgang, Patterns in Criminal Homicide, p. 252; von Hentig, Criminal and His Victim, pp.384-450.

express latent violent feelings for his mother to his wife.

The theory of victim lifestyle, on the other hand, explains crime in terms of the increased vulnerability or probability of victimization that results from certain lifestyles.¹³ For example, people who are apt to go out late at night-- young singles-- are more apt to be the victims of crime. Although the amount of responsibility for the crime differs from that of victim precipitation, victim lifestyle also leads one to place responsibility on the victim, since lifestyles can be changed.

Interestingly, both theories lead one to believe that the victim is ultimately the controlling party to crime, despite the imprecision of the terms or the difficulty in changing the circumstances that might make one more vulnerable to victimization.¹⁴

These concepts about the role of the victim in crimes has been blamed for the emergence of a tendency to "blame the victim." That victims tend to blame themselves for their victimizations is well-documented.

Interestingly, this attitude is shared by the offenders.

Thus, con men will contend that "you can't cheat an honest

¹³"Victim lifestyle" is proposed as a victimization theory in Hindelang, Gottfredson, and Garofalo, Victims of Personal Crime, pp.241-266.

¹⁴The problems involved in articulating a concept of victimization that describes victims' contributions to their victimization are discussed in Ezzat A. Fattah, "Some Recent Theoretical Developments in Victimology," Victimology 4 (1979) 2: 198-213.

man," and use this attitude to justify their behavior.¹⁵ Even more surprising is that society generally agrees with the offender. Thus, Barkas tells of her own shock at people's reactions when she told them that her brother had been murdered:

If I spoke about my brother's murder, people recoiled. They didn't empathize, they didn't sympathize, they didn't get angry. They said, "Well, why was he walking down that street?" "What time of night was it?" They acted as if [he] had done something wrong, as if I were now doing something wrong to mourn him, to be angry, to be devastated.¹⁶

These attitudes of self-blame and of blaming the victim have been described in cases of non-stranger crime, especially in cases of rape and of wife abuse.¹⁷

Finally, the problem with the victimological perspective is the failure of the field to consider the impact of the legal system. Von Hentig thought that the categories of criminal and victim were too constraining and artificial¹⁸ But just as the criminologist asserts that the legal system defines criminal actions and hence,

¹⁵That criminals will blame their victims for their victimization has been noted. See Ezzat Fattah, "The Use of the Victim as an Agent of Self-Legitimization: Toward a Dynamic Explanation of Criminal Behavior," in Victims and Society, ed. Emilio C. Viano (Washington, D. C.: Visage Press, 1976), pp. 105-129.

¹⁶Janet L. Barkas, Victims, (New York: Charles Scribner's Sons, 1978), p.xi.

¹⁷For example, see Lenore Walker, The Battered Woman, pp.14-16, 31-35.

¹⁸von Hentig, Criminal and His Victim, p.384.



criminals, so the legal system also defines victimization and hence, victims. Legal understandings of what it means to be a victim affect not only the likelihood that the victim will receive some satisfaction from the criminal court. Indeed, the legal system may have a great impact on the victim's identification of her- or himself as a victim. In the face of legal silence about whether an action constitutes a crime, one may feel like a victim, but not in a way that would lead to taking legal action.

The importance of this judgment may be greater for cases of non-stranger crime, for the existence of a prior relationship often marks a boundary beyond which the law will not pass. Histories of the legal development of child and spouse abuse laws show that the law has often been silent or ambiguous about actions that, although technically criminal, take place within the context of the family.¹⁹ Thus, if the legal system is ambiguous about the status of these actions as "crimes," then it is not surprising that there is often an uncertainty in the minds

¹⁹Sue E. Eisenberg and Patricia L. Micklow, "The Assaulted Wife: 'Catch-22' Revisited," Women's Rights Law Reporter, 3 (Spring-Summer 1977), pp.138-161.

For some interesting thoughts about the limitations of the criminal courts with respect to non-stranger cases, see Francis A. Allen, The Borderland of Criminal Justice: Essays in Law and Criminology (Chicago: University of Chicago Press, 1964), pp. 1-24; Charles Benjamin Schudson, "The Criminal Justice System as Family: Trying the Impossible for Battered Women," in Battered Women: Issues of Public Policy, Consultation sponsored by the U.S. Commission on Civil Rights, Jan. 30-31, 1978 (Washington, D.C.: U.S. Commission on Civil Rights, n.d.), pp. 365-370.

of these victims about whether or not they are victims. This ambiguity in the law and in the minds of victims has been blamed for the reluctance on the part of the victims to even conceive of themselves as victims and to seek help for their situations.

Unlike the victimiological perspective, the work growing out of the feminist perspective deals with the effect of the legal system on victimization. This perspective is largely confined to the study of crimes against women. By and large, the stance taken by these studies is extremely critical of the legal system, from the laws that define it to the agencies that implement those laws. The poor treatment of rape victims and of battered wives has been the particular target for criticism, and these have led many feminists to argue that the reason for this poor treatment is the patriarchal and sexist nature of the legal system.²⁰

The focus of these feminist studies, however, is too narrow. By focusing only upon those crimes that involve women, this research is based upon the assumption that the treatment of these crimes is unique. This assumption is itself a testable hypothesis that has received no examination. Even the best of the studies that deal with rape or wife abuse fail to compare them with other kinds

²⁰Martin, Battered Wives, pp. 91-99; Marjory D. Fields, "Wife Beating; Government Intervention Policies and Practices," in U.S. Commission on Civil Rights, Battered Women, pp. 228-287; Eisenberg and Micklow, "The Assaulted Wife."

of crimes or the victims of other kinds of crimes. Despite the large number of studies done on the victims of rape and the treatment of rape victims by the criminal courts, Katz and Mazur note in their excellent survey of studies of rape:

[Our survey of empirical studies] shows that no empirical study of rape victims used a control group, although some studies did use population statistics for control of demographic data.... For example, many studies presented statistical data on the rape victim, but they did not compare the data with women who had not been raped to see what features were particularly characteristic of the rape victim. Furthermore, no study compared the rape victim to other victims of violent crime against the person. This comparison is vital in examining the specific characteristics of victims of rape. If rape victims are different from other crime victims, the differences are relevant to the risk of being raped. However, if rape victims are similar to most victims of violent crimes, then the risk of rape victimization is particular to personal assaultive crimes in general.²¹

As in the study of rape, where the appropriate comparison has not been made, the study of wife abuse is also plagued with the problem of inappropriate comparisons. Rather than emphasizing the problems of victim research, however, the literature on wife abuse also focuses on the problem of the treatment of wife abuse by the law and by the courts. Not only have these studies failed to compare the treatment of wife abuse victims to the treatment of victims of violent crime generally, but

²¹Sedelle Katz and Mary Ann Mazur, Understanding the Rape Victim: A Synthesis of Research Findings (New York: Wiley Interscience Publication, John Wiley and Sons, 1979), p.22; emphasis in original.



where the comparison has been made, it is an inappropriate one.

Commentators and researchers concerned with the problem of wife abuse generally criticize the treatment of wife abuse cases by the legal system. The unsatisfactory treatment is attributed to laws that encourage the battering of wives, to the reluctance of the courts and the police to prosecute and punish the offender, and the patriarchal nature of the criminal law and of the society which it reflects. In order to prove these charges, a comparison is made between the treatment of wife abuse cases with the treatment of assault cases involving strangers. Not only is this comparison unsupported by any systematic look at any data, but the comparison itself is, I think, a wrong one. In fact, there are good reasons for expecting that the treatment of wife abuse cases is characteristic of a pattern of treatment for cases involving non-strangers.

Because of the prior relationship between the parties in a non-stranger crime, these crimes are most likely to be cleared by arrest. Ironically, although the question of identification is settled in these cases because the victim knows the offender, there is good reason to expect that these cases would be difficult to handle otherwise. The existence of a prior relationship changes the perception of the incident. Where violence between two strangers seems senseless and random, violence

between non-strangers is more ambiguous. Because of the relationship between the victim and the offender, it is assumed that the relationship is subject to stresses and tensions that make the relationship unique. The closer the relationship between the parties, the stronger this assumption becomes. Family relationships provide a good example of this.²² Failed expectations, frustrations with the situation outside the home, irritation with another family member's habits, all these things contribute to the conflict within the family setting. This kind of relationship, marked by tensions that are inherent to the relationship itself, is also characteristic to a lesser extent of friendship, or even of relationships between neighbors. The proximity of the antagonists in the conflict, whether next door or in the same house, and the duration of daily contact, often bring these tensions to the surface where they are expressed violently. This violence is perceived as different from violence between strangers, since the object of non-stranger violence is unique and specific with respect to the person that the violence is directed against. Thus, because of the shared characteristics of crimes involving non-strangers, the expectation would be that these incidents would be treated

²²Indeed, some sociologists argue that the family is inherently violence-prone. See Suzanne K. Steinmetz and Murray A. Straus, "General Introduction: Social Myth and Social System in the Study of Intra-Family Violence" and Israel W. Charney, "Marital Love and Hate," in Violence in the Family, ed. Suzanne K. Steinmetz and Murray A. Straus (New York: Harper & Row, 1974), pp. 3-21, 52-57.

similarly. The research that has been done on wife abuse to date has possibly undergeneralized its findings by assuming that the treatment accorded to these crimes is unique. Furthermore, the case for unique treatment of wife abuse is undermined by the absence of appropriate comparative data.

Finally, studies conducted in order to understand the criminal courts and how they work pay very little attention to the problem of non-stranger crime. The Vera Institute study of felony arrests in New York City and Harry Subin's study of Metropolitan Court in Washington, D.C. showed that a high percentage of these courts' caseloads involve non-stranger crime. Although both studies indicated that the resolution of non-stranger crimes was different from the treatment of crimes involving strangers, there is very little investigation about why or how this happens. The Vera Institute study is better than Subin's in this respect, although even their study does not explore this issue in much detail.

There are a number of reasons to expect different treatment of non-stranger cases. An exploration of these reasons would yield interesting insights into organizational and policy aspects of the criminal courts. For example, the low visibility of cases involving non-strangers may free the prosecutor from what little pressure there is exerted by public opinion, and he or she may therefore feel free to use more discretion than when



confronted by crimes involving strangers. The large amount of discretion may lead to a marked change in the ways that court actors perceive the role of the court in these cases, and one might see the court take on more of the role of mediator or counselor. Alternatively, the court may see these cases as inappropriate for the criminal court. The perception of neighborhood or family disputes as "messy" and hence, time-consuming and wasteful of resources, may lead the court to try to divert these cases from its docket, so that it may use its resources to deal with "real" crimes that involve substantial danger to the public.

This discussion of these three perspectives on non-stranger crime shows that there are gaps in our knowledge. Common to all three perspectives, however, is a failure to consider the desires of victims in these cases. What victims consider to be fair resolutions to their cases would have an effect on the likelihood that they will either try to resolve the situation themselves, or seek help from the police and the courts. The fact that the criminal courts can punish defendants by incarcerating them or imposing stiff fines makes the courts distinctive as an agency for resolving disputes. This punitive aspect of the court's actions makes it unique. The very threat of punishment embodied in the criminal justice process may be enough to bring about an agreement between the two parties, and this may be the reason that the victim turns



to the criminal courts in the first place. The very fact that the criminal court gets involved in the dispute may itself be enough to bring about a settlement to a situation that would otherwise have gone unresolved or worse, may have been exacerbated by the parties' attempts to resolve the situation themselves.

Whether the court is a suitable agency for the resolution of non-stranger crimes is important. Although the concern of the general public is with violent crime committed by a stranger, a large proportion of violent crime takes place between people who know each other. A recent report by the Bureau of Justice Statistics notes that although an average of 59 percent of violent victimizations during 1973-1979 was committed by strangers, that proportion had remained relatively stable over the period. "...[T]he rate of violent crimes committed by persons known to their victims [by contrast] had increased by 10 percent over the 1973-1979 period."²³ Non-stranger crime not only makes up a large portion of crimes, but they also make up a large portion of court caseloads. Paradoxically, though these cases are numerous, it has been argued that they are difficult for the courts to handle satisfactorily. The Vera Institute sums up the problem this way:

²³Bureau of Justice Statistics Bulletin, "Crime by Strangers" (Washington, D.C.: Bureau of Justice Statistics, April 1982), p.1.

....Equally important,...the incidents that give rise to arrest are frequently not the kind that the court system is able to deal with satisfactorily. At the root of much of the crime brought to the court is anger-- simple or complicated anger between two or more people who know each other. Expression of anger results in the commission of felonies, yet defense attorneys, judges and prosecutors recognize that in many cases conviction and prison sentences are inappropriate responses. High rates of dismissal or charge reduction appear to be a reflection of the system's effort to carry out the intent of the law-- as [court participants] perceive it-- though not necessarily the letter of the law.²⁴

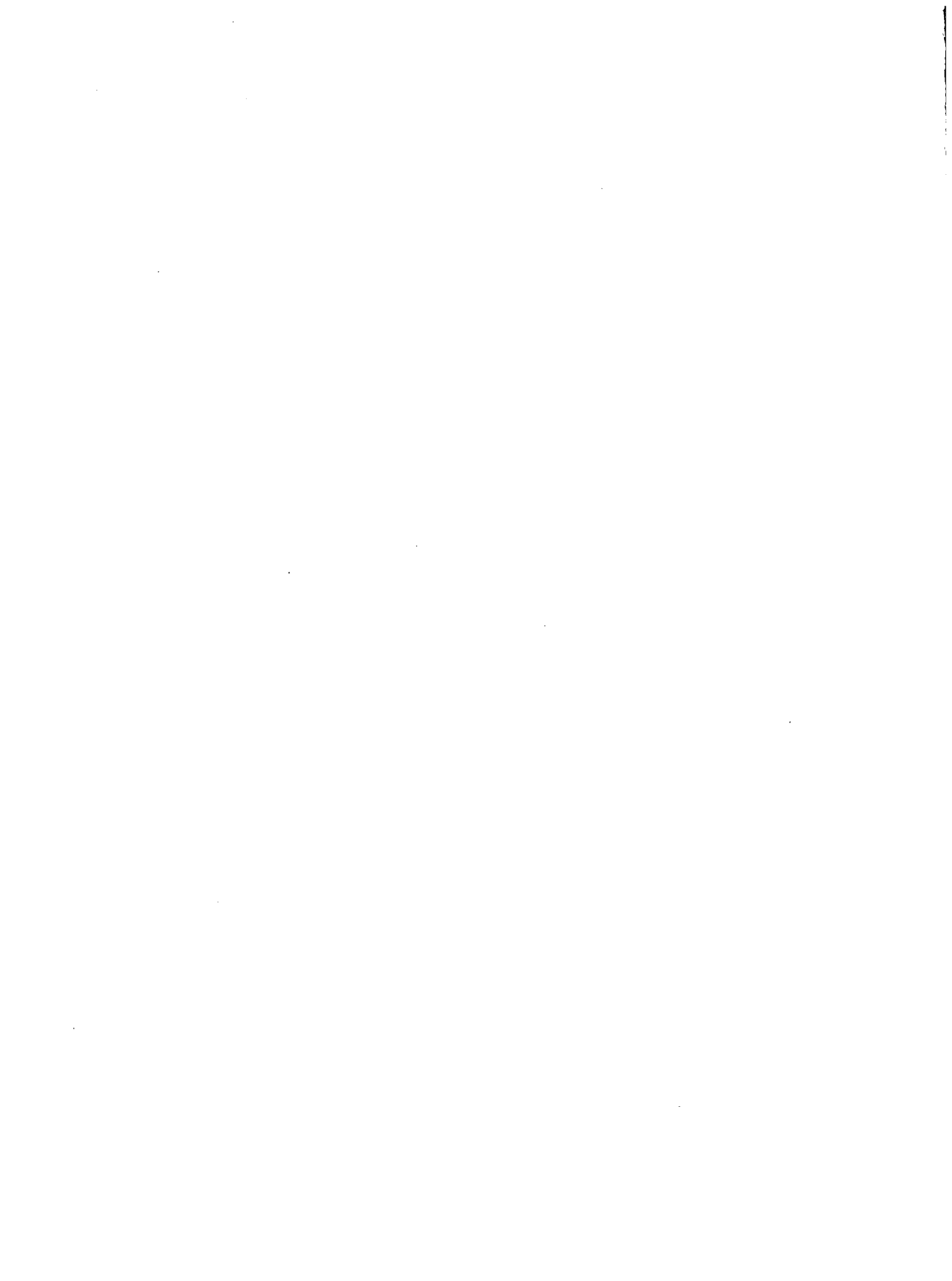
This argument about the inadequacy of the criminal courts to handle the problem of non-stranger violence is answered indirectly by those who argue that the courts are a social institution that both articulate and enforce the norms of social behavior. As an agency of social control,

...The courts seldom hand out direct benefits to the citizens (except in the form of revenge for the aggrieved party). Instead, the courts apply negative sanctions (either a fine or a term in jail, and sometimes a restriction of activities such as probation) to prohibited activity. Simply put, the criminal courts enforce community norms. It seems that when all else fails the criminal courts are called upon to take action. Thus, a large number of social problems end up in court....To a large extent, the failures of other contemporary institutions are given to the courts.²⁵

This argument identifies the courts as an agency that embodies the disapprobation and censure of society. Even

²⁴Vera Institute, Felony Arrests, pp. xxv.

²⁵David W. Neubauer, Criminal Justice in Middle America (Morristown, N.J.: General Learning Press, 1974), p.3.



more important, it is an agency uniquely equipped to punish individuals for wrongful behavior.

The large number of non-stranger cases poses an important policy question to the criminal courts. Because it is a large portion of the criminal behavior that confronts the police, it is also a large part of the caseload of the courts. Thus, if the courts are apt to complain of the huge caseloads they face and the concomitant problems that they create, then at least part of the blame for that caseload and the resulting problems rests with the burden of handling cases that involve non-strangers. This use of court resources to handle non-stranger cases necessarily reduces the resources available to handle crimes involving strangers, crimes that may be generally perceived as much more serious and more deserving of attention by the criminal justice system, and by the larger public as well.²⁶

Thus, if the courts are trying to divert non-stranger cases out of the system, this may be a desirable policy from the standpoint of prosecutors and other court personnel. In terms of what the victim wants and expects from the court, however, this may not be an effective policy. The victim may expect and want the court to provide a settlement to a situation that will not only resolve any conflicts, but will be backed by the authority of a legal agency. On the other hand, if victims have the

²⁶Vera Institute, Felony Arrests, pp. x-xv.

idea that the courts are agencies that will simply mediate the dispute, they may be dismayed with the possibility of punishment that is inherent in court action. If this is the case, the court may be pursuing a policy that optimizes its resources and satisfies its clientele when it diverts non-stranger crimes to other agencies, or uses its discretion to handle the case in a different way from other crimes. The effectiveness of the court's actions in these cases can only be judged, however, if victims' desires and expectations of the system are known.

An understanding of the desires and expectations of victims, and the effectiveness of the criminal court in meeting those desires and expectations, are not only important for the development of policy. This understanding is also important from a larger political perspective. The criminal court is not only an institution that executes justice, but it is a political institution as well. As an "authoritative allocator of values," it both defines and punishes behavior that is deemed criminal. In this manner, it can be said to articulate the values and norms of the society. In a less positive light, it can be said that the court sanctions and enforces the norms of one class over another, and hence, represents the power of one class over another.

The criminal court is also a political institution in that it serves an important function in society-- that of providing for the security of citizens and a peaceful

and fair way of resolving conflict. So important is this function to liberal political society that it is almost taken for granted. Yet for liberal political philosophers like Locke, not only is political power defined in terms of a power "to punish," but the basis of government is found in the citizens' voluntary relinquishing of the right to punish others to the government.²⁷ Not surprisingly, when citizens believe that the government is using this power to punish capriciously or unfairly, they are completely justified in revolting. That the political society is bound to protect its citizens from the attacks of fellow citizens, as well as from the threat of international war, is well established. Equally important is that the quality of justice that is enforced in political society is the foundation for the legitimacy of any political regime. Looked at from this perspective, the argument parallels Casper's argument about the effect of the criminal justice system on the perceptions of defendants.²⁸ Victims are also affected in the administration of justice. To the extent that courts are perceived as a governmental agency, and as an agency that should be responsive to the concerns of citizens, the perceptions of citizens in their encounters with the criminal courts-- the satisfaction they feel with the

²⁷John Locke, Second Treatise of Government.

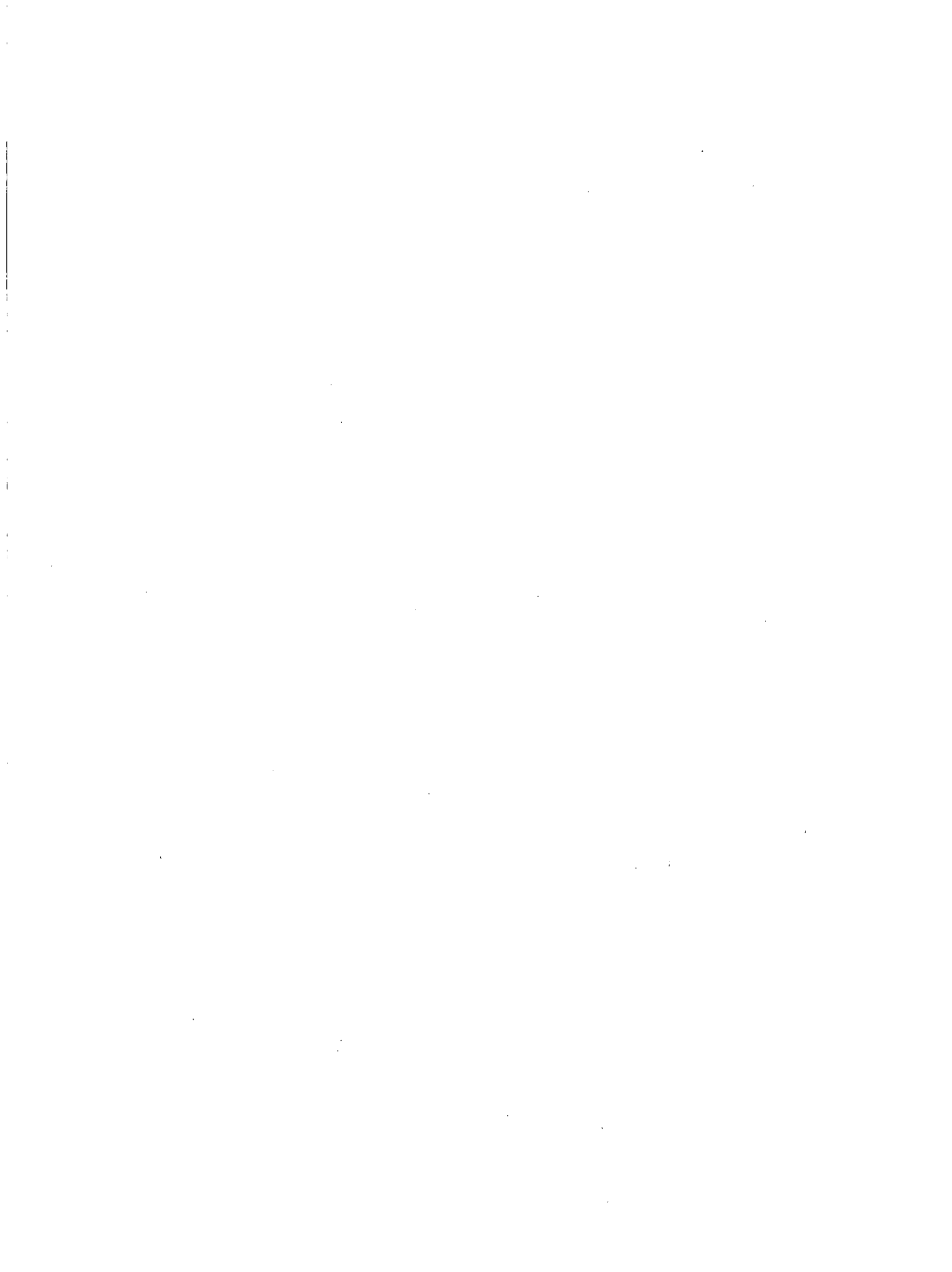
²⁸Jonathan D. Casper, American Criminal Justice: The Defendant's Perspective (Englewood Cliffs, N.J.: Prentice-Hall, 1972).



resolution of their case-- will have important effects on their feelings about the utility and effectiveness of the government generally. These effects are especially important when one considers that the courts are an institution with which citizens are very likely to have contact.

Like victims of stranger crimes, the victims of non-stranger crimes approach the criminal justice system expecting help and a fair resolution to their situation. As in the case of victims of stranger crimes, a feeling of dissatisfaction would make them feel that the "system" is unfair and worthless. But the case of non-stranger crime provides the court with a problem that arises partly out of its "political" nature. One of the premises of political actions and institutions is that they have a public impact. Thus, one of the elements of "crime" is that it presents a threat to public safety. Traditionally, this has been interpreted to mean that attacks against strangers or that involve potentially harmful or harmful actions in public places constitute crimes. These criminal situations are non-ambiguous, in part because they occur in contexts that are governed by generally recognized rules of conduct.

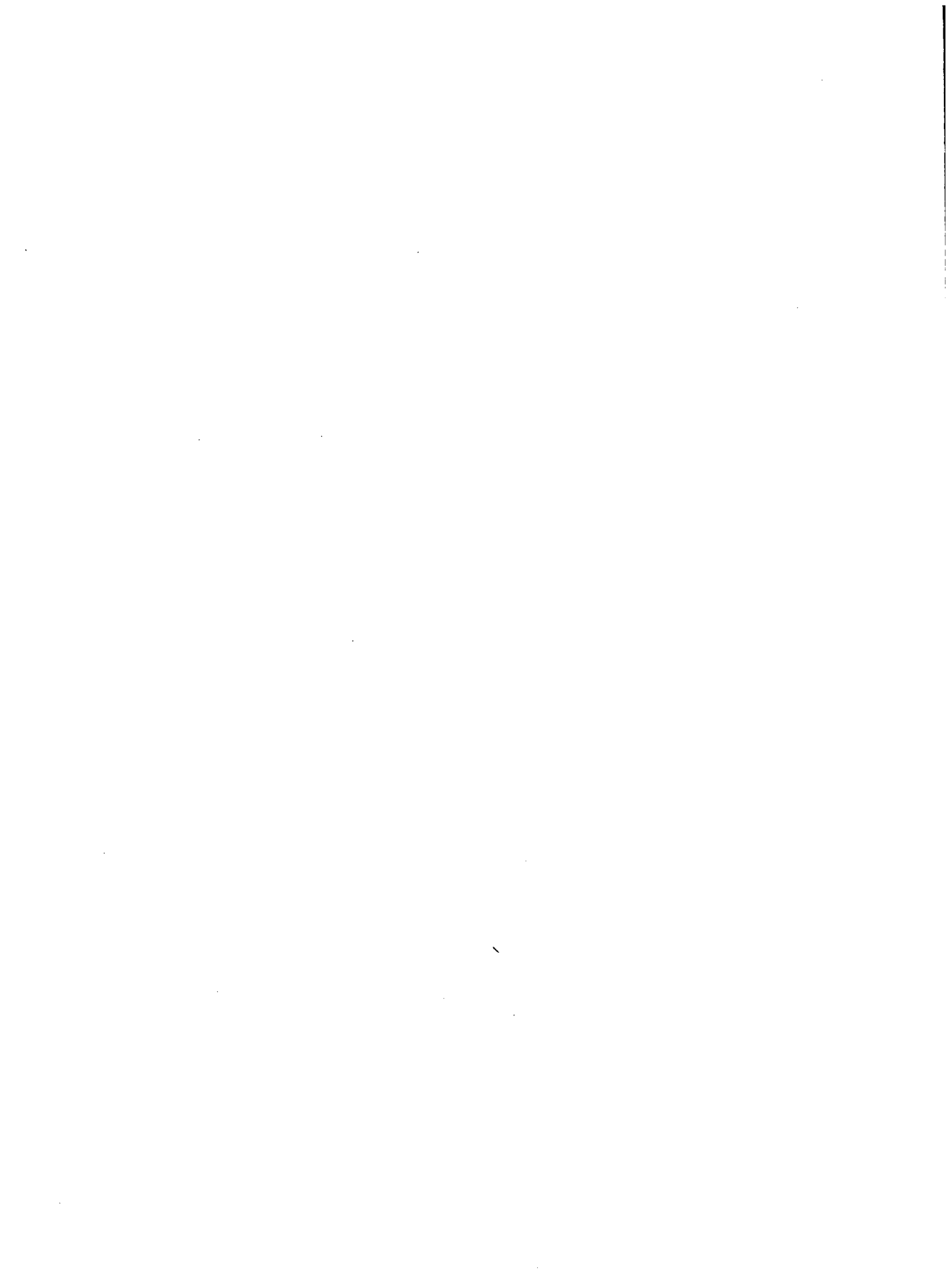
By contrast, attacks upon members of one's own family, or that occur "behind closed doors," are not public. There are no generally recognized rules that govern the behavior of husband to wife or friend to



friend. In the case of interactions between strangers, the standards of social behavior are shared and recognized by society generally. When they are breached there is no disagreement that the government has a right to intervene and punish the offender. In the case of crimes between non-strangers, the standards of behavior are not clearly established by society. The standards are determined not publicly, but privately, by the parties themselves. The court is faced in these cases with the task of determining that standard in order to be able to decide whether it was breached. Given the "private" nature of the relationship, it has been loath to do this.

Further reinforcing the "private" nature of non-stranger crime has been the notion that these crimes, horrible as they may be, do not pose a danger to the public. Other than the immediate parties involved, it has been believed that the person who beats his wife or kills his friend is harmful only within the context of the relationship and not to society generally. This notion, at least with respect to wife-beating, has been challenged by feminists. They have argued that wife-beating has social consequences that should be of concern to the society at large, both in terms of the effects on children and evidence that wife abuse can result in the death of one of the parties²⁹ Just as important has been that

²⁹G. Marie Wilt, et al., Domestic Violence and the Police (Washington, D.C.: Police Foundation, 1977), p. 23.



feminists have been able to link the issue of wife abuse to a broader political question of the power of husbands over their wives and of men over women in this society. Thus, what has previously been perceived as a "private" issue is becoming more politicized. The perspective of feminist theorists has expanded the notion of political relationships to include family relationships, and this development has made it possible to consider the problem of non-stranger crime in light of that development.

Given this development, the criminal courts seem to be caught in a tension between the demands that they do something about a rising crime rate and, at the same time, to handle an emerging problem of public concern, namely, non-stranger crime. How does the criminal court handle this issue, especially given that the court has a finite and limited amount of resources? And how does the court justify the way in which it handles non-stranger cases the way that it does? Does this treatment, and the explanation of it, correspond to the expectations and desires of victims? Ultimately, the question is one of fairness-- is the criminal court fair in its treatment of non-stranger crime? Can it be fair, or is the court an inappropriate institution for settling these kinds of disputes? In examining the issue of non-stranger crime, it is my hope that we can gain an understanding that will not only help formulate more effective policy, but contribute to an understanding of how the criminal court

works as well as how well it works in implementing justice.

CHAPTER 2

HYPOTHESES AND RESEARCH DESIGN

In spite of the frustrations inherent in dealing with non-stranger crimes for the courts and for society, little research has been done on the problem. Although the Vera study of criminal arrests in New York City points out that a large number of criminal cases involve non-strangers, the study fails to treat the question of this kind of crime in detail.¹ Questions about the effects of the closeness of the relationship between the victim and the offender on the charging and disposition of these cases need to be explored. Is it the case that serious crimes are being ignored or undercharged by virtue of the fact that they involve people who know each other?

In order to know the answer to this question, comparisons must be made between the handling of cases involving strangers and non-strangers, controlling for the extent of injury and the presence of a weapon. All these factors have an impact on the charging and disposition of cases involving strangers. What is their impact on cases involving non-strangers? The literature on wife assaults,

¹Vera Institute, Felony Arrests: Their Prosecution and Disposition in New York City's Courts, rev. ed. (New York: Longman, Inc., 1981).



a major category of non-stranger crime, suggests that these factors have no impact on the kind of charge warranted by prosecutors in wife assault cases, nor do they have much effect on the sentencing behavior of judges at conviction.² The Vera Institute study supports these assertions about the treatment of non-stranger crime in the criminal courts.³ In order to verify this response to non-stranger crime, the following hypotheses will be tested:

- a) Controlling for the seriousness of injury and presence of weapon, cases involving strangers will be warranted with more serious offenses than cases involving non-strangers.
- b) Non-stranger cases are more likely to be dismissed than crimes that occur between strangers, and the dismissal rate will increase with the increasing closeness of the relationship between the victim and the offender.
- c) Convictions in non-stranger crimes are much more likely to involve probationary sentences or sentences that divert the defendant out of the criminal justice system than similar cases involving strangers. The probability of diversion or probation should increase with the closeness of the victim-offender relationship.

The description of the characteristics of non-stranger cases in the criminal courts, however, is not the only purpose of this research. Any treatment of these cases is apt to reflect an informal, or formal, policy

² Renee Birnbaum, "Battered Wife: The Legal System Attempts to Help," University of Cincinnati Law Review, 48 (1979): pp. 419-434; Del Martin, Battered Wives, pp.115-119.

³ Vera Institute, Felony Arrests, passim.

about how the courts should treat the problem of non-stranger cases, as well as prosecutors' perceptions of these cases.

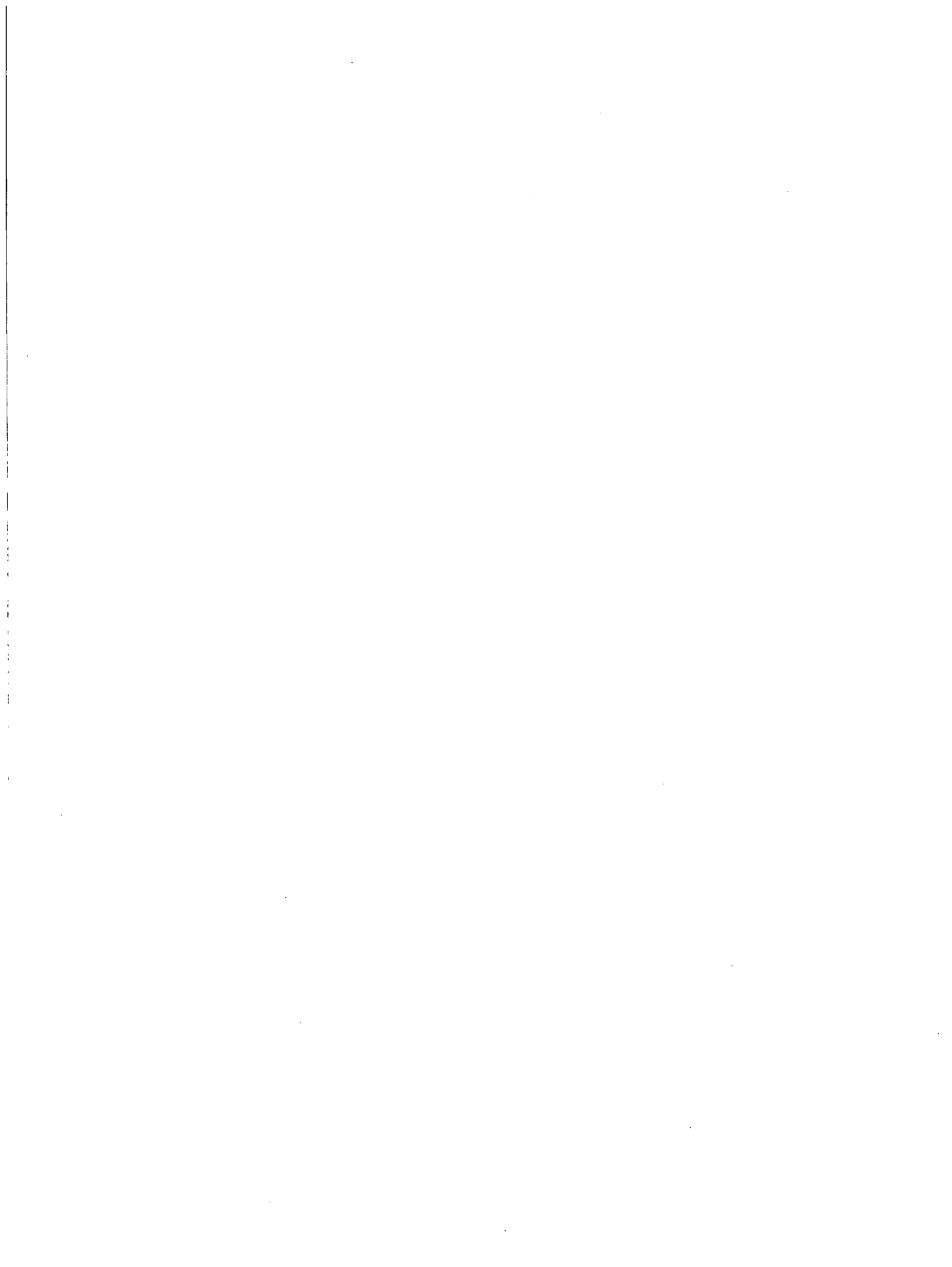
It has been hypothesized that because of the high proportion of criminal cases that involve non-strangers, there is a perception on the part of court personnel that the courts are "clogged up" with a number of cases that are really private disputes. Court personnel seem to resent this use of the courts, largely because of the waste of time and resources expended on cases that are expected to be dismissed due to the victim's reluctance to continue with prosecution. The expectation of dismissal arises out of the prosecutors' and judges' beliefs that the court system does not provide the proper arena for working out these personal disputes, and that the parties to the conflict will most likely work the problems out themselves. Thus, prosecutors are likely to perceive the non-stranger case as unsuited to resolution in the system, and should try to divert these cases out of the criminal courts as much as possible. Because of the importance of prosecutors to the workings of the criminal justice system, it is important to get some understanding of the perceptions and beliefs that they have about the treatment of these non-stranger cases in the criminal courts. Because of the discretion that the criminal court prosecutors have available to them, their actions determine the treatment of the case in the system. Thus



the next set of hypotheses deals with the perceptions of prosecutors of non-stranger criminal cases, the proper role of the courts for these cases, and their own role and obligations in dealing with these cases.

- a) Prosecutors handling non-stranger cases are likely to see the typical non-stranger crime as relatively harmless and as a waste of court resources.
- b) Because of this perception of non-stranger crime, the prosecutor is apt to take on a different role. In the case of non-stranger crime, the prosecutor will take on the role of mediator or counselor, trying to reconcile the parties involved instead of being a bureaucratic figure who warrants complaints. The attempt to mediate the conflict on the part of the prosecutor is a result of the desire to keep the non-stranger crime out of the court system.

The beliefs of prosecutors that the criminal court system is inappropriate for resolving non-stranger cases has led to a number of proposals calling for diverting these cases out of the courts. This policy may not be the right course of action from the standpoint of the parties involved, however. The fact that the criminal courts can punish defendants by incarcerating them or imposing stiff fines makes the courts distinctive as an agency for resolving disputes. This punitive aspect of the court's actions make it unique. The very threat of punishment embodied in the criminal justice process may be enough to bring about an agreement between the victim and the offender, and this may be the reason that the victim turns to the criminal justice system in the first place. The involvement of the criminal courts in the settlement of



the dispute may itself be enough to bring about a settlement to a situation that would otherwise have gone unresolved or worse, may have been exacerbated by the parties' attempt to resolve the situation themselves.

Thus, prosecutors' attempts to divert these cases out of the system may be the wrong action for two reasons. The first reason is that the dispute ²may require the intervention of an authoritative and punitive agency to be resolved. Thus, the courts may be the only agency that could force the parties to come to some kind of peaceful resolution. The second reason that the diversion of these cases may be undesirable has to do with the expectations of the victims that the courts will provide some settlement that will be fair and provide them some relief. Prosecutors may feel that these cases have no place in criminal court because the victim and offender can resolve the conflict themselves. The victims, by contrast, may feel that the pattern of abuse, or the incident of abuse, is so bad that their only recourse is to the court. For them, the court is the only social agency that can guarantee that the behavior will be stopped, and that the kind of incident that sent them to the court will not happen again.⁴ Thus, in order to evaluate the

⁴ For a discussion of the utility of court action in wife-beating cases, see Raymond I. Parnas, "The relevance of Criminal Law to Interspousal Violence" in Family Violence: An International and Interdisciplinary Study, John M. Eekalaar and Sanford N. Katz, eds., Proceedings of the Second International Conference on Family Law, 1977 (Toronto: Butterworth and Co., 1978), pp.188-192.

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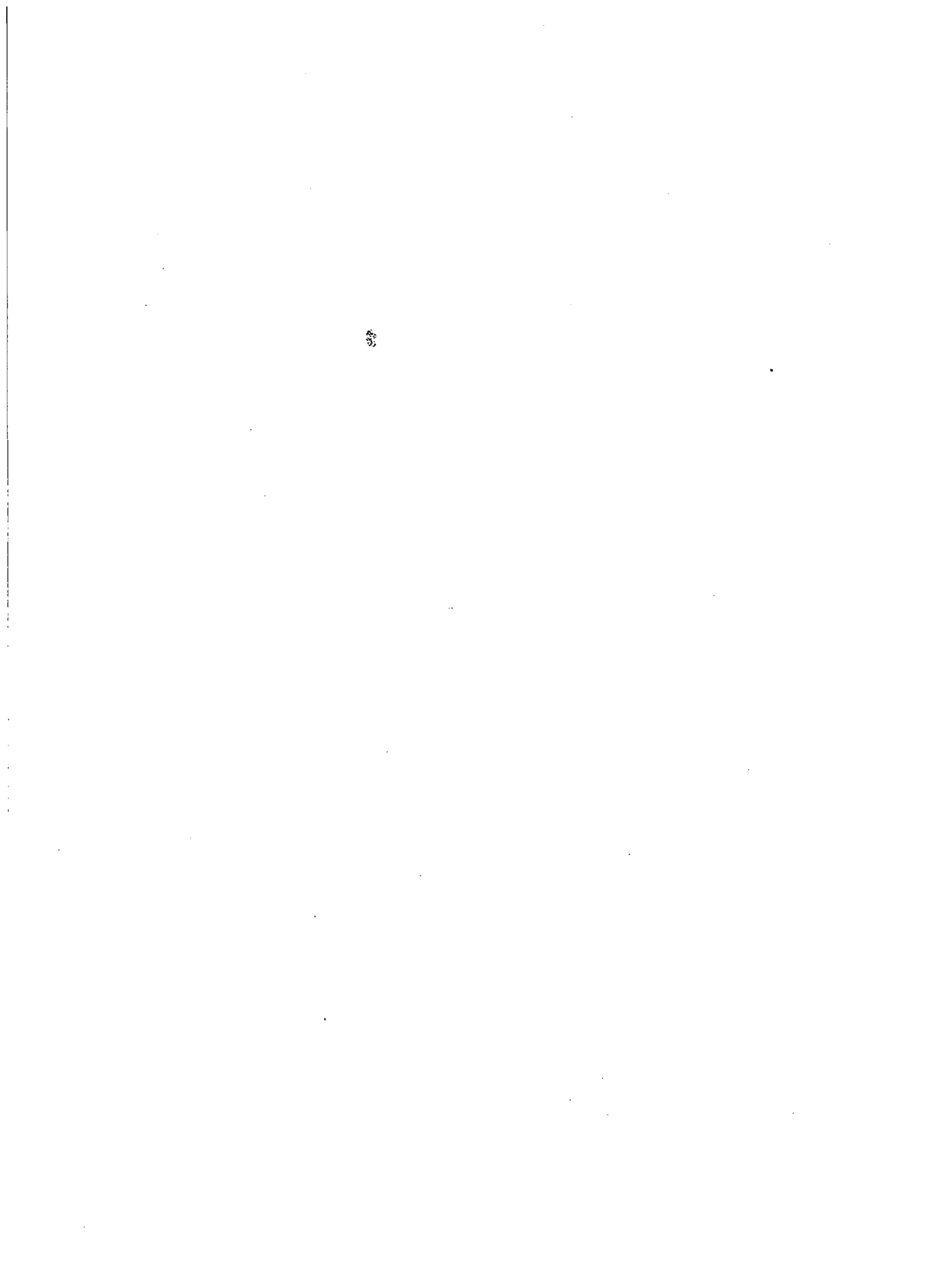
effectiveness of the courts in bringing about a resolution to these situations, it is necessary to measure the expectations that the victims of non-stranger crimes have about the outcome of their cases. We would expect that:

- a) Many non-stranger crimes will be the culminating incident in a series of similar incidents, with the victim finally going to the criminal court system out of desperation for some kind of solution. The criminal court is therefore likely to be seen by victims of non-stranger crimes as a likely place to turn to resolve a problem that is out of hand.

To deal with the set of questions posed for this research, a rather complicated research design was constructed. The design consists of three parts; each part addresses a specific aspect of the problem. Each part also makes use of different data. I will discuss each part of the research design separately, showing the relationship between each part and the questions it was meant to address.

Prosecutor Interviews

I have suggested that non-stranger cases probably have different characteristics than cases involving strangers. One of those differences is that prosecutors probably perceive these cases differently from the non-stranger case. In order to determine the validity of this, I conducted interviews with prosecutors at the Recorder's Court in Detroit. These interviews consisted of a series of open-ended questions dealing with their



experiences at the Recorder's Court, especially with non-stranger cases.

In all, I interviewed 18 prosecutors. All prosecutors had had trial experience, since the prosecutor's office generally started new prosecuting attorneys in the trial division. The prosecutor's office was organized into four divisions which were directly involved with felony cases.⁵ Of the five prosecutors assigned to warranting, four were interviewed. Four prosecutors were assigned to preliminary examinations; two of them were interviewed. Docket attorneys, responsible for all plea bargaining and supervision of trial attorneys, were also interviewed. There were five docket attorneys; I interviewed four of them. The remaining interviews were with prosecutors involved with trial work. At the time of my interviews there were 30 trial prosecutors.

All interviews were conducted in the attorneys' offices. With three exceptions, all respondents allowed the interviews to be tape recorded.⁶ The longest

⁵The four divisions are: warranting, examinations, pre-trial or docket, and trial.

⁶A discussion of the pros and cons of tape recording interviews is presented in Milton Heumann, Plea Bargaining: The Experiences of Prosecutors, Judges, and Defense Attorneys (Chicago: University of Chicago Press, 1978), pp.19-20. My experience interviewing prosecutors was much like Heumann's. In only one case did I think that the tape recorder made the respondent uncomfortable. However, even in that case, the respondent became more talkative as the interview progressed.

interview lasted a a little over two hours; the shortest interview was 50 minutes. On the average, interviews were an hour and 15 minutes long.

Felony Firearm Data

To examine the actual outcomes of cases at each stage of the process, e.g., warranting, bail setting, etc.-- I analyzed the Felony Firearm data collected by Loftin and Heumann. These data were chosen because it allowed direct comparison between the expectations about case outcomes that were gleaned from prosecutor interviews and actual case outcomes. It is also a large dataset, consisting of information gathered from prosecutor files on eleven categories of warranted felonies at the Recorder's Court from 1975-1978.⁷ As such, they represent a universe of the cases accepted for prosecution in the selected categories. For the purposes of this research, only felony assaults for the years 1977-1978 were analyzed. Assaults were chosen because they would yield the largest proportion of non-stranger cases. Because of the size of the dataset, it was decided to focus on two years rather than on the entire dataset. This yielded 1,319 cases for analysis.

⁷For a description of the data, see Colin Loftin, Milton Heumann, and David McDowall, "Mandatory Sentencing and Firearms Violence: Evaluating an Alternative to Gun Control," Law and Society Review 17 (1983) 2: 289.



The fact that the data consist of all felony assault cases is a major advantage to the data. Since the data consist of the universe of those cases, it is not subject to concerns about the representativeness of the data. Another major advantage is that the data were collected from a reliable source. Both PROMIS (Prosecutor Management and Information System) and the prosecutor's files were used to obtain case information. File information was also supplemented with information from court records when necessary.⁸

However, there are drawbacks to the data. The first, and perhaps most obvious, is that it consists only of cases which were accepted for prosecution, and only felonies are included. Given the existing research on wife battering, serious biases would result. One would expect that a large proportion of wife assault and other kinds of non-stranger cases would be refused by the prosecutor. Furthermore, there is evidence to indicate that many non-stranger cases will be warranted as misdemeanors.⁹ This dataset would not allow examination of those cases.

⁸See Milton Heumann and Colin Loftin, "Mandatory Sentencing and the Abolition of Plea Bargaining: The Michigan Felony Firearm Statute," Law and Society Review 13 (Winter, 1979): 399.

⁹Colorado Advisory Committee, The Silent Victims: Denver's Battered Women (Washington, D.C.: U.S. Commission on Civil Rights, August 1977), pp.13-14.

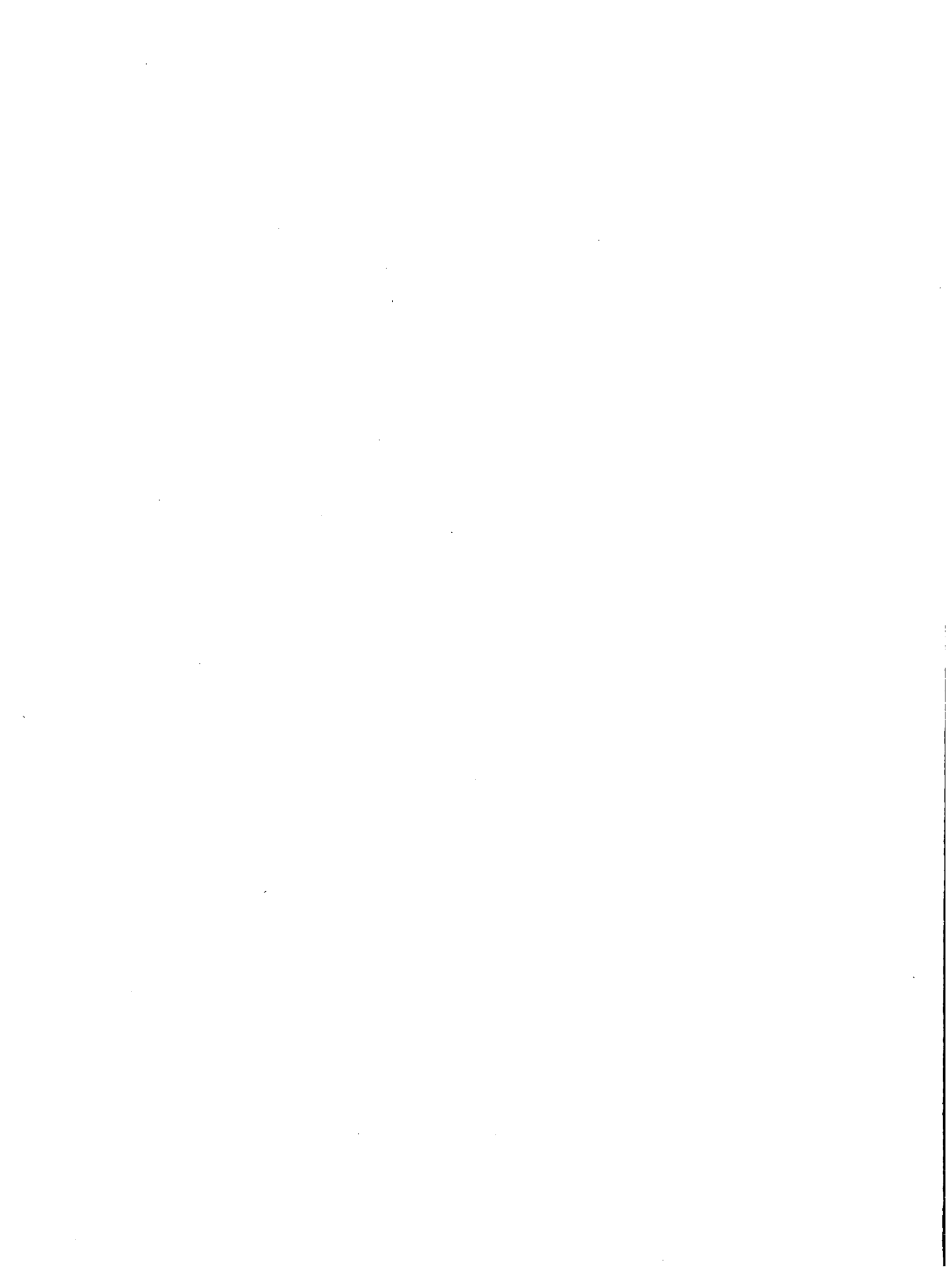
The highly selective nature of the data is problematic for the examination of non-stranger cases. The research on wife abuse suggests that only a small portion of all violent incidents are reported to the police. Of these, only a small percentage result in arrest and are prosecuted. Those cases which are prosecuted are commonly processed as misdemeanors. A survey of women in Kentucky found that only 43% of those women who had experienced violence in the year prior to the survey reported it to anyone. Only 9% of those who told anyone about the violence reported it to the police.¹⁰ Likewise, a study of battered women in Denver, Colorado reported that only 4% of all police calls to domestic disturbances resulted in any action being taken against the assailant.¹¹ The study reported that of the 46 arrests in the first six months of 1976, only one was prosecuted as a felony.¹²

Given the progressively high attrition rates, we would expect that wife abuse cases which are accepted as felonies are much more serious than the average wife abuse case. If these cases then exhibit different patterns of

¹⁰Mark A. Schulman, A Survey of Spousal Violence Against Women in Kentucky (Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, July 1979), p. 1.

¹¹Colorado Advisory Committee, The Silent Victims, p.14.

¹²Ibid. See also, New Jersey Advisory Committee, Battered Women in New Jersey (Washington, D.C.: U.S. Commission on Civil Rights, January 1981).



treatment than stranger cases, we would expect the difference to be more evident if we could examine a larger universe of cases. These cautionary notes are, I think, applicable not only to wife abuse cases, but to non-stranger cases generally. If it is true that cases with a close relationship between complainant and defendant share the problems of wife abuse cases, and I think it is, then a sample consisting of felony cases would underestimate the problems these cases encounter in court. These cases would be the most serious cases, and therefore, would also represent a set of cases where prosecutors would be most sympathetic to treating the case seriously.

Second, there are problems with a lack of information in this data. Victim's age, for instance, is not included in the data. Other variables that might be useful -- strength of evidence and location of the incident--are also not included.

Victim Interviews

To complete the information about non-stranger cases, I also interviewed 54 assault victims at the Recorder's Court. Respondents included complainants who received warrants at both the misdemeanor and the felony level. However, all but one of the respondents received a warrant. In this case, the complainant decided not to prosecute. Fifty-one of the interviews took place at warranting; three were conducted at the misdemeanor court

while the complainants were waiting for their cases to be called for trial. The interviews consisted of a set of questions about the complainant and about the incident, as well as a set of open-ended questions about their expectations for the outcomes of their cases. These interviews ranged in length from 10 minutes to one hour. The average time was 15 minutes.

The selection of respondents for interviews was far from random. Each precinct in Detroit has a precinct officer assigned to the Recorder's Court. These officers were responsible for transporting the police report for each case to the court. They were also responsible for making sure the complainants got to the court. This system made it virtually impossible to randomly select cases. Since the officers brought the warrant requests with them, there was no centralized place to find out what kinds of cases were being processed on any given day. In order to find out which respondents were eligible for this study, it was necessary to enlist the help of the precinct officer, since only they knew what kinds of cases were brought down.

It was also important to enlist the cooperation of the precinct officers because they were the ones who presented the cases to the prosecutors. If an interview with the complainant was needed, the precinct officer would call the complainant into the prosecutor's office for the interview. If the precinct officer did not know



where the complainant was, it was not only inconvenient; it could result in the dismissal of the case. For that reason, I always checked with the precinct officers to make sure that interviewing a complainant would not present a problem.

This system introduces some selection bias into the sample of victims. The first type of bias is a result of the dependence on the precinct officers to identify respondents. Although all attempts were made to inform the officers about my research, this did not result in universally high levels of cooperation. Some officers were more helpful than others in identifying respondents.

Another problem had to do with getting the officers to identify the right kinds of respondents. Because I was interested in "non-stranger" cases, officers believed that I was interested in woman-battering cases. Although this was true, I needed interviews with complainants in other kinds of assault cases as well. I eventually did obtain interviews from different kinds of assault victims, but it took some time to overcome the initial concepts about the kinds of respondents I wanted to interview. This means that my sample of complainants is likely to contain a higher number of cases which are perceived as "less serious" by court personnel.

Although these biases limit the representativeness of my sample, the interviews represent a fairly broad range of complainants. Ten of the respondents in my sample did

not know their assailants; twenty of the respondents were male. Thus, the responses represent a variety of victim characteristics and should be suggestive of some trends.

Finally, the responses themselves are relatively free of outside influence. All the interviews were conducted before the complainant saw a prosecutor.¹³ Thus, their expectations were not affected by anything that prosecutors said to them. Complainants were also interviewed at a point where they were relatively free from intimidation from their assailants. Because the complainants were brought down fairly quickly after the incident had occurred, they had generally been separated from the defendant for that period.

Overview of the Research Design and Some Comments

Despite these drawbacks to the data, there are some considerable advantages. Because they come from different sources, the data allow a multi-faceted approach to the problem. The fact that the data were all collected at the Recorder's Court also allows us to construct a coherent picture of the handling of non-stranger cases and the extent to which the treatment accorded these cases comports with the victim's desires.

¹³This meant that the interview was conducted in two parts. The first part was conducted before the prosecutor spoke to the complainant. After the victim saw the prosecutor, a short set of questions was asked about their encounter with the prosecutor.



The ability to supplement the Felony Firearm data with the prosecutor interviews also allows us to exploit the strengths of both kinds of data. The qualitative data gathered from the interviews allows us to construct a set of hypotheses about case outcomes which are based on the insights of prosecutors themselves. The quantitative Felony Firearm data allow us to test the truth of these hypotheses, and by extension, the validity of the prosecutors' insights. The combination of these three approaches therefore provides a rich resource for understanding and analyzing the problem of non-stranger cases.

CHAPTER 3

PROBLEMS OF RECONSTRUCTION: PROSECUTORS' PERCEPTIONS OF THE NON-STRANGER CASE

The victim of domestic violence...may file a criminal complaint with the district attorney....As with other courses of action open to battered women, what sounds like a routine procedure is really a can of worms. The first difficulty is persuading the prosecutor that the case is worth pursuing. Again, resistance is often encountered. With the crime rate rising steadily all over the nation, district attorneys' offices are without exception overloaded with work. Therefore, though the complainant's purpose in filing the complaint is to bring the assailant to justice, the prosecutor's main concern may be to clear away all cases in which a conviction is not guaranteed.¹

The best source of information and research about the criminal courts and non-stranger crime is the large body of research produced on battered women. The criminal courts have been sharply criticized by researchers for their handling of cases involving battered women. They charge that prosecutors are often reluctant to issue a warrant in these cases, despite laws that make wife abuse a crime. This reluctance is the product of the prosecutor's ambivalence towards the necessity or appropriateness of criminal action in these cases. Because prosecuting attorneys tend to divert wife assault

¹Del Martin, Battered Wives (New York: Pocket Books, 1976), p.110.

cases to mediation agencies, or require that the case meet high standards of proof before they will issue a warrant, their actions have been characterized as insensitive and dangerous, a reflection of the blatant sexism of the laws and the criminal justice system.

Underlying the criticism of prosecuting attorneys is the recognition that they have a great deal of discretion in the criminal justice process. The accusations against them are based on the assumption that these discretionary powers are misused. According to the research on battered women, the prosecutor's discretion is used to ignore a significant problem. After all, the argument goes, if a perfect stranger walked up to someone on the street and hit that person, there would be no question that the assailant would be arrested and put in jail. Why shouldn't this be the case with assaultive husbands?²

But are wife abuse cases really the same as cases involving strangers? One might well argue that cases involving assaults between strangers are generally perceived as more serious than those between people who know each other. Thus, a more appropriate comparison would be between wife abuse cases and cases involving non-strangers. If wife abuse cases were treated differently from other cases involving close relationships between the parties, then the charge of sexism would be made more convincingly. This chapter and the next will deal with

²See Martin, Battered Wives, p.88.

the way that prosecutors perceive non-stranger and stranger cases, and how these perceptions are reflected in the actual ways that these cases are resolved in a criminal court.

Prosecutor Discretion in the Criminal Courts

Although prosecutors have been portrayed as possessing vast amounts of discretion, seemingly able to do almost anything they want to, this image is a bit exaggerated.³ To paraphrase an old cliché, nothing occurs in a vacuum. Although prosecutors have a great deal of discretion, they operate under certain organizational constraints. For example, their decisions are often subject to the scrutiny of other prosecutors, and decisions made by one prosecutor may be changed by other prosecutors. The demands of working with other actors in the court-- for example, judges and defense attorneys-- also impose certain constraints on what a prosecutor may do. The prosecutor must operate within the bounds of prosecutorial policy. This policy affects decisions in two ways. In the first, the prosecutor must take into consideration the general goal of the office.

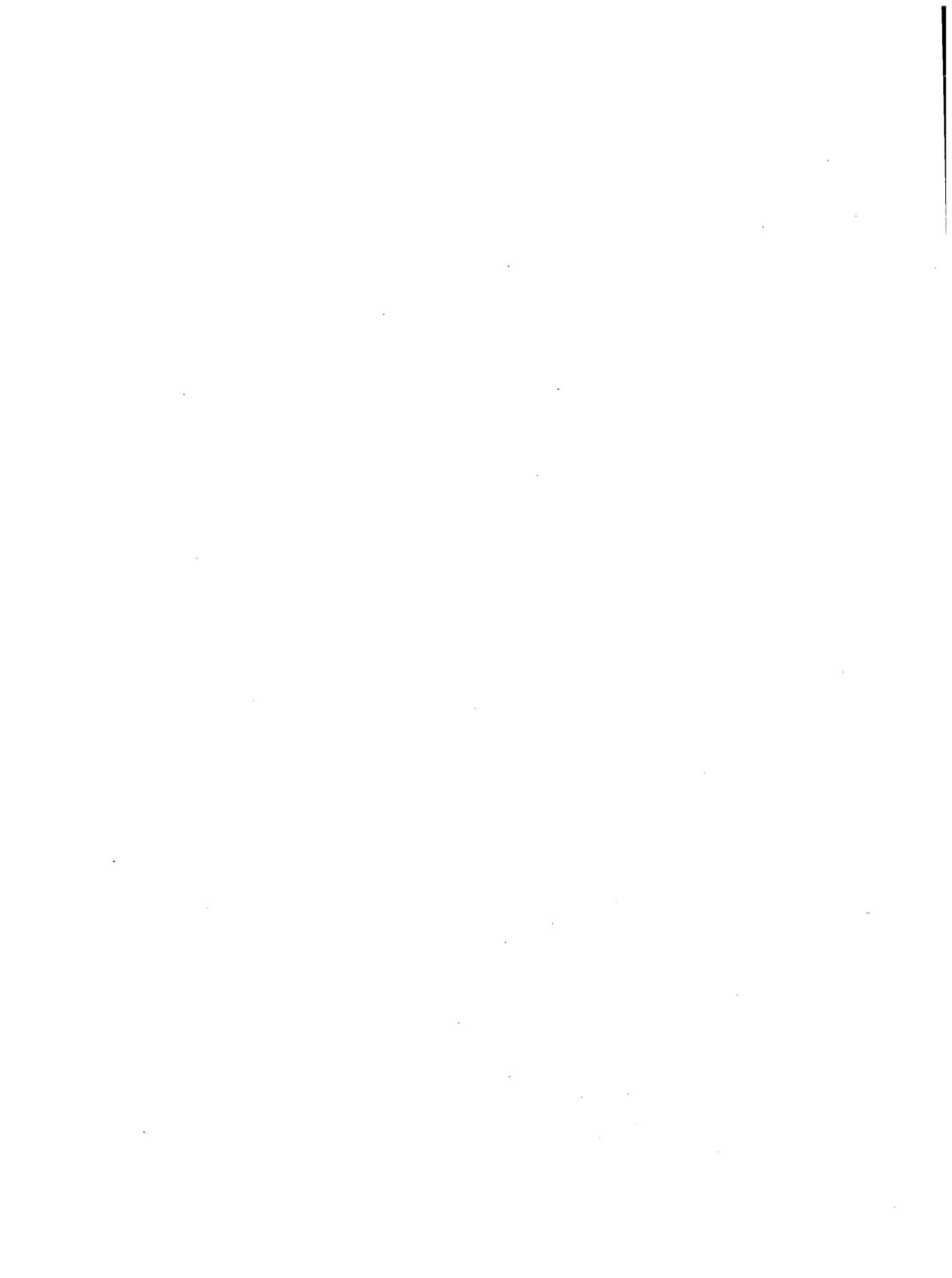
³For descriptions of the power of the prosecutor, see Kenneth Culp Davis, Discretionary Justice: A Preliminary Inquiry (Urbana, Ill.: University of Illinois Press, 1979), pp.188-217 and passim.; Wayne LaFave, "The Prosecutor's Discretion in the United States," American Journal of Comparative Law 18, no.3 (1970): 532-578; Frank W. Miller, Prosecution: The Decision to Charge a Suspect With a Crime (Boston: Little, Brown & Co., 1970).

For example, does the prosecutor's office want to send most of their cases to trial? Do they want to settle cases by trying to rehabilitate the defendant? These policy considerations, according to Jacoby, have an important effect on the distribution of resources within a prosecutor's office, and on the kinds of decision-making that will take place within the prosecutor's office.⁴

The second way that policy will affect prosecutor's decision-making has to do with the nature of the case itself. As Mohr and others point out, although the majority of cases that enter a court system will be disposed of in a manner that demands that the parties involved strike a "bargain," this "routine" method of case disposition will be abandoned when the case involved is notorious. Thus, cases that command a lot of public attention will generally be handled in ways that will deviate from the normal procedures of the criminal court.⁵ These constraints of working relationships, policy goals, and the character of the case, are subordinate to the constraints imposed by a system that

⁴Joan E. Jacoby, The Prosecutor's Charging Decision (Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, 1976).

⁵Lawrence B. Mohr, "Organizations, Decisions, and the Courts," Law and Society Review 10 (Summer, 1976): 621-672. See also George F. Cole, "The Decision to Prosecute," Law and Society Review 7 (February, 1970): 313-373; James Eisenstein and Herbert Jacob, Felony Justice: An Organizational Analysis of Criminal Courts (Boston: Little, Brown & Co., 1977), pp.19-67.

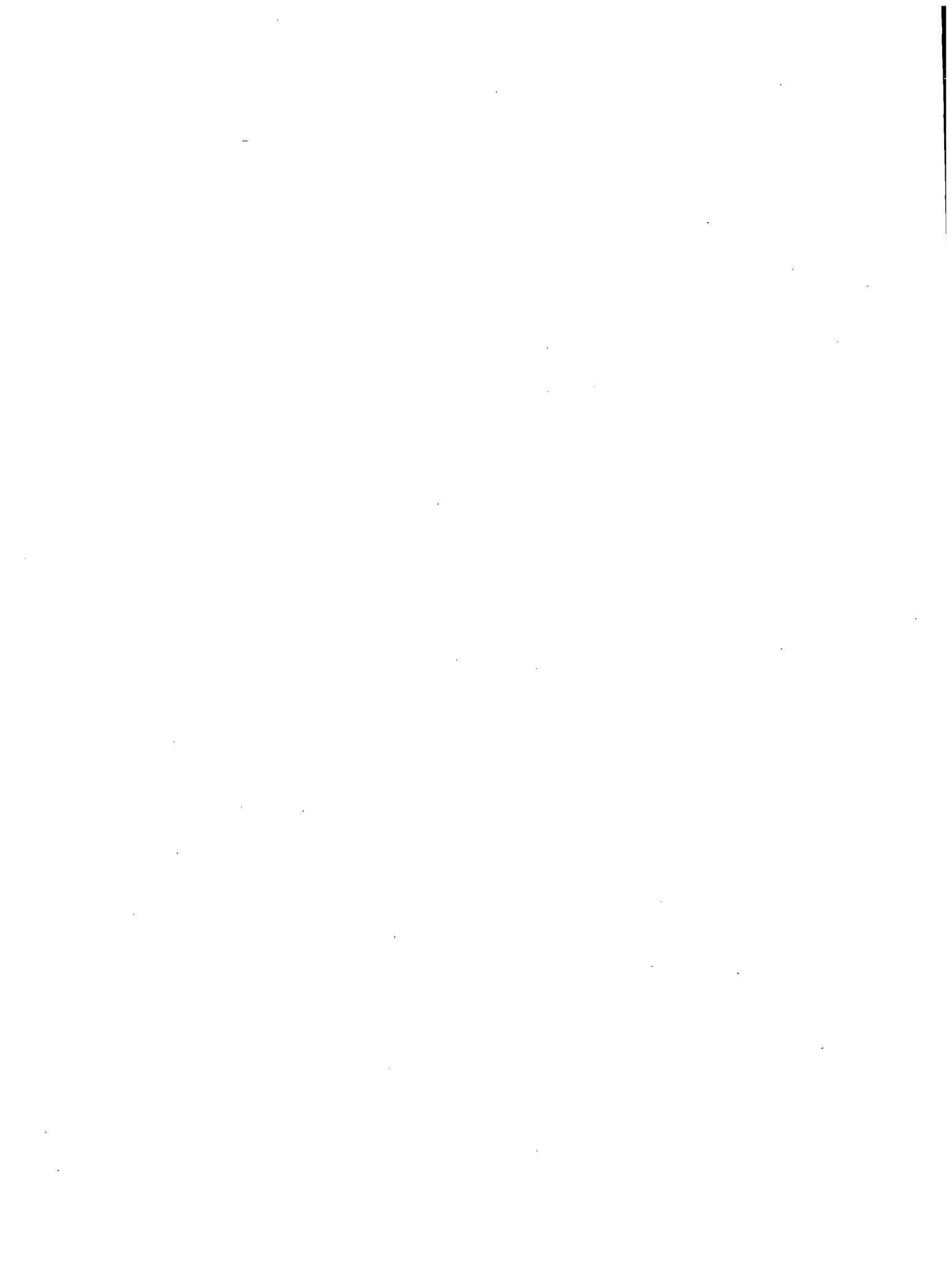


has as its ultimate goal the quick and certain conviction of defendants.

It is generally accepted that the old image of the criminal court as a place where cases are resolved by trial is a fiction that lives only on old episodes of television shows like "Perry Mason." The "classical" notion of the criminal justice system, emphasizing the give and take of two adversary parties, was modeled on the lines of a battle. In the clash between the defense and the prosecution, truth and innocence were determined. The image of the system that has replaced this dramatic confrontational style is that of "assembly-line justice." In this model of the criminal justice system, the purpose of the system is not the determination of the guilt or innocence of the defendant, but is instead the quick and certain conviction of the defendant. Given this goal, "assembly-line justice" is characterized by the screening of cases on the basis of the probability that they will result in a conviction at trial, and the use of plea bargaining.⁶

Perhaps the most controversial aspect of modern criminal justice is the use of plea bargaining. Its use has been justified by the huge caseloads that often face metropolitan courts. Without plea bargaining, it is

⁶Herbert L. Packer, "Two Models of the Criminal Process," in George F. Cole, ed., Criminal Justice: Law and Politics, 4th ed. (Monterey, Ca.: Brooks/Cole Publishing Co., 1984), pp.15-29.



argued, the courts would be tied up in hopeless delays that would result in a general chaos. More recent research on plea bargaining has questioned this argument. Rather than an environmental explanation, it has been suggested that there are compelling organizational factors that encourage the use of plea bargaining in criminal courts. Perhaps the most interesting of these factors is one that is a variant of the caseload argument. That is, plea bargaining is used by prosecutors because they know that the defendant is guilty. Rather than use precious court resources in a trial that will only confirm what is a foregone conclusion, they are willing to offer the defendant a chance to "plead." If the defendant pleads, the prosecutor secures a conviction. Besides having gotten a conviction, the prosecutor believes that nothing has been lost, and indeed, that something has been gained. They believe that the charge offered, whether reduced or not, and the corresponding sentence recommendation, are not different from the result of a trial. The prosecutor has therefore convicted the defendant without using the time and resources of a trial, and that conviction even seems to correspond to some notion of fairness-- i.e.: it is not significantly different from the outcome of the ideal process of a jury trial. The defendant also believes that he has gained something from the plea bargain. By admitting guilt, the defendant believes that

he or she will receive a more lenient sentence than at a trial.⁷

The normative implications of the use of plea bargaining are numerous and hotly debated, but they are not of interest here. What is of interest is the nature of the administration of criminal justice that is reflected in the use of plea bargaining. According to Heumann and others, plea bargaining is an organizational response to a caseload that consists largely of "dead-bang" cases, i.e., cases where the defendant is certainly guilty.⁸ Thus, the goal of the criminal justice system lies not in determining the defendant's guilt in these cases, but lies instead in trying to convict the defendant with as little trouble as possible. Since most of the caseload of the criminal courts looks like this to prosecutors, the processing of the cases becomes fairly routine. In a system that places a high priority on getting as many cases processed as it can, and as many convictions as it can, the use of plea bargaining becomes a necessary and even a desirable practice.

Besides increasing the number of convictions, plea bargaining also reduces the amount of uncertainty inherent

⁷This discussion of plea bargaining draws heavily from Milton Heumann, Plea Bargaining: The Experiences of Prosecutors, Judges, and Defense Attorneys (Chicago: University of Chicago Press, 1978).

⁸Heumann, Plea Bargaining, pp.100-103; Lynn M. Mather, Plea Bargaining or Trial? The Process of Criminal Case Disposition (Lexington, Mass.: Lexington Books, D.C. Heath and Co., 1979).

in the process of conviction. Plea bargaining is used to get a conviction in "dead-bang" cases because it eliminates the uncertainty of a trial. Prosecutors are never quite certain how a trial will turn out, and avoiding the possibility that a jury will not see the facts in quite the same way as the prosecutor does is an incentive for the prosecutor to bargain.' This desire for certainty is not wholly one-sided. The defendant often admits his guilt because he knows he is guilty. The prosecutor's offer to plea bargain assures him what his sentence will be, and he believes that the sentence offered is a better deal than he would get if he were convicted at trial.

Thus, the use of plea bargaining is not only a way of husbanding resources and increasing the number of convictions, it is also a reflection of a desire for certainty on the part of the actors in the process. Plea bargaining reflects the concern that the criminal courts have for increasing the probability of conviction, and by extension, a preference for cases that present a high probability of conviction. Thus, prosecutors operate in the system with these goals in mind. This is not unimportant, for there are powerful organizational forces to make sure that the prosecutor does not lose sight of these goals.

'Heumann, Plea Bargaining, pp.110-117.



Central to the process of plea bargaining is the construction of a "bad act" into a crime. Although it seems straightforward enough, the process of deciding whether or not an incident is in fact a crime is really quite complex. Rather than simply "matching up" facts with statutes, prosecutors are faced with the problem of trying to decide what the relevant facts are, and how they might appropriately fit a particular statute to them. Littrell argues that in this sense, the prosecutor is faced with the problem that all historians face.¹⁰ That is, the prosecutor must make a decision about an incident that he experiences vicariously. He only knows about an incident because someone has told him about it, and he is dependent on the narrative of the victim and any physical evidence that may exist to determine what has happened. Based upon his reconstruction of the event, he must then decide what will happen to the case. Because of the organizational demand for certainty, he needs to decide how convincing the evidence is that things happened the way the complainant says they did. Thus, he must sort through the available information about the event and decide what happened. Based on his reconstruction, he will decide if this reconstructed incident is in fact a crime, how serious the crime is, which statute applies to it, and issue or deny a warrant.

¹⁰W. Boyd Littrell, Bureaucratic Justice: Police, Prosecutors, and Plea Bargaining (Beverly Hills, Ca.: Sage Publishing Co., 1979), pp.29-57.



Therefore, in the routine case, prosecutors must examine the evidence to decide if a crime has occurred, and then evaluate it in terms of the certainty of the defendant's guilt and the likelihood of conviction. Given the demands of the process, the threshold for acceptance of these cases must be fairly high. It is because of the emphasis of the criminal court on certainty-- certainty both of the defendant's guilt and of a subsequent conviction-- that the non-stranger case becomes a problem. There are a number of reasons that prosecutors look at these cases with a certain hesitation. We turn now to a consideration of these reasons.

Prosecutor Perceptions: The Problems of the Non-Stranger Case

The first set of problems encountered in a non-stranger case have to do with the guilt of the defendant. A common theme in the literature is that the criminal justice system assumes that the defendant is guilty.¹¹ In the case of non-stranger crime, however, a number of factors make the defendant's guilt questionable.

The first problem that the prosecutor encounters with the non-stranger crime has to do with the reconstruction of the event.

R: The cases tend to get messy in that the sense you now have [sic]--it's difficult to focus on 12:35 p.m. on a given date. (R imitates

¹¹Heumann, Plea Bargaining, passim.; Littrell, Bureaucratic Justice, pp.147-149.

complainant) "Well, he did this to me the day before, and this happened then," and so on, and so forth, and the cases just do not, are not, as neat as a robbery. "I was at such-and-such a place when a man, who I describe as so-and-so, comes up and holds a gun on me, and then I-- and I now tell you that this is the man." [10, warrant]

The incident that is described to the prosecutor differs from the straightforward account of an armed robbery or a shoplifting. Whereas the former incidents present a discrete incident, clearly defined by time and place, the time and place of a non-stranger crime is generally amorphous and consists of a long time frame and several different places. Thus, prosecutors often complain about trying to find out what happened-- the "event" is often a long series of events culminating in an assault or some other climactic event. Because the events that make up the crime are often complex, there is confusion about which event happened when, and who did what. Uppermost in the prosecutor's mind is the question of whether the incident was in some way provoked by the complainant. Thus, the prosecutor is not quite certain that the defendant is really guilty.

R: I told you about dealing with people, and you know, we're dealing with people problems. And it's criminal stuff, but it's still, it's people problems. And with problems between people that know each other, you've got so many things happening that, I guess different mechanisms go into operation 'cause you gotta think about: who knows who is bothering whom? What's really behind this story that brought these people to this court system? You get more sensitive to it than you would with a crime between strangers, which is deeply offensive to me. (Dramatically) How dare you prey upon someone you don't even know? I am-- like

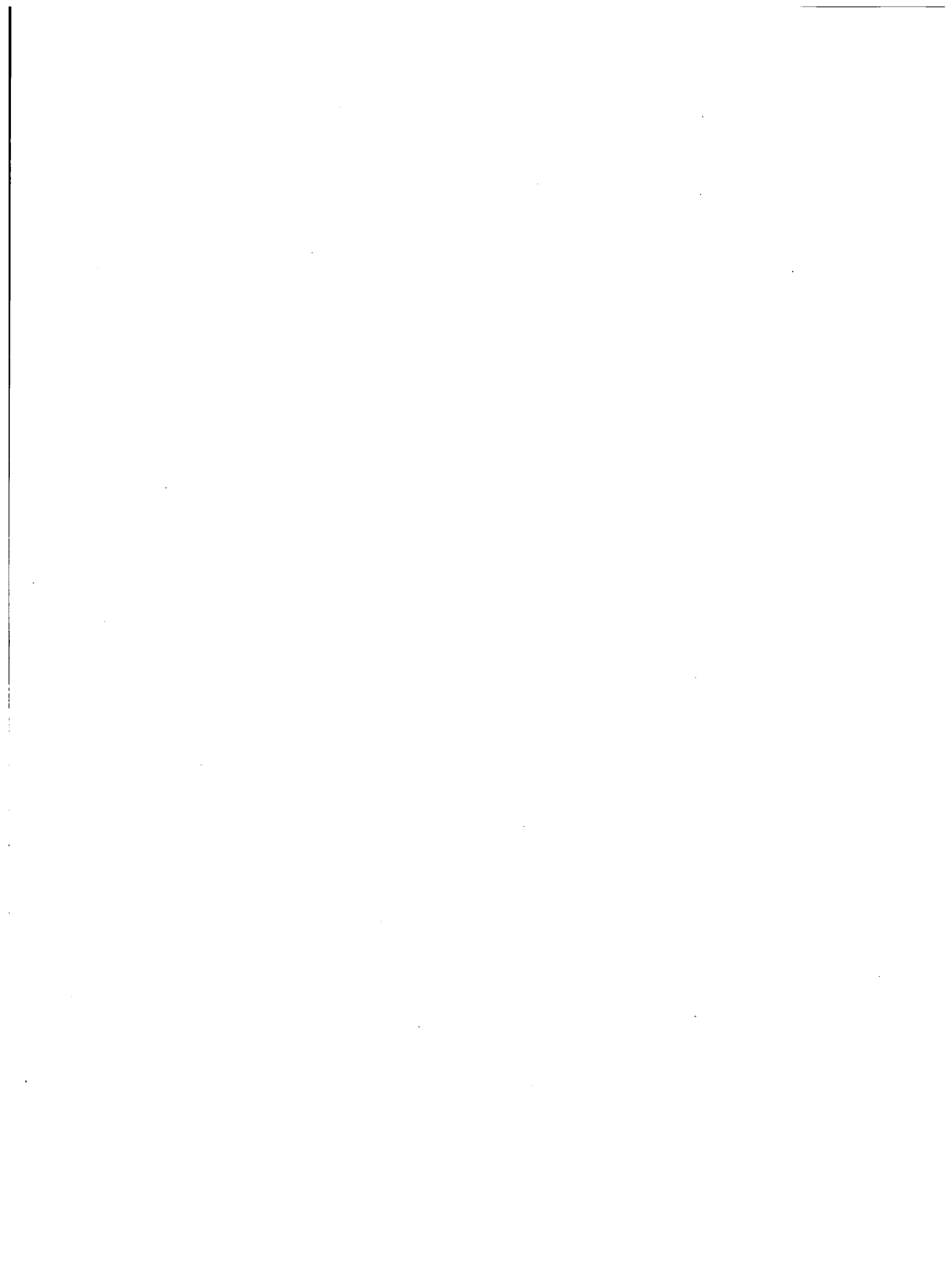
the man who was shot by his son-- Who knows what that father was really doing to his son? [9]

The question of provocation or blame is probably the most damaging quality of the non-stranger case. In a system that operates on the likelihood that the defendant is guilty, the non-stranger crime provides a wealth of uncertainty about that issue. Not only is the sequence of events often confused, but there may be a lack of physical evidence to provide some independent confirmation of the victim's story. Because of the complexities of the event, and the relationship between the two parties, the credibility of the victim is more important to establishing that a crime has occurred. At the same time, that credibility is more difficult for the victim to establish in a non-stranger crime.

R: You know, after you deal with trials and all these things, one of the main arguments on behalf of determining the credibility of any witness is, do they have an interest in the outcome of the case? And if you have a person who just happens to be a storekeeper who is robbed, he ordinarily doesn't have an interest to "get" this particular person outside of having been victimized. But when you have a closer relationship, there are many other possible explanations and reasons for a person wanting to try to do something, "get" ex-boyfriend or ex-girlfriend. Are they trying to get back at each other? You get husband/wife, in the process of divorce, or after divorce, trying to get back at each other personally.

Q: So you're saying then, that it's a credibility issue?

R: It's always a built-in credibility issue, just because there are other reasons for a person other than to be telling the truth [sic] that they have to motivate their being there and calling up, and claiming the charges, that something happened. [13]



It is this question of credibility that makes the problem of non-stranger crime a difficult matter for prosecutors. In my interviews, it was a theme that was continually referred to and discussed. As one of the respondents put it:

R: The first question you wanna ask is, what are the issues involved in a criminal case? There are two issues, really. The first is where the defendant is accused of a crime and he can say, "I didn't do it." The second is where] the defendant is accused of a crime and he says, "Sure, I did it. But it wasn't a crime."....In the second case, you have the defendant admitting that he did the thing, but that it's not criminal. [He'll say something like,] "Well, it wasn't rape, 'cause she consented." "It wasn't murder two; I was defending myself against an attack, so it's really justifiable homicide." Or they might say something like, "I know this person, and she's lying. She has a reason to lie. It wasn't really an armed robbery; I didn't have a gun. She owed me some money and she didn't want to pay me back." When you're getting a crime with a prior relationship, you're generally eliminating the big category of [cases where] identification [is the issue]. But the obvious question is then [one of] the interpretation of what happened. That rests on the credibility of the defendant and the victim. With strangers, you get the victim's side. They [the defendant and the victim] don't argue about what happened. When you get two people who know each other, you get a whole different focus. [18]

Non-stranger crime thus raises a question about the reconstruction of the crime. Did things happen the way the victim says they did?

Lest this seem like a trivial question, consider that the prosecutor must reconstruct the incident in order to decide if a crime has occurred. Small changes in the order of the actions that make up the incident could make a crucial difference not only in the seriousness of the

crime charged, but in the belief that a crime has occurred at all.

It is not only ambiguity about what actually happened that makes the prosecutor's task difficult. Like rape, non-stranger crime is often a crime that greatly depends on the context of the incident to make it criminal.¹² This is especially true in cases where the victim is not seriously injured. Because of the acceptance of violence in our society, violence between non-strangers is often not perceived as necessarily criminal. Prosecutors would describe these cases with humor or disgust:

R: I had this one girl-- I had her in here about six times. And I talked to her best friend and her best friend said, "you know, we're good friends, and I love her dearly, but boy, does she ask for it.".....

It's hard to put these [non-stranger assaults] in a category. Maybe there's a lot more depth to it. If you had the time....But with the pace (R shrugs)-- All you've got is the police report to go by. And it's not always a one-way street. Some of these things are a two-way street. Some of these women really lay into these guys, and you think, you can't blame the guy-- I'd hit her, too. [16]

These comments reflect the general idea that violence between non-strangers can be understood, or even justified, by the circumstances that produced it. The stress of child-raising, unemployment, or a nagging spouse could be mitigating factors when considering the

¹²I am indebted for this insight to Marilyn E. Walsh and Donna D. Schram, "The Victim of White-Collar Crime: Accuser or Accused?" in White Collar Crime: Theory and Research, ed. Gilbert Geis and Ezra Stotland (Beverly Hills, Ca.: Sage Publications, 1980), pp.32-51.



seriousness of assaultive behavior. The acceptance of a certain amount of violence between family and friends makes the prosecutor's task difficult because he or she must evaluate not just the action, but the circumstances surrounding that action, to decide if the action is criminal or not. Because of the acceptability of certain kinds of violent behavior between friends and family members, the judgment about whether an action is criminal or not rests with an evaluation of the kinds of interactions that are familiar to a given family, and whether the behavior exhibited by the defendant is indeed unacceptable within that context. That violent behavior between friends and family members is acceptable is a theme frequently discussed by Straus. He suggests that despite the existence of a strongly held image in our society of the family as a non-violent "haven in a heartless world," that there are strong norms and values that sanction the use of violence against family members. Straus argues that violence against children, for example, often takes a form in families that would be seen as unacceptable and intolerable if committed by someone outside the family. Gelles' research on married couples found that there was an accepted pattern of "normal violence," situations where both partners felt that the violence committed by the other was deserved or necessary.

Therefore, when prosecutors are faced with a case of non-stranger violence, another ambiguity arises because of

the context of the situation. The behavior that the victim is complaining about, at least in less severe cases, can be considered legitimate under certain circumstances. By reflecting society's general acceptance of familial and "friendly" violence, prosecutors are left with trying to determine whether the violence that has occurred is somehow "out of the ordinary." Rather than focusing on the incident, then, they must focus on the context of the incident. This places even more emphasis on the victim's credibility. Without collaborating evidence the victim is faced with convincing others that the violence experienced by him or her was unwarranted and/or excessive-- in short, that it was unprovoked.

There is a factor that will eclipse the ambiguity of events in the non-stranger case. That factor is the seriousness of the injury inflicted on the victim. If the injury is severe enough, then the context of the incident becomes less important. It would be difficult, for example, to justify broken bones by saying that the victim was "nagging" the defendant.

Thus, the initial problem with the non-stranger crime has to do with the problems that surround the reconstruction of the incident. The problems of victim credibility, the situational context, and a lack of physical evidence that confront the prosecutor when he or she is trying to reconstruct the crime cast doubts about the defendant's guilt or innocence.

The second area of uncertainty in the non-stranger crime rests with the probable outcome of the case. Most prosecutors strongly believe that the victim in a non-stranger crime is not likely to continue with prosecution. This reluctance to pursue the case is explained by them in a number of ways. One explanation offered by prosecutors is that victims are often reluctant to punish the defendant. Rather than wanting the defendant to be incarcerated for being violent, prosecutors assert that victims' desires are often not clearly defined. Victims will often ask that the defendant be "kept away" from them, or be given counselling, as a means of resolving the problem. Many times, the victims are adamant that the defendant not be incarcerated.

R: I had this woman, the guy came at her with a hatchet, he throws the hatchet, cuts her-- she's holding a baby at the time-- and she [comes in and] says, "All I want is for him to get counselling. Can the judge do that? I don't want to press charges." I said, "No, the judge can't order him to do anything unless--" She says, "Well, I don't want him to go to jail."... I think there's a lot of pressure. Like the families [will say] "Well, you put him in jail." Or the attitude, "Well, he was locked up for a month, you know, maybe this will change him." [17]

Q: But what you're saying is that these cases don't go because the complainant doesn't want to go through with it?

R: The truth of the matter is that I want to prosecute. Quite frankly, they [complainants] don't want to prosecute. I want to prosecute, but I can't tell you how many times I've had a complainant in here who wants to drop [the charges]. I almost have to threaten jail (Q: To the complainant?) Yeah.... And this is not just

women. I had one case, a guy was shot by his girlfriend. He showed me the bullet holes-- all over his back and chest. I mean, this guy looks like a piece of Swiss cheese! But he still takes her out; they still date. And he still likes her! So this idiot still sees her! It's the same with women-- after some of the worst things. You would not believe it. They still see these jerks, they want to drop [cases]--I don't like it; I just don't like it. [18]

R: [M]ost of the time what so many of these people are interested in is just some kind of an assurance that this person will stop what they've done and not do it again, and some kind of guarantee that they are-- safe and that they don't have to put up with it. But when you tell 'em that well, he'll either be put on probation if you go through [with prosecution] and there's a conviction-- that's one hammer you can have over that person,or you tell 'em that they may go to jail. And a lot of times they start going, "Oh-h-h." [They're thinking] are they gonna be worse off because they sent that person to jail? And your other acquaintances are gonna be perturbed. As a result of your actions, that person's in prison. And [the complainant] starts to think, "Well, I really don't want to hurt that person that badly." [13]

For prosecutors, the factors that motivate the victim to prosecute in a non-stranger case are different than in cases involving strangers. In the latter type of case, the prosecutor describes the victim as having less of a personal interest in the case. Prosecutors believe that victims of strangers prosecute because they have a civic duty, or because they want retribution for the damage inflicted on them. Victims of non-stranger crime, by contrast, want to get out of a situation with the least amount of damage done to the offender and to themselves. Prosecutors argue that the existence of a relationship tends to be reflected in a concern that victims often have

for the well-being of the defendant. Even if the victim is not concerned about the defendant, prosecutors are aware of pressures exerted upon the victim by friends and family, whether well-meaning or hostile, that will make the victim more likely to decide that criminal prosecution is not the answer to their problems.

Besides the pressure from family and friends, there is often pressure exerted on the victim by the defendant. Because of the existence of the relationship between the two parties, interaction between them is often difficult to prevent. Prosecutors recognize that even if they take measures to prevent contact between the victim and the defendant, that this is difficult to achieve. Victims in non-stranger cases often live in the same neighborhoods or even in the same household; they also often have acquaintances in common. Besides these factors, the very fact that the victim and the defendant know each other means that they know how to contact each other. The combination of proximity, pressure from family and friends, and even the fact that the victim may still genuinely feel affection for the defendant, means that the defendant and the victim are much more likely to resolve the situation themselves. Thus, prosecutors are often confronted at some point in the process with a victim who has "forgiven" the defendant for the incident, and is willing to let "bygones be bygones."

Prosecutors also believe that the victims of non-stranger crime, besides being concerned about the defendant, are often motivated by anger when they file their cases. Although this does not distinguish them from victims of stranger crimes, the difference between the two types of victims often has to do with the endurance of their anger and the existence of other types of motivation. For prosecutors, the victim of a stranger crime is often so outraged that he will pursue prosecution to "get his pound of flesh." One prosecutor described victims of stranger crimes as "wanting blood." On the other hand, non-strangers may be angry at their attackers, but their anger is likely to subside, especially if the defendant can convince them that he or she is truly sorry. Because of their personal stake in the offense, the non-stranger victim is also not susceptible to the same kinds of appeals that would persuade a reluctant victim of a stranger crime to pursue prosecution. A victim of an attack by a stranger may be reminded of his or her "civic duty," that the defendant is a dangerous criminal. The victim of an acquaintance or a relative knows something about the defendant outside of the violent action. These victims also feel that the crime is a personal incident. The same appeals that would work with the prosecution of a stranger crime are therefore not effective.

Even if the victim does persevere and continue with prosecution, however, prosecutors generally feel that the

non-stranger case is fraught with problems that would make it difficult to obtain a conviction. The very problems that make the non-stranger crime difficult for the prosecutor to reconstruct also make it difficult from the standpoint of a jury trial.

Q: But as a trial attorney now, when you get these cases at the end, and they've gone through [the process]-- someone has observed to me that they do not like to handle these cases when they go to trial. I mean, cases involving husband/wife, neighbors, whatever. They just don't like those cases. What are the problems that you see in doing that kind of case, or do you see those problems?

R: Well, they're one-on-one. You will-- the case is written up and presented from the victim's point of view. You will very often find that there's another side to the story. Nobody bothered to put down [that] yes, the victim got a black eye-- and the husband needed five stitches at the hospital because his face was all scratched up. How do you convince the jury who did what first? The husband's story is, "We got into a fight, she scratched me, and I popped her to keep it from continuing." Her story is, "He hit me and I was defending myself and he got scratched." We have a burden of proof beyond a reasonable doubt. There are no other witnesses. How do you prove beyond a reasonable doubt when these are the facts? [10]

R: In any case where you have a prior relationship, any kind of assault case, even if it's between two men, the jury-- I think they automatically think that both of them are lying. Like, I always hope that I have a neutral witness to tell what's going on. Because everybody, everybody sort of slants things, you know, when you're telling it from your point of view. And there are some people who are very objective. But by and large, I think people really slant it. If there's a prior relationship, the jury--they're wondering, you know? (R imitates skeptical juror) "Well, you know, maybe they're not telling me the whole story." [17]

For the prosecutor, the problems with a non-stranger case at a jury trial mirror the skepticism about the event

that they themselves may feel. Their primary worry is that they have to establish the guilt of the defendant, often with very little to go on besides the testimony of the two parties. Thus, the case often hinges on the credibility and cooperation of the complainant. Even with that cooperation and with a good witness, prosecutors are aware that members of a jury, like society generally, will often regard a non-stranger case with skepticism.¹³

Because of the relationship between the parties, the jury is apt to wonder why the defendant has attacked the victim. They often tend to believe that the complainant is at fault. As one prosecutor put it, "[Juries think,] You pick your friends." [6]

The other problem with the non-stranger crime is that prosecutors must combat the sympathy that the jury may feel for the defendant. This is especially the case if the defendant has not seriously injured the complainant and has no criminal record. Here, the tendency is for the jury to try to be fair, and they will acquit the defendant even if the evidence of guilt is very strong.

This consideration of the likely outcome of a jury trial, on its face, seems puzzling. The vast majority of criminal cases do not get resolved at trial, and are

¹³This belief is not unfounded. Kalven and Zeisel report in their research on jury deliberations that crimes involving prior relationships were more likely to be cases where juries are more lenient than judges. Harry Kalven, Jr. and Hans Zeisel, The American Jury (Chicago: University of Chicago Press, 1966), pp. 242-285.

generally resolved by plea bargain. But the possibility of the jury trial shapes much of the decision making in criminal courts, especially when evaluating case strength for plea bargaining.

Indeed, it is the low likelihood of obtaining a conviction in a non-stranger case that leads to another major problem with resolving these cases within the court. Because of the lesser seriousness of non-stranger cases, as well as the problems with juries, there is a fairly strong incentive for the prosecutor to plea bargain these cases out of the system. However, because of the low likelihood of conviction at a jury trial, as well as the high probability that the complainant will drop the charges, the defendant is not likely to plead. This situation was somewhat frustrating to the docket attorneys at the court. Because of policies forbidding the plea bargaining of cases involving the Michigan Felony Firearm Statute, felonious assault cases involving guns could not be plea bargained effectively.¹⁴ Even in cases that don't involve firearms, however, docket attorneys argued that the defendant still had very little incentive to plead.

R: OK, if I get a case like that, [where] I'll see that they're acquainted, and, for instance, in a felonious assault case, if it's boyfriend/girlfriend, I think the judges-- and this depends on the injuries, too--....If it's a felonious

¹⁴For a discussion of the prosecutor's policy on the Michigan Felony Firearm Law, see Milton Heumann and Colin Loftin, "Mandatory Sentencing and the Abolition of Plea Bargaining: The Michigan Felony Firearm Statute," Law and Society Review 13 (Winter, 1979): 393-398.

assault that means that somebody assaulted somebody with a dangerous weapon. So, it means they pulled a knife on 'em, or they pointed a gun at the person. Well, nobody was hurt, and I think there's a tendency for the judges here... to say, well, we'll give that person probation anyway. I look at that case-- as you know, 90 percent of those aren't going to go to trial. And so I would say, in that particular casse, I'll offer attempt felonious assault to try to induce a plea. Because if I can get the defendant to plead, he'll be placed on probation and if he goofs up somehow, then the judge can send him to jail.... So I use that, I plea bargain that, you know, with that reasoning. [But] you know 90 percent of the time that the defendant is not going to take that because-- not going to take the lesser plea--because he was angry about it at the time he pulled the gun out, and he's still angry about it. Now, he's angry that the girlfriend is trying to prosecute him. He's probably had a conversation with the girlfriend and made the overture where he said, "Hey, I'm sorry." And she said-- she probably said something like, "Well, I'll think it over." So he's not that anxious to plead guilty to something that's maybe gonna send him to jail or put himself on probation. He's more likely to say, "Well, I'll wait and try again and maybe I'll be able to convince her not to prosecute." [11]

This prosecutor went on to say that this strategy on the part of the defendant was less likely when the injuries were serious, although it might still be a possibility even in more serious cases. Even in cases involving very serious injuries, a complainant might still reconcile with the defendant.

Conclusion

The complicated emotional nature of the non-stranger crime thus creates problems. Instead of presenting a neat package of evidence and witnesses, the non-stranger crime is messy. Possibilities that the complainant is confusing

the story or even making it up, that the complainant will change his or her mind and drop prosecution, and the low likelihood of conviction, make these cases difficult for the prosecutor to handle. These problems all flow out of the uncertainties contained in the non-stranger case.

These uncertainties about non-stranger cases also point up the lack of control that the prosecutor has over these cases. According to prosecutors, the non-stranger case is more likely to be dependent on the testimony of a single witness-- the victim. The factors in this situation that would strengthen the case-- victim cooperation and credibility-- are really not within the prosecutor's control. The emotional ties between the victim and the defendant cannot be dictated by the prosecutor. If the complainant decides that the defendant is really sorry for what he or she has done and the complainant decides that prosecution is unnecessary, there is very little the prosecutor can do about that. Burdening an already difficult case with a reluctant witness, who might change elements of the testimony to make it easier for the defendant, is not a pleasant alternative.

Thus, the problems that non-stranger cases present make them difficult to handle. Faced with the emotional nature of these cases, the high probability that they will "drop out" of the system, and the difficulties they pose for disposition by plea bargaining, what does happen to

these cases? A more fundamental question has to do with the image of the non-stranger case that is presented by prosecutors. Is it really true that these cases are dismissed at a higher rate than cases involving strangers? Is it true that defendants in these cases are less likely to take a plea bargain? In the next chapter, we will examine some data from the Recorder's Court to determine the characteristics of non-stranger crimes and how they are resolved.

CHAPTER 4

NON-STRANGER CASES IN THE CRIMINAL COURT: EFFECTS OF THE "RASHOMON SYNDROME"

Defendant to judge: Sure I shot him! So what is that? A crime?

----a caption from a cartoon in the New Yorker

According to prosecutors, the fact that a relationship exists between the victim and the defendant means that the central issue of the case is one of intent, rather than identity. Instead of being based upon an issue of hard fact, the non-stranger case rests heavily on interpretation and context. Whereas in a comparable stranger case, the prosecutor knows that whoever has committed the crime is guilty, the opposite problem presents itself in the non-stranger case. The prosecutor generally is certain that the defendant has committed the act, but he or she is uncertain about whether the circumstances that surround the act actually make that incident a crime. Thus, the prosecutor's attitude towards the guilt of the defendant in the non-stranger crime is similar to that of the defendant in the cartoon. It is not clear that the act committed is a crime, since the criminality of the act rests at least in part on its context.

Thus, the non-stranger crime provides a different pattern from that encountered in most criminal justice research. In that research, prosecutors generally act out of the certainty that the defendant is guilty. The non-stranger case presents the prosecutor with uncertainty about the defendant's guilt. The complainant may be using the criminal courts to "get back" at the defendant for some slight, or there may be extenuating circumstances that would justify the defendant's behavior.

Besides feeling uncertain about the defendant's guilt, prosecutors are also uncertain about the determination of the complainant in a non-stranger case to prosecute. Because a relationship exists between the parties, there are emotional factors that may affect the complainant's willingness to cooperate as the case continues. It is likely that the complainant will "cool down" as time passes. The acquaintance between the two parties may lead to reconciliation. The contact between the complainant and the defendant may also lead to a less happy conclusion. The defendant may threaten the complainant with retaliation if the complainant continues with prosecution.

The uncertainties surrounding the non-stranger case are not without importance. Criminal courts work to reduce uncertainty. Blumberg, for example, describes the

court process as a progressive "filter."¹ With each succeeding stage of the process, cases are evaluated for their strength (i.e.: the likelihood that the defendant is guilty, and that the evidence will support that conclusion). Cases that are weak are "weeded out" of the process through dismissal. Heumann identifies one of the factors that encourages plea bargaining practices in courts as the prosecutor's belief that the plea bargain offers a more certain means of conviction than a trial.² This drive to reduce uncertainty is a byproduct of the organizational constraints on the courts and the people who work within them.

In this type of environment, the non-stranger case would pose a problem. We would expect the presence of a relationship between the complainant and the defendant to have an effect on the outcome of these cases because of the uncertainties that are inherent in these cases. These effects would be of two types. The first is the result of the victim's actions. Because of the relationship to the defendant, the victim is unlikely to continue with prosecution. The second effect would be seen in prosecutor's strategies to increase the chance of a

¹Abraham Blumberg, Criminal Justice (Chicago: Quadrangle Books, 1967).

²Milton Heumann, Plea Bargaining: The Experiences of Prosecutors, Judges, and Defense Attorneys (Chicago: University of Chicago Press, 1978), pp.110-114. See also, W. Boyd Littrell, Bureaucratic Justice: Police, Prosecutors, and Plea Bargaining (Beverly Hills, Ca.: Sage Publishing, 1979), pp.148-149.

conviction in these cases, or alternately, to minimize the potential waste of court resources if the case does not proceed. The examination of the impact of these two uncertainties on case disposition will be the focus of this chapter.

The Effects of Victim Uncertainty on the Outcome of Non-Stranger Cases

The effects of lack of victim cooperation in non-stranger cases are well-known. Vera reports that of their "deep sample" of felony assault cases, over half of the non-stranger assaults (25 out of 46 cases, or 54 percent) were dismissed. A very large percentage of the dismissals (92 percent) were due to complainant non-cooperation. This figure is contrasted with a dismissal rate of 29 percent for cases involving strangers; 40 percent of the stranger dismissals were due to lack of victim cooperation.³ This pattern is reported in other studies, and is almost a truism for prosecutors.⁴ The effect of victim reluctance to prosecute, then, is straightforward.

³The figures cited here and below are from Vera Institute, Felony Arrests: Their Prosecution and Disposition in New York's Felony Courts, rev. ed. (New York: Longman, Inc., 1981), p.20.

⁴Kristen M. Williams, "The Effects of Victim Characteristics on the Disposition of Violent Crimes," in Criminal Justice and the Victim, ed. William F. McDonald (Beverly Hills, Ca.: Sage Publications, 1976), pp. 197-201; (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, Harry I. Subin, Criminal Justice in a Metropolitan Court (Washington, D.C.: U.S. Department of Justice, Office of Criminal Justice, 1966), pp.55-57.

This reluctance should result in a higher rate of dismissals at every stage of the process for non-stranger crimes.

However, the differences in dismissal rates between non-stranger and stranger cases may not be as great as depicted in the Vera study. In the Vera study, 54 percent of non-stranger assault cases in the deep sample were dismissed, whereas only 29 percent of stranger assault cases were dismissed. However, it is important to note that although Vera reports that fewer non-stranger cases result in conviction (46 percent of non-stranger assault cases compared to 71 percent of stranger assault cases), almost half of the stranger assaults involved police complainants. If these cases are excluded, then the rate of dismissals in stranger cases jumps from 29 percent to 42 percent. Although this is still lower than the rate for non-strangers, the difference is not as dramatic.

Another reason to expect that dismissal rates might be similar for stranger and non-stranger cases is that police practices differ among various jurisdictions. Whereas the police determine the warranted charge at the time of arrest in New York, this is not always the case. In Detroit, the charge is determined by the prosecutor. This difference in warranting practices would be expected to affect the rate of case dismissal in a number of ways. The most important effect would be to introduce a screening effect before the case is accepted for

prosecution. Because the complainant must wait to get a warrant, and must go to a different building than the police station to begin prosecution, they might be more motivated to go through with prosecution in the first place. Thus, it might be the case that this higher level of motivation would lead to fewer dismissals.

Table 4.1

Percentage of Cases Dismissed by Victim-Offender Relationship: Detroit

	Stranger	Acquainted	Closely Related
%	29.0	39.1	42.2
N	146	172	152

Examination of the data from the Recorder's Court shows that the rate of dismissal for assault cases is similar to that observed in the Vera study. As seen in Table 4.1, 29 percent of all felony assault cases involving strangers resulted in dismissal, compared to 42.2 percent of non-stranger cases. The relationship between the dismissal rate and the closeness of the relationship is monotonic-- for those who knew the defendant, but did not have a close relationship, the rate of dismissal was 39.1 percent.

The difference between the dismissal rates for stranger and non-stranger cases, however, is provocative in its moderateness (approximately 12 percent). In

conversations with prosecutors, the conventional wisdom about these cases would lead one to expect a much larger difference. What is striking about this difference is that although stranger cases are dismissed somewhat more frequently than non-stranger cases, the perception of the frequency of dismissals is decidedly different. Thus, prosecutors often complain about the uncertainty of the non-stranger case, when in fact, the differences in the rate of dismissal are not very great. What is behind the strong belief that non-stranger cases are only very rarely completed?

The answer to this question lies, I think, in the very different reasons for dismissal for stranger and non-stranger crimes. The Vera study notes that 40 percent of the dismissals in cases involving strangers were due to problems with complainant non-cooperation. This should be compared with the very high percentage of non-stranger cases that were dismissed because of complainant problems (92 percent). The analysis of the Recorder's Court data does not reveal such a strong relationship, but it still tends to support the findings of the Vera study. Although slightly less than half-- 48.7 percent-- of stranger cases were dismissed due to complainant problems, 75.5 percent of cases involving parties with close relationships were dismissed because of complainant non-cooperation. This percentage of dismissals for cases involving close relationships is virtually the same for those who are

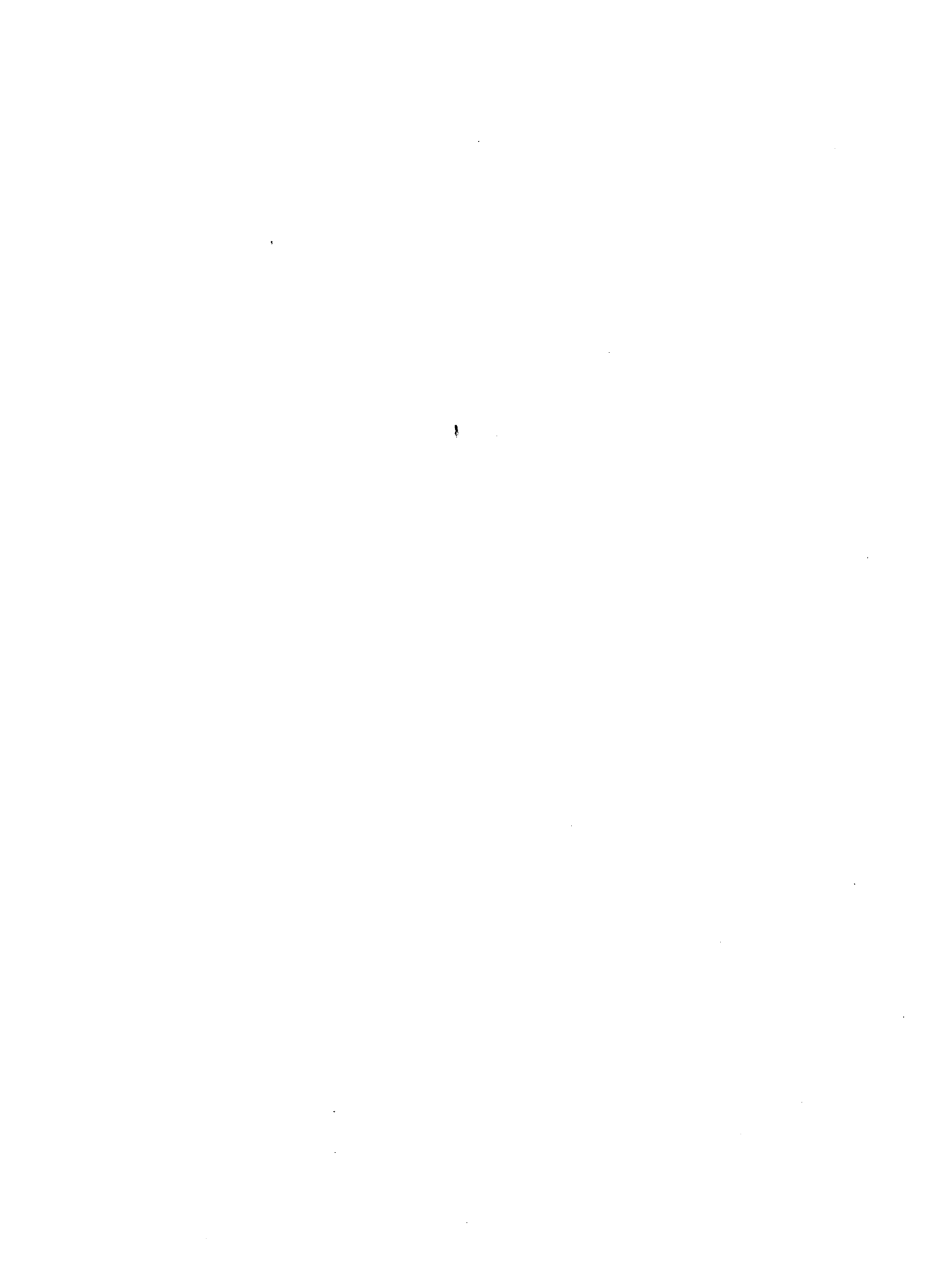
acquainted with the defendant (72.6 percent). Thus, knowing the defendant increases the probability of dismissal due to victim non-cooperation by half.

Table 4.2
Relationship by Reason for Dismissal of Case

Relationship	Reason for Dismissal	
	Other	Complainant
Stranger (%) N	51.3 78	48.7 74
Acquainted (%) N	27.4 45	72.6 119
Close (%) N	24.5 37	75.5 114

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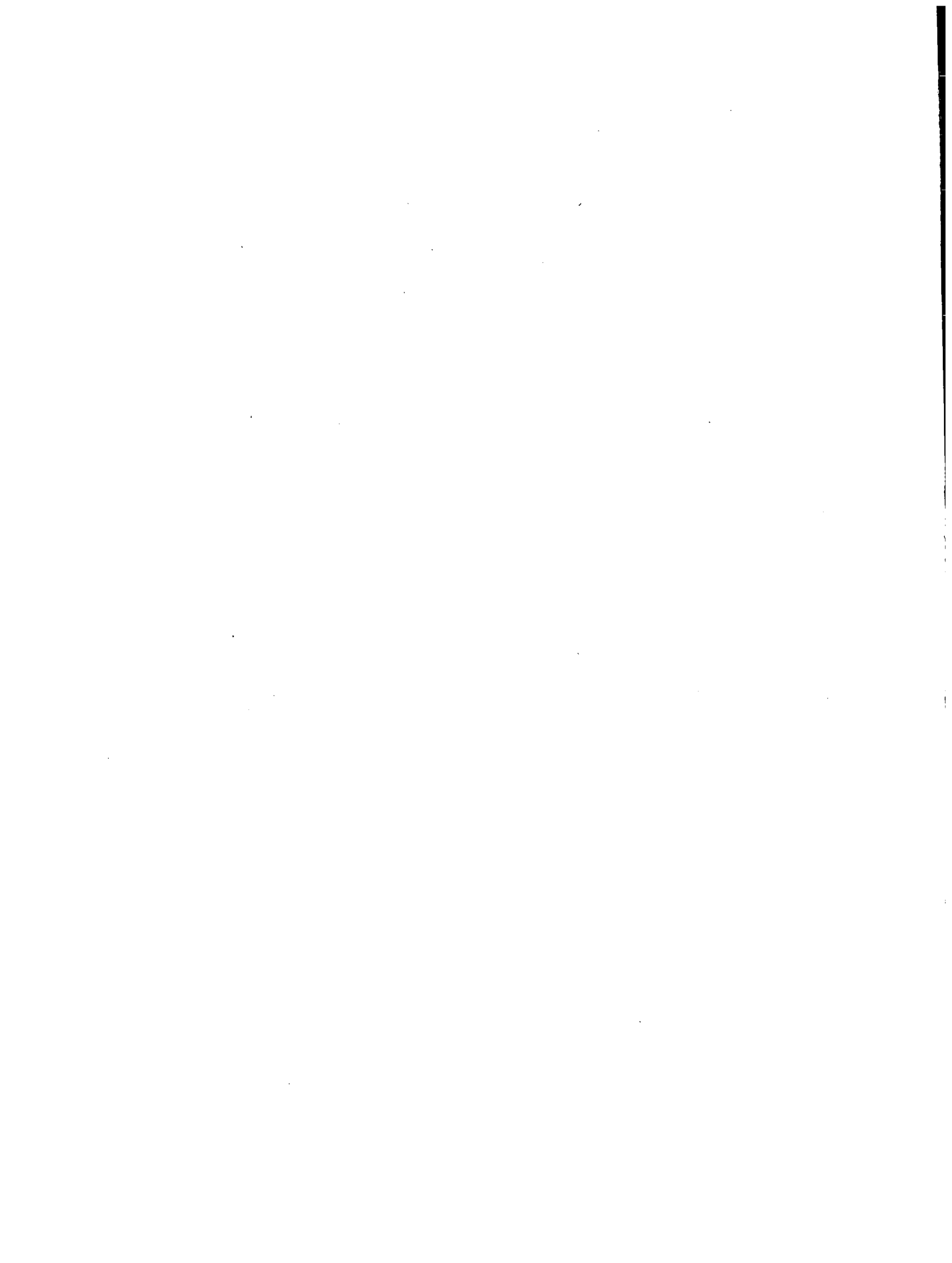
The difference in reasons for dismissal for stranger and non-stranger cases is significant because it introduces an important case variable that is beyond the prosecutor's control. Prosecutors often reported feeling frustrated with non-stranger cases. Because of the personal relationship with the defendant, victims in these cases often required more counseling about the alternatives available to them, about the possible outcomes to the case, and about their own fears about the case. Prosecutors generally reported that they took more



time with non-stranger cases for these reasons. It was not surprising, then, that they also felt much frustration when despite their efforts, victims decided to drop the charges anyway. What was discernible in their comments was a sense of powerlessness along with the frustration.

This feeling of frustration and powerlessness further enhanced the prosecutor's reluctance to handle the non-stranger case. The effort that a prosecutor puts into these cases stood a good chance of being wasted not because of anything the prosecutor fails to do, but because of a situation that he or she cannot anticipate or predict with much accuracy. The uncertainty of the situation, coupled with a source of uncertainty not under the prosecutor's control, is bound to make the prosecutor wary of these cases. To some extent, the uncertainty surrounding these cases is also reflected in the insistence by some prosecutors that trial outcomes in non-stranger cases were purely a matter of the victim's credibility. This attitude, taken to the extreme, was illustrated by the comment of one prosecutor:

R: ...I do look at those cases (non-stranger cases) differently, in terms of the preparation for that case, because I have a feeling that 95 percent of those are not going to go to trial, and so I'm not going to waste my time, candidly, preparing for that case as much as I'm going to prepare for other cases where the victim doesn't know the other person.... I'm going to spend 90 percent of my time on that case and 10 percent on the case [where the people know each other] because of my experience that they don't follow through. And I think that I'm qualified enough that in a situation like that, I can still handle the trial, because it's a one-on-one type of case anyway. The issue's gonna be

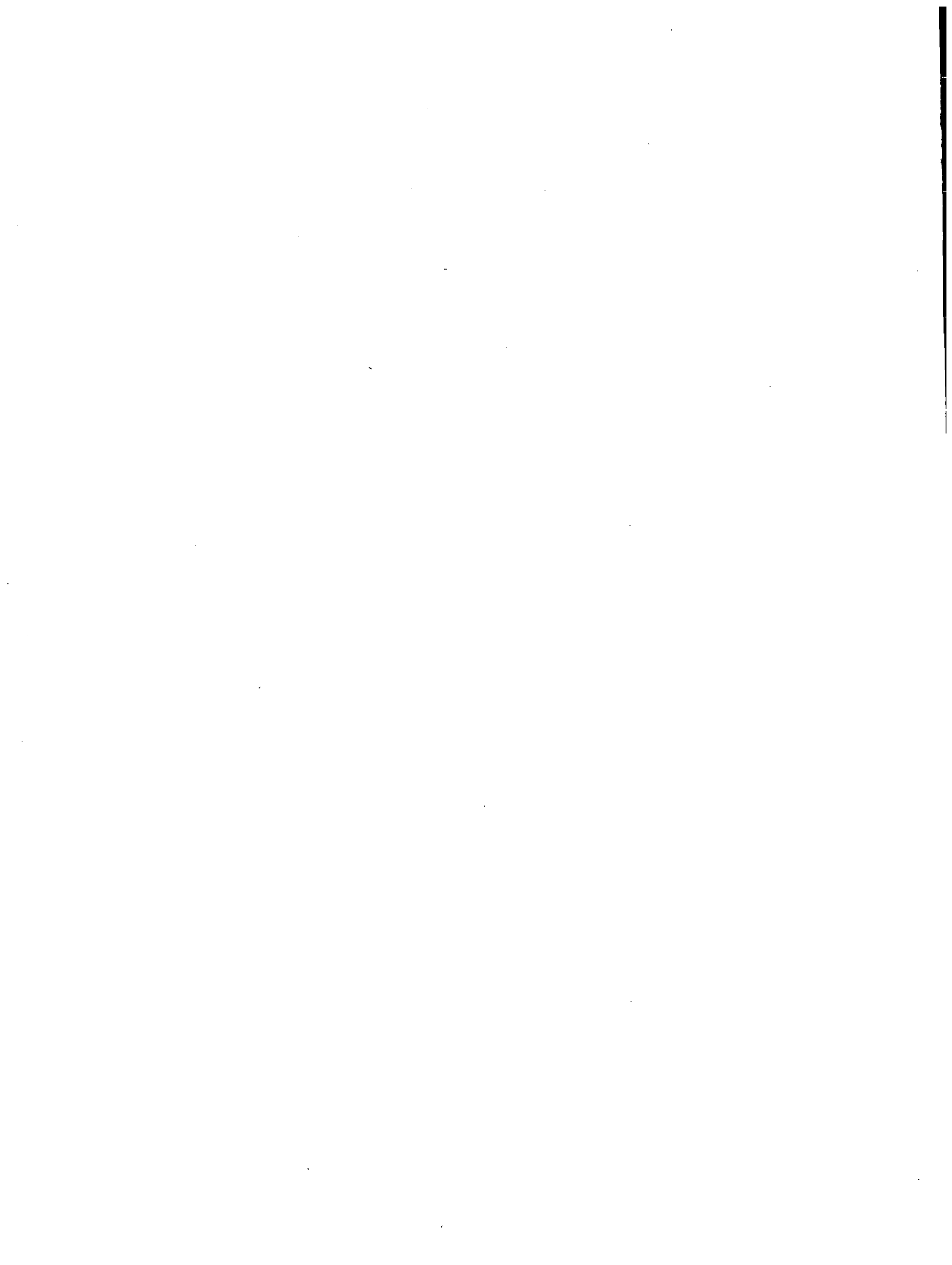


the credibility of the [complainant].... If [the complainant] does wanna go through with the trial-- she's gonna come in and say, "Yes, he pointed the gun at me." "Okay, if you believe that, ladies and gentlemen of the jury, find the defendant... guilty."... And then-- that's a simple case to argue, it doesn't take a lot of detailed preparation.... So, by the nature of the case itself, I don't have to do [a lot] of preparation. [11]

The Effects of Case Uncertainty on Case Outcome: The Rashomon Syndrome

Prosecutor uncertainty about whether the victim will continue with prosecution, although a very important factor, is not the only source of uncertainty about non-stranger cases. Besides feeling uncertain about the determination of the victim, the prosecutor also feels uncertainty about the guilt of the defendant. Hence, prosecutors are faced with uncertainty about the outcome of a case. Non-stranger cases, often borne out of situations that involve complicated relationships, are difficult to reconstruct. As a result, prosecutors reported feeling wary of victim accounts of the incident. Prosecutors often referred to having to take victim accounts with "a grain of salt," or reminded me during my interviews with them that there were always "two sides to every story."

It is hardly surprising, then, that prosecutors feel uncomfortable about non-stranger cases. The problems of victim credibility, of victim motivation, and of evidence come together to form what I call the "Rashomon syndrome."

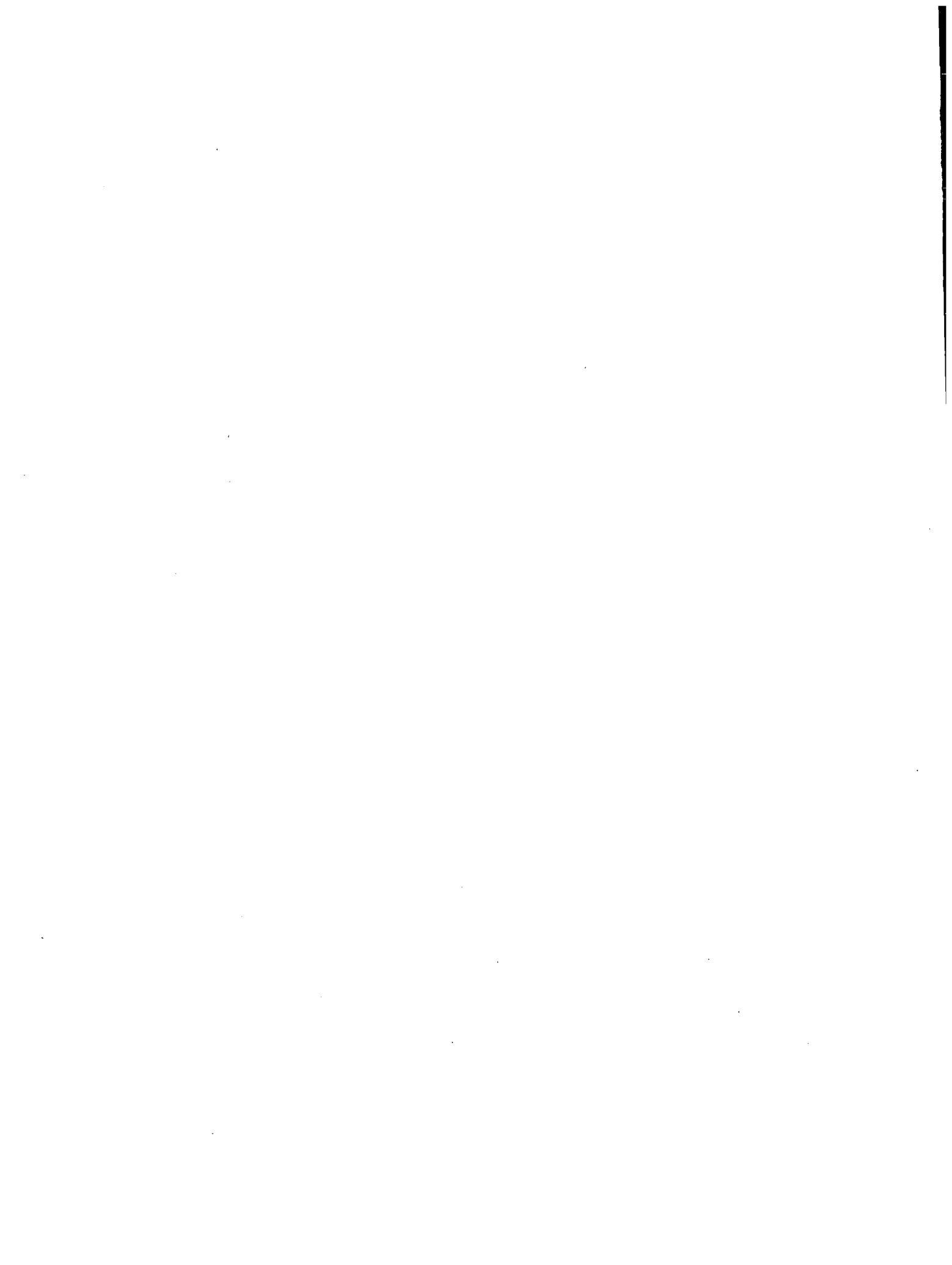


Rashomon, a movie by the Japanese film maker Kurosawa, is about a samurai who is murdered, and whose wife is raped, by a notorious bandit. The bandit is captured and brought to trial for his crime.⁵

The bandit admits his guilt at the trial. Defiant and arrogant, he says that he lured the samurai into the woods and away from the road by telling him stories about a store of treasure supposedly hidden there. Once they were deep in the woods, the bandit attacks the samurai and ties him to a tree. He then proceeds to seduce the samurai's wife, who is overcome by the strength and masculinity of the bandit. After the seduction, the bandit begins to leave. The samurai's wife, however, stops him and tells him that she feels so dishonored by the incident that she cannot live with the knowledge that both men know about it. She proposes that the men wage a fight with her as the prize. The bandit frees the samurai and battles with him. After a long and skillful duel, the bandit kills the samurai. The woman escapes during the battle.

The wife of the samurai is found at a monastery. Her testimony is different from the bandit's. She was indeed raped by the bandit, but he left after the assault. She ran to free her husband, but he refuses to speak to her

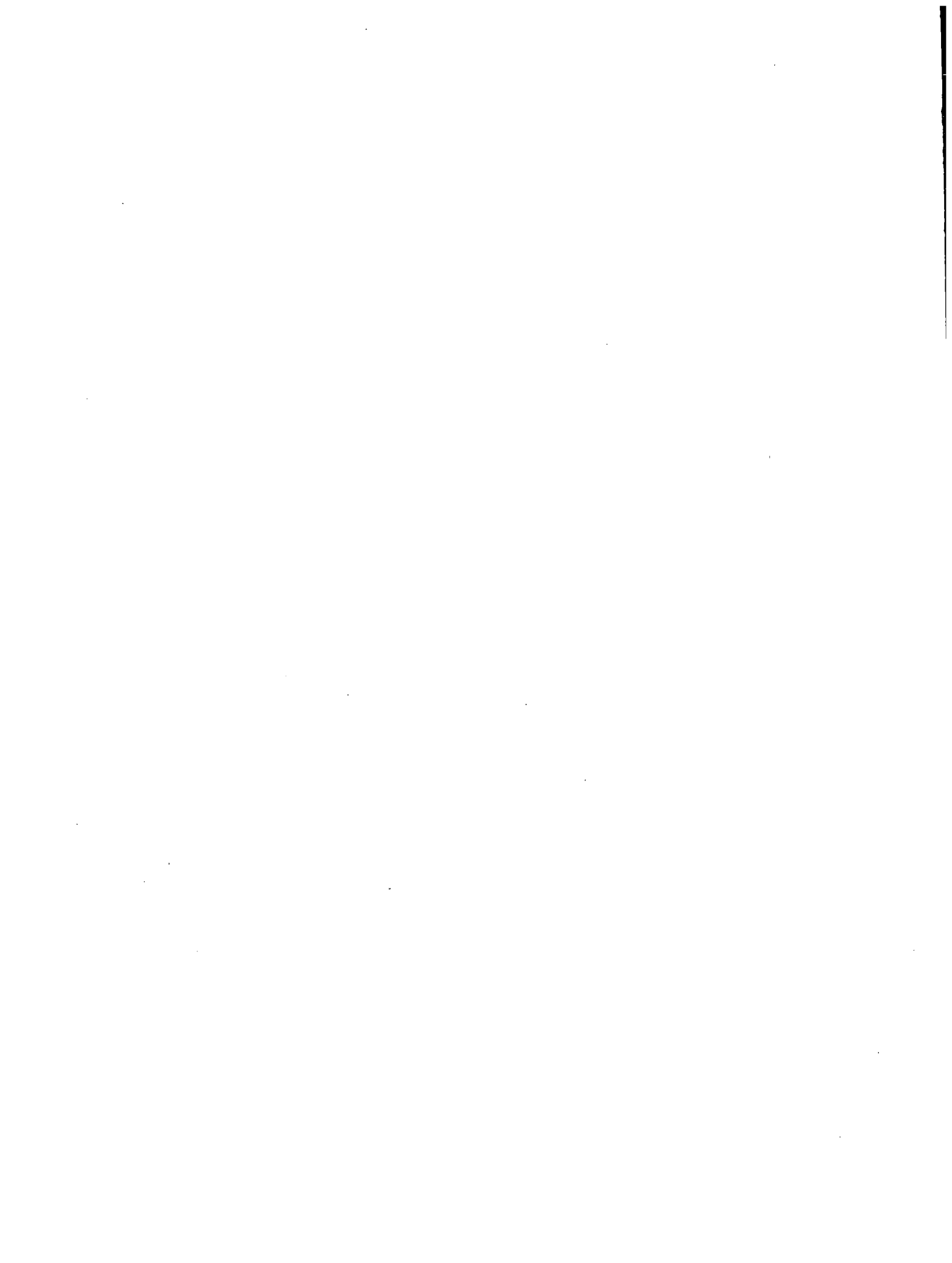
⁵A synopsis of the film's plot and several review essays of Rashomon can be found in Donald S. Richie, ed., Focus on "Rashomon" (Englewood Cliffs, N.J.: Prentice-Hall, 1972).



and looks at her with contempt. Untying him, she offers him her dagger and begs him to kill her. In the face of her entreaties he continues to remain silent and contemptuous. As the shame and horror of her situation becomes more apparent, the wife becomes increasingly hysterical. Finally, she stabs her husband with the dagger and kills him.

An interesting example of the use of the expert witness is provided. A medium is brought in to provide the account of the deceased samurai. After the bandit overpowered him and tied him up, he witnessed the rape of his wife. However, in his account his wife consented and was seduced. When it was over, the bandit asked his wife to leave the samurai and go with him. His wife agreed, but as they were leaving, she ordered the bandit to kill the samurai. The bandit is shocked by her vindictiveness. He grabs her and asks the samurai whether he ought to kill her. She struggles free and runs into the woods. The bandit then frees the samurai and goes on his way. The samurai, badly shaken and in despair, kills himself.

The theme of Rashomon is the ambiguity of reality. In this story, each person tells a story which might be true; all accounts are consistent with the physical evidence. But how to choose which story is true? The wife, who has been dishonored by the rape, may be lying to conceal her complicity in the incident. The bandit's story absolves him of guilt on both counts. If his story



is true, then he neither raped nor murdered. The samurai's story casts his actions in the best light, showing his actions to be consistent with the samurai's code of honor.

The problem confronting the viewer of Rashomon in trying to determine the true sequence of events closely parallels the problem faced by the prosecutor when dealing with the non-stranger case. Not only are a number of different stories consistent with the physical evidence, but the defendant and the complainant both have reasons to lie. In what ways does this syndrome affect the handling of these cases? To understand these effects, we need to consider the process as it works in the situation of the more "typical" case involving strangers.

As a large, urban court, we would expect that the typical case in the Recorder's Court would be affected by two factors. The first factor is one common to many courts: the desire to handle a large docket quickly and efficiently. The desire for speed and efficiency is identified as a primary factor underlying case dispositions in urban courts. The "sieve effect" described by Blumberg reflects the need for efficiency; as a case makes its way through the courts it is evaluated for the likelihood that it will result in a conviction.⁶

⁶Blumberg, Criminal Justice; see also Packer, "Two Models of the Criminal Process," in George F. Cole, ed., Criminal Justice: Law and Politics, 7th ed. (Monterey, Ca.: Brooks/Cole Publishing Co., 198-), pp.15-29.

The longer a case remains in the system, the more likely the defendant is to be convicted. Plea bargaining is a common method of disposing of cases because of the certainty of the prosecutors that the defendant is guilty, and the belief that a trial would only be wasted in settling the question. Further, many prosecutors argue that trial resources are wasted on cases that are not "important." Thus, "nickel and dime" cases (e.g.: shoplifting, auto theft, bar room brawls-- cases where the guilt of the defendant is evident, but where the victim will probably be compensated or where the victim may partially be at fault) are often plea bargained to leave precious courtroom resources available for "important" cases. Finally, plea bargaining and the general quickness of court practices are generally described as faster than trials.

Another factor underlying the criminal court process is the desire for certainty. Not only do prosecutors (and even defense attorneys) operate under the assumption that the defendants are guilty, but they also want to make sure that the probability of conviction is high. Again, plea bargaining reflects this desire for certainty.

Prosecutors, suspicious of the vagaries of jury decision-making, argue that plea bargaining secures conviction of a guilty defendant. Defense attorneys, also suspicious of juries, are willing to plea bargain to insure their



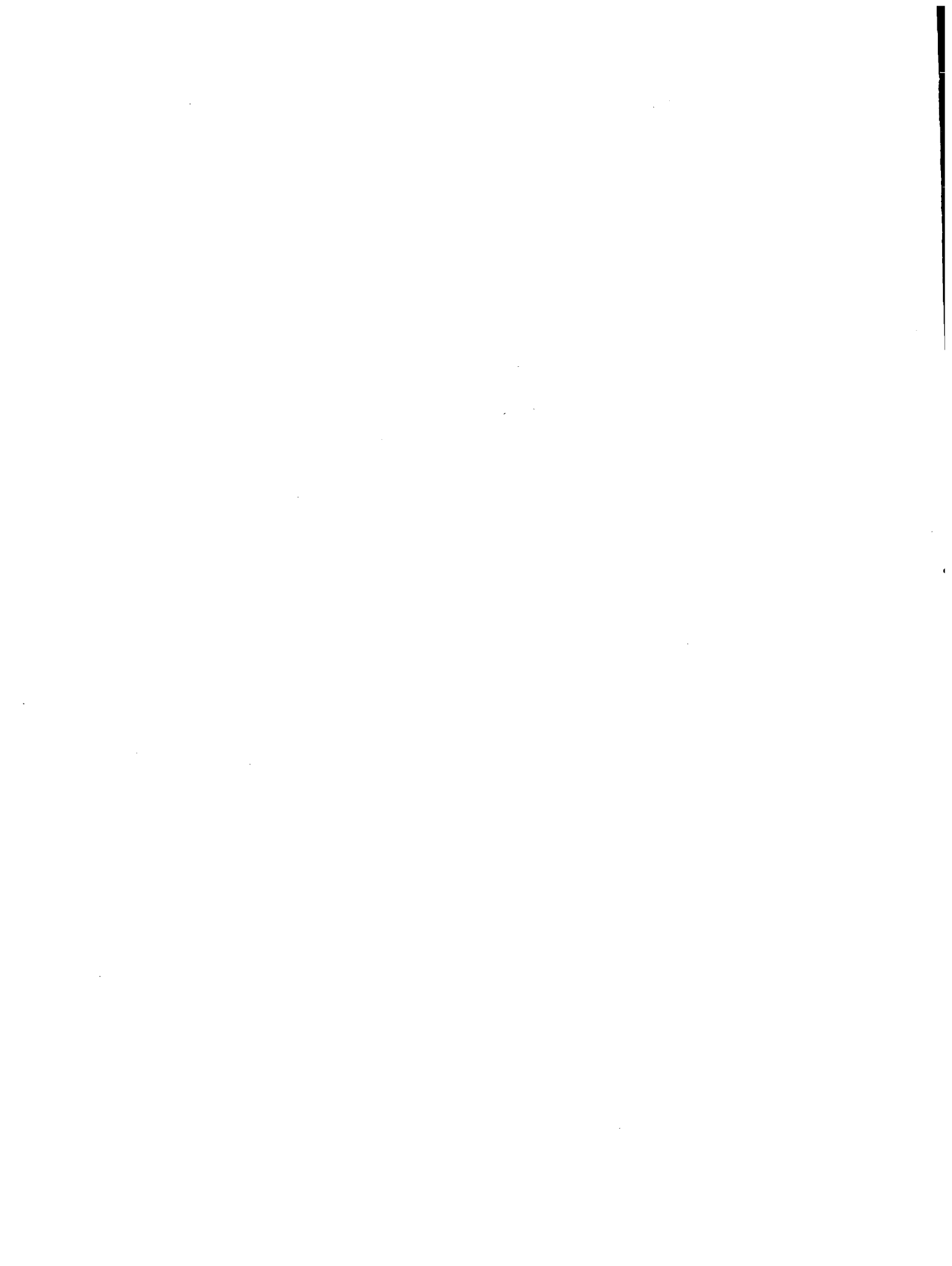
clients a certain, and presumably lower, sentence.⁷ This desire for certainty can also be seen at other stages. Flemming's study on bail setting in Baltimore and Detroit shows that the desire to reduce the uncertainty in allowing a particular defendant back on the street leads to a reliance on other court personnel, on other stages of the process, and on ad hoc rituals to diffuse responsibility and assure the judge that he or she is making the right bail decision.⁸

On consideration, the characteristics of non-stranger crimes would confront the prosecutor with some problems with respect to these two factors. The prosecutor would want to resolve the non-stranger case quickly. In this sense the non-stranger case is similar to other cases. However, the factors of uncertainty are more numerous in the non-stranger case than in the case involving strangers. What is more, the major sources of uncertainty-- i.e., the reconstruction of the event and the guilt of the defendant and the commitment of the complainant to pursue prosecution-- are largely independent of the prosecutor's control.

The uncertainty about the defendant's guilt would be expected to have one other effect on the case. That

⁷Heumann, Plea Bargaining; Littrell, Bureaucratic Justice.

⁸Roy B. Flemming, Punishment Before Trial: An Organizational Perspective of Felony Bail Processes (New York: Longman, Inc., 1982), pp.18-33.



effect would be to make the prosecutor more likely to downplay the importance of the non-stranger case. This attitude was reflected either through humor or through expressed empathy with the defendant. Because the defendant's guilt is questionable, the perception of these cases is that they involve "human foibles" rather than dangerous criminal tendencies. This attitude towards the non-stranger case is further reinforced by the prosecutor's perception that the non-stranger crime is not perceived as an important problem by the public.

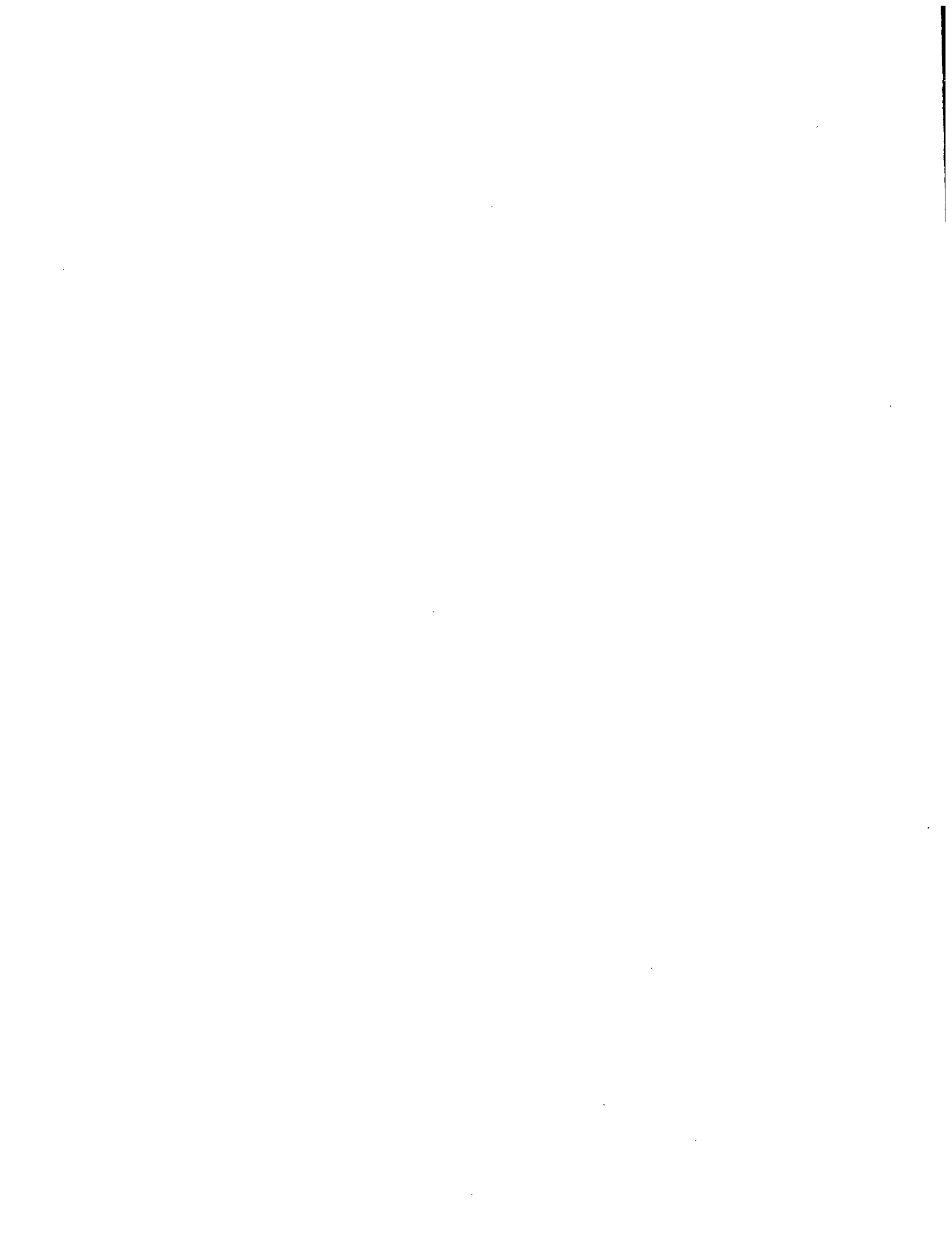
Given the uncertainty about the guilt of the defendant and the likelihood that the victim will not go through with prosecution, we would expect certain differences in the disposition patterns of non-stranger cases. Because of the uncertainty about whether the victim will continue prosecution, we can expect that the prosecutor will be cautious about committing court resources to the case. Therefore, it is likely that in evaluating the case, a higher premium will be placed on factors that will increase the probability of the defendant's guilt. Thus, although a certain amount of violence is acceptable between people who know each other, the use of a weapon or the inflicting of serious injury reduces the likelihood that circumstances would mitigate the guilt of the defendant. So, for example, although friends might get angry at each other while playing cards, it is difficult to imagine that anything said could



justify an attack with an axe that resulted in maiming the victim for life. Furthermore, the presence of a serious injury or the use of a weapon would be expected to reduce the likelihood that the victim will "forgive and forget." A friend who gets angry and inflicts a black eye with a piece of wood might be forgiven; it is less likely that forgiveness would occur if the friend stabs at the victim repeatedly with a butcher knife.

The evaluation of injury and weapon use as indicators of certainty would explain the findings of criminal justice research that non-stranger crimes are treated less seriously than crimes involving strangers, both by the police and by the courts. Victimization studies show that non-stranger crimes are more likely to involve the use of a weapon and injury than stranger crimes.' But research suggests that the court treats these cases less seriously. Thus, the prosecutor might be looking not just at the presence of a weapon or the infliction of injury, but at the type of weapon and the degree of injury that is inflicted. Because of the probability that the violence was a product of the interaction between the victim and the offender, the important question revolves around how much, rather than whether, harm was done.

⁹Michael J. Hindelang, Michael R. Gottfredson, and James Garofalo, Victims of Personal Crime: An Empirical Foundation for a Theory of Personal Victimization (Cambridge, Mass.: Ballinger Publishing Co., 1978), pp.44-47.



Besides evaluating the amount of harm that was done, the prosecutor in the non-stranger case must also make some evaluation of the context of the case. Given the degree of relationship and the provocation or interaction involved, is the degree of harm serious enough to the participants that the likelihood of victim non-cooperation is substantially reduced? The effects of these considerations are seen in one prosecutor's comments:

R: [Assaults on] children-- well, with children you get bad ones (assaults). I just get particularly upset about assaults on kids.

Q: [But] why are child abuse cases put in misdemeanors? Couldn't they be in felony?

R: On what charge? ...[F]elonious assault requires a weapon. [Q: Well, the boy in the picture who had the marks...] The belt? Well, yeah, technically, [we] could probably make them felonies, but they really wouldn't go. Sometimes, you get better justice with a misdemeanor, faster justice. Sometimes, it's more effective [to try a case] in misdemeanor court. And of course with kids, this little kid, for instance, there were a couple of kids, 17 or 18 years old, who lived above him, and they kept hearing noises. And they finally got upset enough to call the cops. You don't have witnesses, no one saw who did it. You have a torture statute, a cruelty statute, but these [cases] are really ongoing things. This kid beaten with the fists and hands [referring to a different case], you gotta distinguish parental discipline from assault and battery. And some people let parental discipline go pretty far! [With] some child abuse [cases] you have, you have a mother who gets mad, and they admit that they carry things too far. They say they really didn't mean to hurt them..... You get some where children are A and B'ed where they've come home with bad grades or something like that. But in a lot of cases it's just kids acting like, you know, kids, and the parents get mad at them. [16]

We expect, then, that the "threshold" for warranting of non-stranger cases is higher than for comparable cases



involving strangers. In comparing cases involving strangers and non-strangers, then, we would expect to find that non-stranger cases are charged at a lower level than comparable cases involving strangers.

Once accepted for prosecution, the non-stranger case is different because, unlike the case which involves strangers, the longer the case remains in the system, the higher the probability that it will be dismissed. In the stranger case, each stage of the process is seen as providing an evaluation of the strength of the case, i.e.: the likelihood that the defendant is guilty. The non-stranger case undergoes the same process, but paradoxically, because the complainant is likely to reconcile with the defendant, the probability that the case will be dropped by the complainant rises.

The non-stranger case also provides the classic example of the "nickel and dime" case generally scorned by prosecutors. Because of the perceived contribution of the victim to his or her own victimization, and the increasing likelihood that the case will be dismissed because of victim non-cooperation, we expect that prosecutors are much more likely to plea bargain the non-stranger case. Their desire to avoid "wasting" resources on these cases, as well as the perception that they are not really serious to begin with, leads to an expectation that non-stranger cases are more likely to receive reductions in charges and

to receive greater reductions, than crimes involving strangers.

Interestingly enough, prosecutors complained of another problem. That is, although they have every incentive to plea bargain to resolve a case, the likelihood that a defendant would take the plea in a non-stranger case was low. Like the prosecutor, the defendant is also uncertain about his or her guilt; indeed, the defendant may not think he or she is guilty at all. The defendant may believe that the action being prosecuted was perfectly justifiable given the circumstances. Moreover, the defendant may be trying to negotiate a settlement with the complainant which would resolve the situation without resulting in a criminal conviction and, more important, the possibility of doing time.

Thus, the non-stranger case should present a different pattern from the stranger case as it goes through the criminal courts. The prosecutor's greatest control is at two stages: warranting and plea bargaining. We would expect to see the non-stranger case warranted at a lower level than the case involving strangers, given the presence of a weapon and the degree of injury. At plea bargaining, we would expect that the prosecutor would try to plea bargain the case out of the court. Consequently, we would expect that he or she would be more likely to reduce the charges in the non-stranger case.



Paradoxically, although the prosecutor is willing to bargain in the non-stranger case, it is argued that the defendant in these cases rarely pleads. The defendant, unlike the defendant in the stranger case, is unwilling to recognize his or her guilt. They may see the actions they are being prosecuted for as justifiable. Alternately, they may be trying to avoid a conviction by trying to resolve the situation with the complainant on their own initiative. Both of these motivations work to reduce the likelihood that the defendant will "cop a plea."

The problems inherent in the non-stranger case causes much frustration for the prosecutor. It would not be surprising, then, if other stages of the process reflected the perception of non-stranger cases as "difficult." To the extent that non-stranger cases are seen as resulting from "squabbles," and "family spats," these cases will be treated less seriously. Thus, the judge setting bail for a felony case involving strangers will be plagued with numerous uncertainties. One important consideration will be the potential danger the defendant poses to the community. In the case of the non-stranger crime, these considerations will not generally come into play. Because of the interpersonal nature of the dispute, judges may feel that the defendant is not truly "dangerous." Furthermore, the nature of the crime itself may be perceived as "technically" criminal, but not "substantively" criminal. There may be a belief that

crimes occur only if harm is done to society; the family may be seen as something apart from society.

These attitudes about the non-stranger case should also be evident at sentencing. The mitigation of criminal responsibility for actions committed "in the heat of passion" is a principle which has much support in criminal law and legislation. To the extent that non-stranger cases are believed to be manifestations of anger and products of longstanding patterns of provocation, it is expected that "passion" will be a factor considered in sentencing in non-stranger cases. When combined with the historical pattern of reluctance on the part of the criminal courts to intervene in "private matters," it is expected that defendants in non-stranger cases will receive shorter sentences.

A recognition of the problems of non-stranger cases would lead to different and less serious treatment from other stages of the process. Bail would be lower for non-stranger crimes. Sentences would also be shorter in these cases.

A Discussion of the Effect of Victim's Sex on Case Outcome Case Outcome

It has been observed that non-stranger crimes are more likely to involve female victims than crimes between strangers. This higher probability of female victimization by offenders known to them makes intuitive

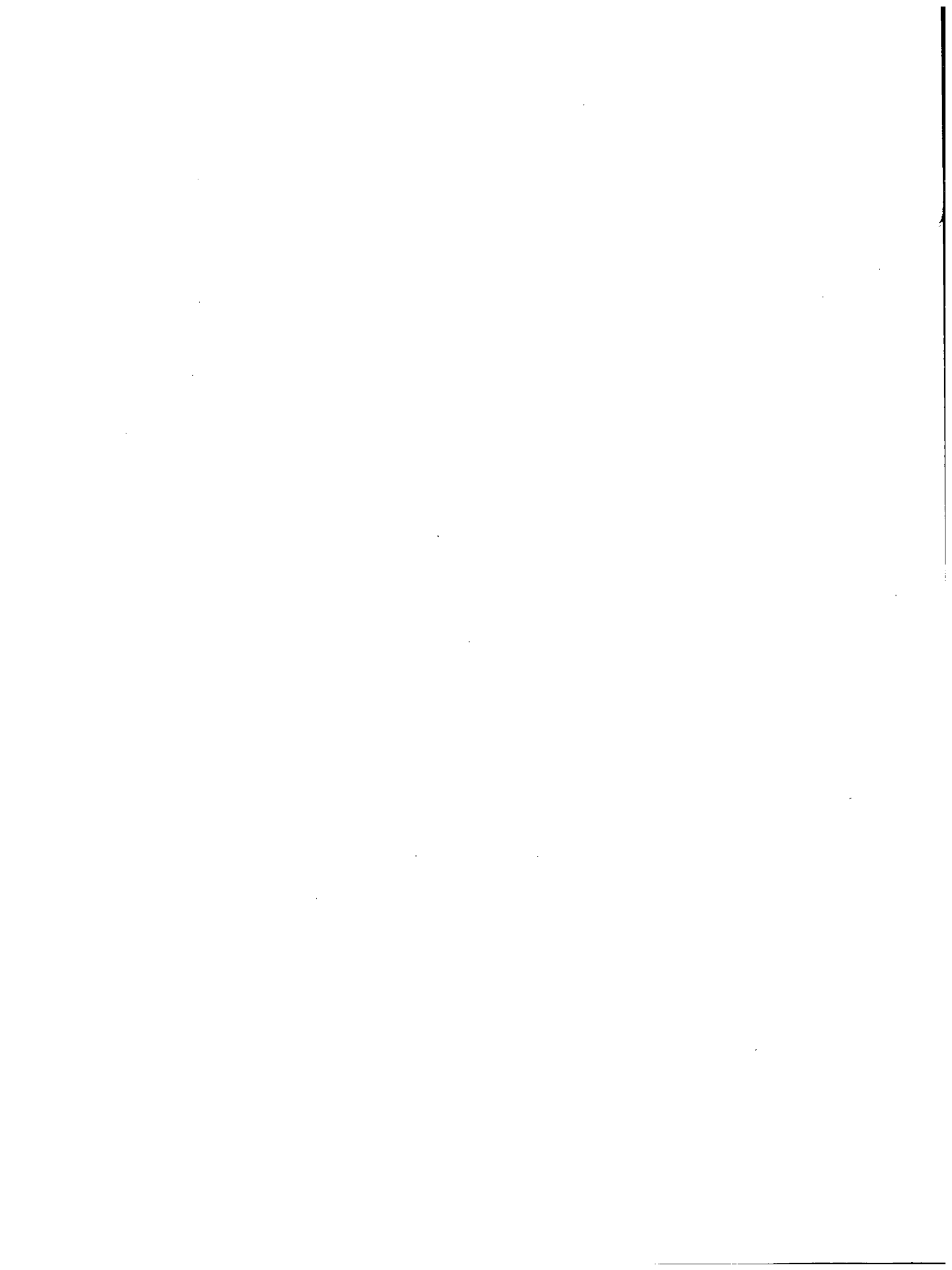
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sense given the theories of victimization research. Women, because of their physical vulnerability, are easy targets for criminal attack. Moreover, the traditional roles women hold in this society make them more likely to spend large amounts of time at home. Thus, women are apt to interact more often with people known to them, and especially with members of their own family. These interactions with family are also likely to involve conflict. A high level of antagonism and hostile feelings are, as has been noted in chapter one, common to family interactions. Thus, the theory of victim precipitation would lead one to expect women's higher vulnerability to criminal behavior from members of their families.

Hindelang's theory of victimization as a result of victim lifestyle would also lead one to expect this pattern.

Because women are more likely to stay home at night, and to generally spend more time at home, their victimization would be more likely to occur at home as well. Thus, although women might be less vulnerable to attack on the streets because they don't spend as much time as men on the streets, they are then more vulnerable to criminal activity that occurs inside the home.

This difference between men and women in criminal victimization has led to a conclusion that a difference in treatment of criminal behavior can also be found in the courts. Thus, it has been argued that sex is a



significant variable in explaining the treatment accorded a case by the court.

The conclusion that sex is an important variable in explaining the treatment of cases, however, is a conclusion based on little systematic evidence. Although it is generally acknowledged that battered wives, for instance, are treated differently from battered strangers, the different treatment may be due to the difference in the relationship between the victim and the offender, rather than to the victim's sex.

In order to test these hypotheses, we need to compare the characteristics of non-stranger cases with those of cases involving strangers. Are non-stranger cases more likely to involve injury to the complainant and the use of a weapon? And if this higher level of violence, or potential for violence, is observed, are these cases charged in the same way as cases involving strangers? In the case of male and female victims, we need to look at the treatment of cases involving male and female victims while controlling for the effect of the relationship between the victim and the offender.

Analysis of Case Disposition Patterns at the Detroit Recorder's Court

We turn, then, to an examination of the characteristics of felony assault cases that were accepted for prosecution at the Detroit Recorder's Court. These cases were filed in the years 1977 and 1978. There were

1319 felony assault cases in that period, ranging in seriousness from felonious assault to assault with intent to do great bodily harm to assault with intent to murder.

Table 4.3

Level of Felony Assault Charge by
Victim-Offender Relationship

Warranted Felony Assault Charge	Victim-Offender Relation		
	Stranger	Acquainted	Closely Related
Felonious Assault (%) N	43.0 292	28.7 195	28.3 192
Assault With Intent To Do Great Boldily Harm (%) N	33.0 88	38.6 103	28.5 76
Assault With Intent To Murder (%) N	34.5 124	39.6 142	25.9 93
Total (%) N	100.0 504	100.0 440	100.0 361

Gamma=.0636

Contrary to the hypothesis, there is no significant association between the three levels of relationship and the level of the warranted assault charge (See Table 4.3).¹⁰ This finding is surprising given findings by

¹⁰The relationship variable originally consisted of nine categories. These categories were collapsed for the purposes of this analysis. This was done to keep the number of cases in each category from becoming too small. The stranger category in the original variable was retained in the new variable. The acquaintance category was also retained. Close relationships in the collapsed



others that show that relationship does have some effect on the warranting of the case.¹¹ However, these studies included all cases that were brought to the court being studied; by comparison, this dataset includes only those cases that were accepted for prosecution at the felony level.

To see if there are differences between felony assaults involving strangers and non-strangers, a series of tables was run using the characteristics of the offenses. As can be seen, there are some significant differences between stranger and non-stranger assaults.

First of all, non-stranger crimes are much more likely to involve women as victims than are crimes involving strangers. Almost 58 percent of the victims who were closely related to their attackers were women; this is compared to 85.8 percent of stranger crimes involving men (Gamma=.6065). Furthermore, this difference is most marked when comparing victims with a close relationship to

variable consisted of household relatives, non-household relatives, romantic relationships, close friends, and rivals. The inclusion of "close friends" in this category might raise some objections, but my involvement with the coding of the data convinced me that "close friends" was a category that coders were reluctant to use unless there was very strong evidence in the prosecutor file that the relationship was of long standing. The remaining two categories of relationship were "no victim" (obviously not of use in this category of cases) and "other." The latter were included in the acquaintance category-- there were only two cases coded as "other."

¹¹Subin, Criminal Justice, p.34; Smith, Non-Stranger Violence: The Criminal Court's Response (Washington, D.C.: U.S. Dept. of Justice, National Institute of Justice, 1982), p.49.

Table 4.4

Characteristics of Felony Assault Cases by
Victim-Offender Relationship: Victim's Sex

Victim's Sex	Victim-Offender Relation		
	Stranger	Acquainted	Closely Related
Male (%)	85.8	78.0	42.2
N	344	273	124
Female (%)	14.2	22.0	57.8
N	57	77	170
Total (%)	100.0	100.0	100.0
N	401	350	294

Gamma=.6065

the offender. For those victims who were acquainted with their assailant, only 22 percent were female.

Measures of the relative seriousness of the incidents yield a mixed result. Non-stranger crimes were more likely to involve serious injury to the victim.¹² Roughly a third of those who knew the offender suffered severe injury in the attack-- 32.5 percent of those who were acquainted with the defendant; 33.2 percent of those who were closely related. Eighteen percent of those attacked by strangers were severely injured. To complete the comparison, approximately 60 percent of those who did not

¹²"Serious injury" as coded in this data includes injuries requiring hospitalization, broken bones, and wounds requiring stitches. "Minor injury" included cuts, bruises, scratches, and the like.

know the offender received no injury. The comparable numbers for those who were related to the defendant were 39.5 percent for those who were acquainted, 34.6 percent for those victims who were closely related.

Table 4.5

Characteristics of Felony Assaults by Victim-Offender Relationship: Degree of Injury

Degree of Injury	Victim-Offender Relation		
	Stranger	Acquainted	Closely Related
No Injury (%) N	57.3 289	39.5 174	34.6 125
Minor Injury (%) N	24.4 123	28.0 123	32.1 116
Serious Injury (%) N	18.3 92	32.5 143	33.2 120
Total (%) N	100.0 504	100.0 440	100.0 361

Gamma= .2630

By contrast, the degree of relationship between the parties is not related to weapon use. Although strangers are twice as likely as non-strangers to attack the victim without a weapon, the difference is small (less than 5 percent). Furthermore, this difference is not observed when looking at the kinds of weapon used; strangers and non-strangers are just as likely to attack their victims with knives, guns, or other weapons (Gamma=.0177).

Table 4.6

Characteristics of Felony Assaults by Victim-
Offender Relationship: Type of Weapon Used

Weapon Used	Victim-Offender Relation		
	Stranger	Acquainted	Closely Related
No Weapon (%) N	9.2 46	6.4 28	4.7 17
Miscellaneous-- club, bottle, etc. (%) N	19.2 96	18.5 81	18.9 68
Knives (%) N	20.4 102	25.5 112	27.2 98
Guns (%) N	51.2 256	49.7 218	49.2 177
Total (%) N	100.0 500	100.0 439	100.0 360

Gamma= .0177

Likewise the presence and use of a gun is not significantly different for strangers or non-strangers. Not only were they as likely to have a gun with them at the incident; they were just as likely to fire it (presumably at the victims-- Gamma=-.0204).

Thus, the picture of the typical non-stranger felony assault is an attack upon a female victim with a weapon. The attack often results in serious injury to the victim. Is the impact of these differences of significance for the warranting decision? If so, in what ways do they affect the level of the charge?

Table 4.7

Characteristics of Felony Assaults by Victim-Offender Relationship: Presence and Use of Gun

Presence of Gun	Victim-Offender Relation		
	Stranger	Acquainted	Closely Related
Gun not present (%)	43.5	46.4	48.5
N	219	204	175
Gun present, but not used (%)	23.8	15.2	17.2
N	120	67	62
Gun present and fired (%)	32.7	38.4	34.3
N	165	169	124
Total (%)	100.0	100.0	100.0
N	504	440	361

Gamma= -.0204

Although there appears to be little or no correlation between the level of the relationship between the parties and the level of the warranted felony assault charge, this may be misleading. Although the charges may be the same, there may be a systematic reduction in the level of the charge given the overall seriousness of the offense. That is, cases involving non-strangers may be more serious in terms of injury and weapon used than cases warranted at the same level involving strangers.

In order to test this hypothesis, a regression model using the assault charge as the dependent variable was

constructed.¹³ The independent variables used were the sex of the victim, the degree of injury, the type of weapon used, and the relationship between the victim and the offender. The results of this analysis are presented in Table 4.8.¹⁴

As can be seen from the results of Table 4.8, relationship does not have any appreciable effect on the level of the warranted charge. This can be seen in the F-

¹³The use of a standard regression model in cases where the dependent variable is categorical is a problem, since one of the assumptions underlying the model is that the dependent variable is continuous. The presentation of the data in this way was chosen because it is, to my way of thinking, intuitively easier to grasp than the results of the alternate, but more appropriate, probit or logit models. These analyses were conducted on the data and the substantive results remained the same.

¹⁴In this model, variables are coded as:

Warranted assault charge: 1=felonious assault; 2=assault with intent to great bodily harm; 3=assault with intent to murder.

Victim-offender relation: 1=stranger; 2=acquainted; 3=close.

Degree of Injury: 1=no injury; 2=minor injury; 3=serious or major injury.

Female victim: 0=male victim; 1=female victim.

Weapon use is coded as a set of dummy variables:

No Weapon: weapon used=0; no weapon=1.

Other Weapon: all other categories=0; other weapon=1.

Gun Used, Not Fired: all other categories=0; gun present, not fired=1.

Interaction variables are the products of the variables indicated.

Table 4.8

Regression of Warranted Assault
Charge on Case Characteristics

Variable	Model 1	Model 2	Model 3	Model 4
Constant	1.806** (.168)	1.572** (.067)	1.244** (.152)	2.091** (.115)
Victim-Offender Relationship	-.124 (.084)	--- ---	-.068 (.077)	.035 (.053)
Female Victim	.057* (.027)	.056* (.025)	.112** (.030)	.077** (.029)
No Weapon	-.512* (.239)	-.128 (.100)	--- ---	-.623** (.252)
Other Weapon (e.g.:knife,club)	-.827** (.138)	-.707** (.053)	--- ---	-.705** (.144)
Gun Used,Not Fired	-.909** (.169)	-.830** (.069)	--- ---	-.973** (.174)
Degree of Injury (none,minor,major)	.242** (.076)	.328** (.029)	.202** (.078)	--- ---
No Weapon*Relation	.210 (.121)	--- ---	--- ---	.228 (.128)
Other Weapon*Relation	.063 (.066)	--- ---	--- ---	.059 (.069)
Gun Present*Relation	.040 (.084)	--- ---	--- ---	-.149 (.087)
Relation*Injury	.044 (.036)	--- ---	.056 (.038)	--- ---
R ²	.284	.281	.113	.198
N	1039	1039	1039	1039
F-Statistic Between Models d.f.		.862 (1,2) 5,1028	40.919** (1,3) 6,1028	61.737** (1,4) 2,1028

**sig.=.01

*sig=.05

test of the difference in explained variance between Model 1 and Model 2. The difference in the explained variance shows that relationship and the interaction variables which involve relationship do not increase the power of the model. The variables which are most significant in determining the level of the charge are the degree of injury to the victim and the type of weapon used. As the seriousness of the injury inflicted on the victim increases, so does the seriousness of the charge. Weapon use was indicated by a series of dummy variables, three of which are used in the equation. The missing variable indicates the presence and firing of a gun during the incident. Not only does the use of a weapon have a very significant effect on the warranted charge (as can be seen by the significance of the F-test of the difference between the Model 1 and Model 2 and the large drop in the R^2), but the impact of gun usage is very high. The impact of the presence and firing of a gun is especially great.¹⁵

Of interest is the result that the sex of the victim does have an effect on the warranted charge. Although the relationship is marginal, the effect of victim's sex is significant. However, the effect on the warranted charge is opposite from the one expected. That is, female

¹⁵One puzzling result, however, is that it seems that the use of a knife or presence of a gun actually drops the level of the warranted charge relative to cases where no weapon is involved. One explanation for this is that the defendants in cases involving no weapons were more likely to have codefendants, thus making these incidents more serious.

victims appear to get a more serious charge than male victims. This result, while unexpected, may be indication of paternalism on the part of prosecutors. Women may get a more serious charge at warranting because of their status as weaker and more vulnerable members of the society.

The results of this analysis suggest that, contrary to the hypothesis, the relationship between the victim and the offender is not an important factor in determining the warranted charge. This finding is surprising, especially since other research shows that relationship has a decided effect at this stage of the process. One reason for the negative finding may be due to the composition of the data. Although other studies were able to use samples of cases which included those cases which had not been accepted for prosecution, the Felony Firearm data consist only of cases that were warranted as felonies. It is highly likely that a close relationship between the parties leads to charging the case as a misdemeanor, even when the elements of the case would technically support a felony charge.

Although relationship does not have an impact on the level of the warranted charge, this is not true of subsequent stages of the process. In examining the relationship between the likelihood that the defendant will make bail, the victim-offender relation does appear to have an effect. Again, a regression analysis is used

to measure the effect of prior relationship while controlling for other variables which may be important. Table 4.9 gives a summary of these results.¹⁶

The regression model only explains a small portion of the variance: approximately 11 percent. The likelihood of the defendant receiving bail is a function of the amount of bail, the warranted assault charge, whether or not the defendant has been convicted of prior felonies, and the victim-offender relationship. As expected, the higher the bail amount and the more serious the warranted charge, the less likely that the defendant will be able to make bail. The likelihood of posting bail is also affected by the defendant's prior record. If the defendant has been previously convicted of a felony, then the likelihood of making bail is reduced.

The negative coefficient for relationship indicates that the closer the victim-offender relationship, the more likely it is that the defendant will be able to post bail. To the extent that bail indicates the seriousness of the offense and the level of risk that the defendant poses to the community, relationship appears to decrease those factors.¹⁷ It should be noted, however, that although victim-offender relationship has a significant effect on

¹⁶The bail variable is coded as: 1=yes, bail posted; 2=no. Previous felony convictions were coded as: 1=no prior felony convictions; 2=prior felony convictions. All other variables are coded as defined for Table 4.8.

¹⁷Flemming, Punishment Before Trial, pp.1-40.

Table 4.9

Regression of Defendant Posting Bail on
Case and Defendant Characteristics

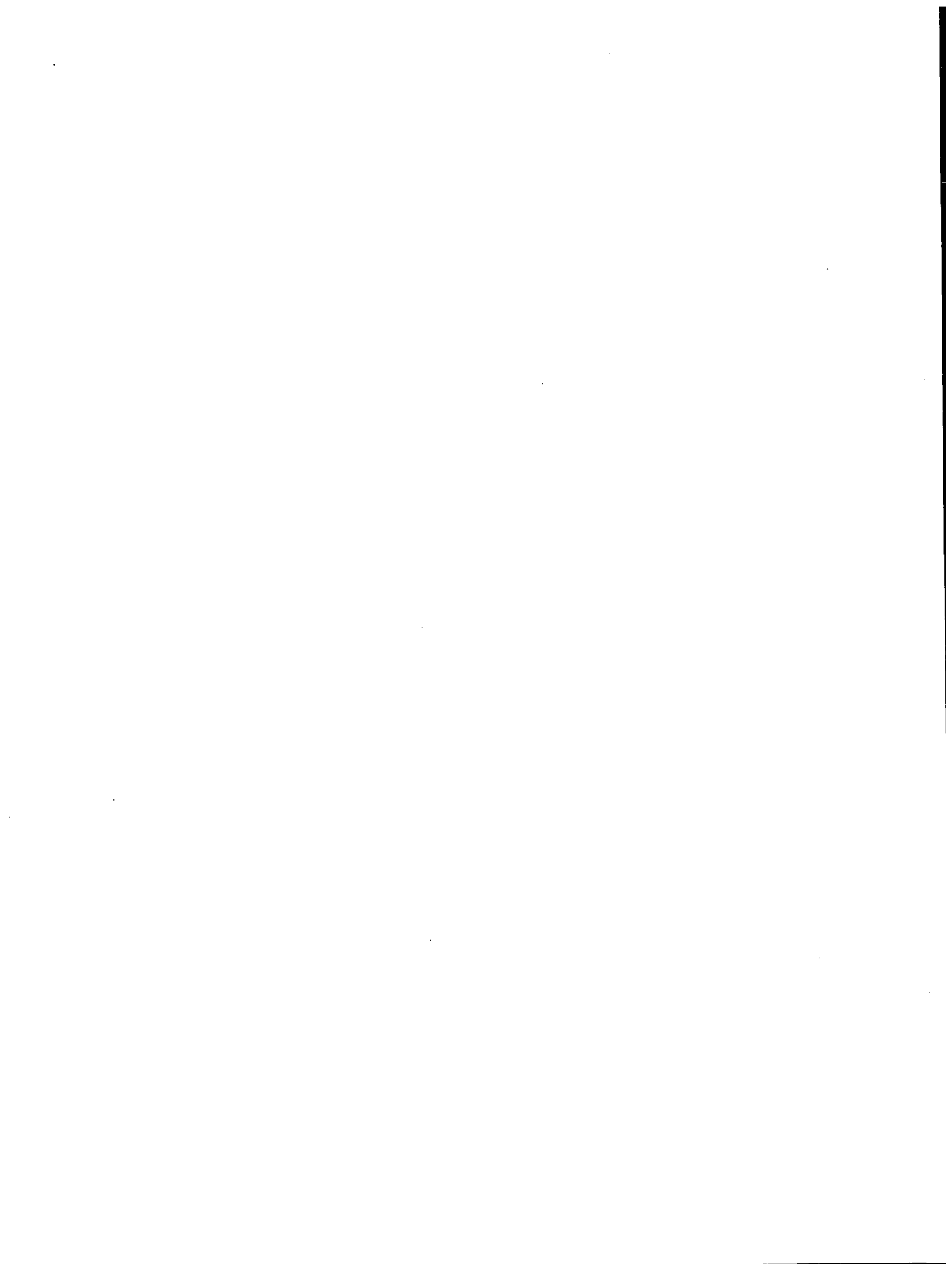
Variables	Full Model b (s.e.)	Reduced Model b (s.e.)
Constant	1.1364** (.063)	1.168** (.060)
Victim-Offender Relationship (stranger, acquaint, close)	-.040* (.018)	-.034* (.018)
Bail Amount (in dollars)	.103(-4)** (.138)(-5)	.102(-4)** (.138)(-5)
Warranted Assault Charge	.044** (.018)	.054** (.018)
Previous Felony Convictions (no, yes)	.182** (.032)	.182** (.032)
Degree of Injury (none, minor, major)	.034 (.018)	--- ---
R ²	.114	.111
N=	1090	1090
F-Statistic d.f.		3.670 1,1086

**sig.=.01

*sig.=.05

the likelihood of making bail, the size of the effect is pretty small.

The victim-offender relationship also has an effect on plea bargaining. As predicted, the victim-offender relationship is negatively associated with charge



reduction: the closer the relationship, the more likely it is that the prosecutor will authorize a reduction in the severity of the charges. The dependent variable is the type of reduction authorized by the prosecutor. This authorization could either be a reduction of the charge to a misdemeanor, to reduce the charge to another felony, or to refuse to make any reduction in the charges at all. Besides victim-offender relationship, other independent variables included in the model were whether the charges include a Felony Firearm charge, whether the defendant had been able to post bail, the degree of injury to the victim, previous felony convictions for the defendant, and the sex of the victim. The results of this analysis are presented in Table 4.10.¹⁸

Again, the effect of prior relationship between the victim and the offender is significant. Although the effect is not large, it is interesting to note that the effect of relationship is as important than the effect of injury on the likelihood that the prosecutor will offer a reduction in the plea bargain. The effect of the Felony Firearm count is the most important. The Wayne County Prosecutor, responsible for handling all cases in the Recorder's Court, adopted a strict policy regarding

¹⁸Authorized plea bargain is coded as: 1=authorized reduction to misdemeanor; 2=authorized reduction to another felony; 3=no reduction in charges. The felony firearm variable indicates whether the defendant was charged under the Michigan Felony Firearm law: 1=no felony firearm charge; 2=felony firearm was charged. All other variables are coded as defined for Table 4.8.

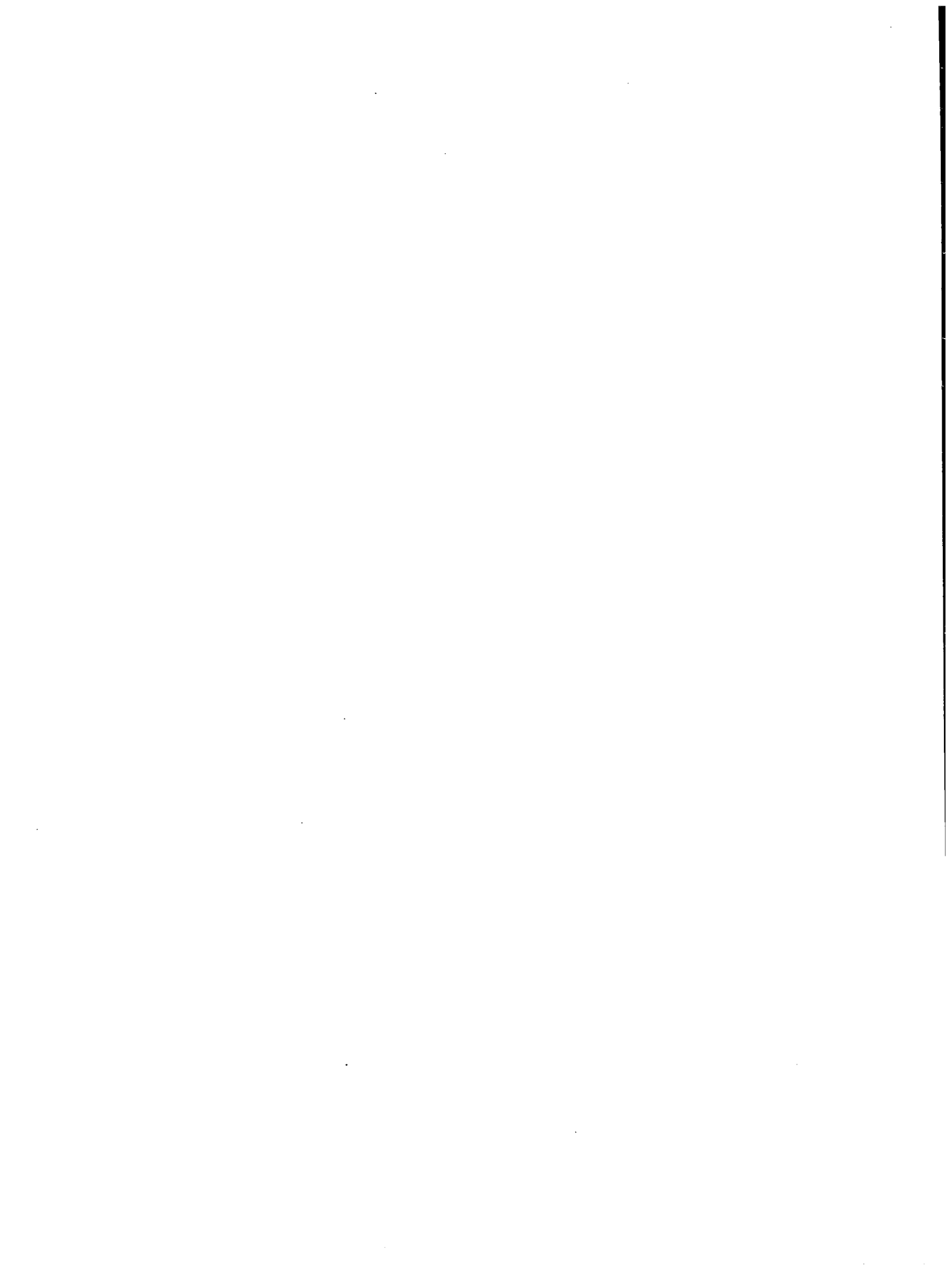


Table 4.10

Regression of Authorized Plea Bargain on
Case and Defendant Characteristics

Variable	Model 1	Model 2	Model 3
	b (s.e.)	b (s.e.)	b (s.e.)
Constant	1.179** (.149)	1.158** (.147)	1.251** (.134)
Victim-Offender Relation (stranger,acquaint,close)	-.061* (.031)	-.052* (.029)	-.053* (.029)
Felony Firearm Charge (no,yes)	.694** (.049)	.691** (.049)	.690** (.049)
Defendant Made Bail (yes,no)	.176** (.047)	.176** (.047)	.188** (.047)
Degree of Injury (none,minor,major)	-.058* (.029)	-.059* (.029)	-.060* (.029)
Female Victim	-.023 (.028)	---	---
Previous Felony Conviction (no,yes)	.081 (.052)	.082 (.052)	---
R ²	.269	.268	.266
N	741	741	741
F-Statistic Between Models d.f.		1.004 (1,2)	1.506 (2,3)
		1,734	2,734

**sig.=.01

*sig.=.05

felonies committed with guns. This policy was implemented in the wake of legislation which imposed a two-year

mandatory sentence in cases where the defendant was convicted of committing a felony with a gun. The prosecutor's policy required that this new law had to be invoked in all cases where the facts supported it. Furthermore, the charge could not be dismissed as part of a plea bargain nor could the other charges in the case be reduced to effectively dismiss the Felony Firearm count. So, for example, a felony assault could not be reduced to a misdemeanor as part of a plea bargain. Since the firearm charge must accompany another felony, reduction to a misdemeanor would mean that the charge would be lost. Therefore, cases involving a Felony Firearm charge are not likely to get as much of a reduction as cases that do not involve Felony Firearm charges.

Whether or not the defendant makes bail is also an important factor. Cases where the defendant was able to make bail were more likely to be reduced in a plea bargain than cases where the defendant was not able to make bail. A number of factors may explain this. One is that the bail decision is a reflection of the seriousness of the charge. The other is that defendants who have spent some time in jail awaiting a disposition are more likely to plead than those who have been out. In the latter case, prosecutors may anticipate a lower probability of a plea and decide to lower the charges. It is difficult to decide which of these forces are at work given the data.

Despite the greater likelihood that prosecutors would reduce the charges in a non-stranger case, prosecutors argued that the probability that the defendant in the non-stranger case would plead was low. Because of the relationship between the complainant and the defendant, prosecutors believed that defendants were likely to persuade the complainant to drop the charges. Thus, these defendants would refuse the plea bargain because there was a reasonable chance that the case would be dismissed and they could get off without a conviction.

Prosecutors therefore believe that the defendant in the non-stranger case evaluates the plea bargain from a perspective where the probability of conviction is low. The offered plea, then, must be good enough to offset a fairly high probability that the defendant will be able to "beat the rap" if the case continues. Another factor to consider here is the presence of a Felony Firearm charge. Not only does this charge limit the reduction of charges in a given case, but a defendant who pleads to this charge is guaranteed a two-year sentence. The certainty of serving time in these cases means that the defendant is even less likely to plead. Table 4.11 presents a set of models which attempt to test these propositions.¹

¹The dependent variable here is whether the defendant pled guilty. It is coded as: 1=defendant pleads; 2=defendant refuses to plead. The other variables in the model are coded as described earlier. The interaction term is the product of the two variables, relationship and whether or not the defendant was charged with the felony firearm.

Table 4.11

Regression of Defendant Guilty Plea on
Case and Victim Characteristics

Variable	Model 1 b (s.e.)	Model 2 b (s.e.)	Model 3 b (s.e.)
Constant	1.255** (.136)	1.081** (.083)	.822 (.071)
Victim-Offender Relationship (stranger, acquaint, close)	-.234** (.062)	-.009 (.020)	--- ---
Defendant Makes Bail (yes, no)	-.105** (.031)	-.124** (.033)	-.111** (.031)
Plea Bargain Offered (reduced-misdemeanor, reduced-felony, no reduction)	.182** (.024)	.288** (.022)	.182** (.025)
Felony Firearm Charge (no, yes)	.033 (.081)	--- ---	.312** (.036)
Relationship* Felony Firearm	.149** (.039)	--- ---	--- ---
R ²	.270	.183	.256
N	767	767	767
F-Statistic Between Models d.f.		45.474** (1, 2) 2, 761	7.318** (1, 3) 2, 761

**sig=.01

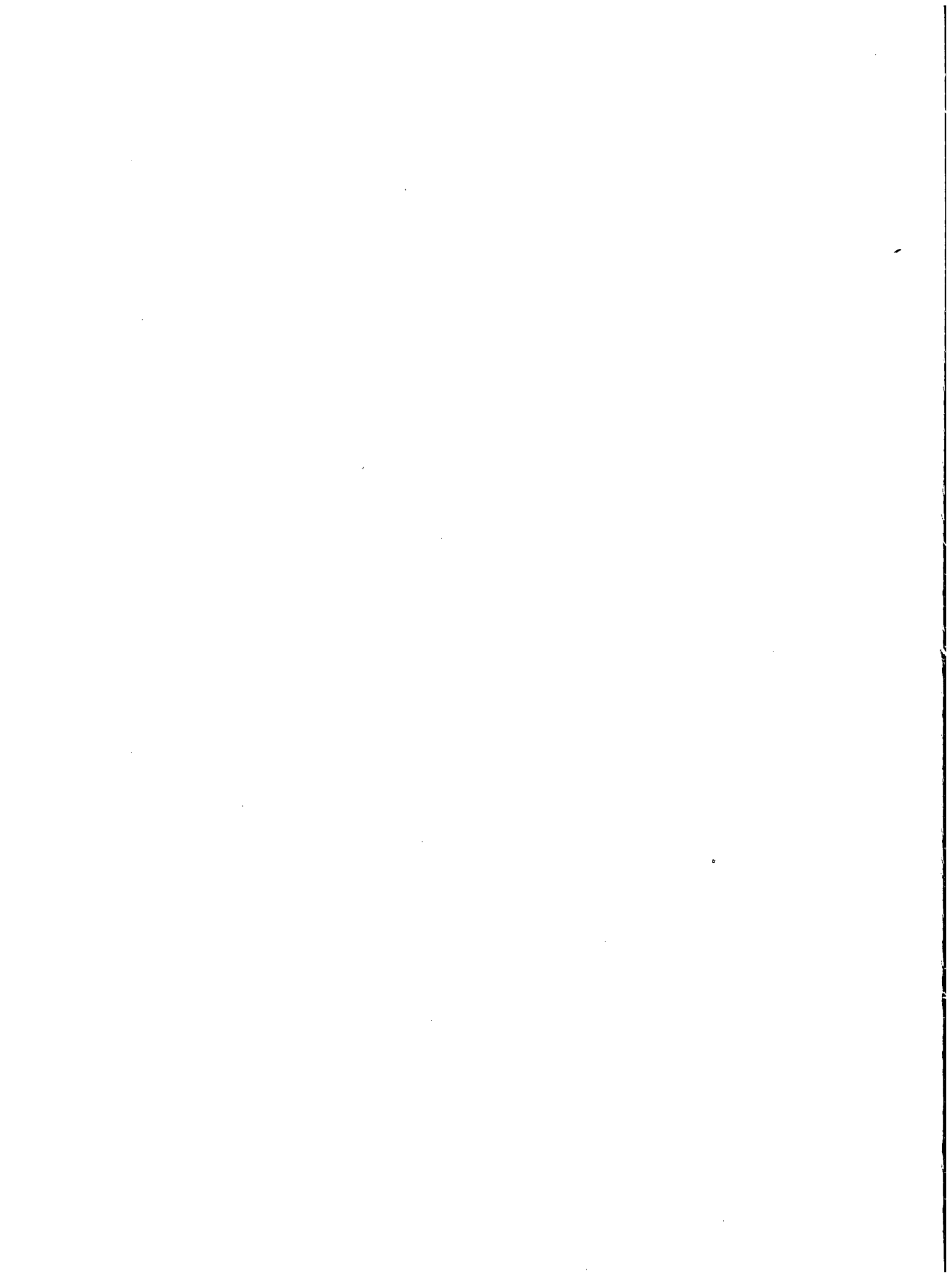
*sig=.05

The dependent variable here is whether the defendant chose to plead at the pre-trial conference when plea

negotiation was likely to take place. Not surprisingly, an offered reduction in the charges is an important variable in obtaining a guilty plea. Defendants who got a reduction were more likely to plead than those who did not. Another important variable is whether the defendant was able to make bail. Those who did not make bail were more likely to plead guilty. This is consistent with the literature which suggests that defendants who are detained before trial are often willing to plead to end the unpleasant experience.²⁰

To test the effect of relationship, both relationship and an interaction variable consisting of relationship and whether the case involved a felony firearm charge were included in Model 1. Both variables are significant. However, the effect of relationship on the defendant's pleading guilty is negative, opposite the expected result. According to the model, the closer the victim-offender relationship, the greater the probability that the defendant will plead guilty. This result must be modified by the effect of the interaction variable, though. The positive effect of that variable indicates that defendants who are closely related to the victim and who are charged with a Felony Firearm are less likely to plead. The effect of the two variables taken together suggests that when no gun charge is involved, defendants in non-stranger

²⁰Jonathan D. Casper, American Criminal Justice: The Defendant's Perspective (Englewood Cliffs, N.J.: Prentice-Hall, 1972).



cases are more likely to plead; when a gun charge is involved, they tend not to plead.

Model 1 also indicates that the effect of the Felony Firearm charge is not significant by itself. However, the presence of the interaction variable could be reason for this. To test the effect of the Felony Firearm charge, the model was estimated without the Felony Firearm Charge and the interaction term (Model 2). As can be seen from the F-statistic testing the difference in the explanatory power between the models, the effect of the gun charge is significant.

A similar test was done for the effect of relationship. Both relationship and the interaction variable were dropped, and the model was estimated in Model 3. Again, the F-statistic here indicates that the effect of victim-offender relationship is important, especially when considered together with the presence of the gun charge. Given the results of Table 4.10, prosecutors are apt to try to reduce the charges in the non-stranger case in order to induce a plea. This strategy works when the case does not involve a Felony Firearm count. When the gun charge is involved, however, the prosecutor is limited on the reductions he or she may make on the charges. This means that the plea bargain is less likely to be attractive, and hence, the defendant will be less likely to plead.

Interestingly enough, defendants who refuse to take the plea and decide to go to trial are partially rewarded. As can be seen from Table 4.12, cases where the victim is closely related to or acquainted with the defendant are twice as likely to be dismissed at trial. However, the proportion of non-stranger cases that is dismissed is not that large--25.8 percent of the non-stranger cases were dismissed as compared to 12.7 percent of the cases involving strangers. If the case is not dismissed the chance of conviction is almost as good as it is in cases involving strangers.

Table 4.12
Outcome of Case at Trial Stage by
Victim-Offender Relation

Trial Outcome	Victim-Offender Relation		
	Stranger	Acquainted	Closely Related
Dismissed (%)	12.7	25.8	25.8
N	25	42	31
Acquittal (%)	34.5	23.3	29.2
N	68	38	35
Conviction (%)	52.8	50.9	45.0
N	104	83	54
Total (%)	100.0	100.0	100.0
N	197	163	120

Gamma=-.1367

Finally, does prior relationship have an effect on the sentence given to the defendant in assault cases? We would expect that a close relationship between complainant and defendant would result in shorter sentences for the defendant than in comparable stranger cases. In order to test this hypothesis, a sentence variable was constructed. This variable distinguishes three kinds of sentences-- probation, sentences less than a year, and sentences longer than a year. The results are given in Table 4.13.²¹

The analysis confirms the hypothesis. Prior relationship between the complainant and the defendant is related to shorter sentences. The effect of relationship is not very large, however. Of much more import are whether the defendant has previous felony convictions, whether he or she is able to make bail, and whether a gun charge is involved. Defendants with a felony record receive longer sentences, as do defendants charged with a Felony Firearm count. Defendants who are not able to make bail are also apt to receive longer sentences.

Interestingly, two variables that were thought to be significant are not. The first variable is whether the defendant pleads guilty. The literature on plea bargaining argues that defendants who plead are often doing so with the expectation that they will receive a

²¹The sentence given is coded: 1=probation; 2=sentences of a year or less; 3=sentences longer than a year. All other variables are coded as described previously.

Table 4.13

Regression of Sentencing Decision on Case
and Defendant Characteristics

Variable	Model 1	Model 2	Model 3
	b (s.e.)	b (s.e.)	b (s.e.)
Constant	.126 (.217)	.113 (.209)	.069 (.204)
Victim-Offender Relation (stranger,acquaint,close)	-.107* (.048)	-.108* (.048)	-.091* (.044)
Previous Felony Conviction (no,yes)	.372** (.079)	.370** (.078)	.373** (.078)
Defendant Makes Bail (yes,no)	.601** (.073)	.603** (.072)	.602** (.072)
Felony Firearm Charge (no,yes)	.326** (.083)	.317** (.071)	.313** (.071)
Defendant Pleads (yes,no)	-.018 (.084)	---	---
Female Victim	-.039 (.043)	-.039 (.043)	---
R ²	.231	.230	.229
N	468	468	468
F-Statistic Between Models d.f.		.599 (1,2) 1,461	.599 (1,3) 2,461

**sig.=.01

*sig.=.05

shorter sentence. Moreover, it is believed that the defendant who pleads does receive a lighter sentence. The

findings in Table 4.12 suggest that this is not the case. Whether the defendant enters a guilty plea is not a significant related to the sentence. This result is confirmed when the variable is excluded from the model. The insignificant F-statistic indicate that the explanatory power of the model is not greatly affected by the omission of this variable. This suggests that Heumann's argument that plea negotiations are not necessarily bargains may be correct.²² Although the defendant may be pleading in anticipation of a "deal," the action has little or no effect on the actual sentence received.

The second variable is the victim's sex. Although the victim's sex was expected to have an effect on the sentence (those who assaulted women victims were expected to get shorter sentences), the effect is negligible.

Conclusion

The demand for certainty that pervades the criminal court results in a crucial disadvantage for the non-stranger case. As argued earlier, the non-stranger case poses two kinds of uncertainty: uncertainty about whether the case will be fully prosecuted by the complainant, and

²²Heumann, Plea Bargaining, pp.102-110, although this conclusion needs some qualification. Heumann argues that prosecutors learn to emphasize certainty, rather than length, of sentences, and their assessment of what ought to be the outcome of a case depends on their evaluation of its seriousness.

uncertainty about the reconstruction of the event. Although the problem of complainant non-cooperation is important, the second problem is also significant. Because of the dynamics of the relationship which underlie the non-stranger crime, some doubt about the defendant's guilt is almost inevitable. Prosecutors expressed skepticism about the complainant's description of the event not so much because they believed that a complainant would lie, but because of the tendency of all people to tell stories from their point of view. They were well aware of the possibility that this one-sided view of the incident would put the complainant in the best light. This problem is especially acute in the non-stranger case because the victim may have provoked the incident. It further complicates matters when there is little physical evidence that could confirm the victim's story, or the evidence that exists is itself ambiguous, a common problem in these cases.

These problems of reconstruction lead to the "Rashomon syndrome." Like the famous film of the same name, the non-stranger crime is an incident that can be filled with ambiguity. This lack of clarity about the order of events, the actions of the participants, and their motivations, all lead to uncertainty in the prosecutor's mind about the "criminality" of the defendant and the event. When this ambiguity is coupled with the uncertainty about the determination of the complainant to

prosecute, it would not be surprising if prosecutors were to treat these cases less seriously than comparable cases involving strangers.

In the analysis of the Felony Firearm data, this expectation seems to be confirmed. Although prior relationship had no significant effect on the warranting decision, it does have an effect on subsequent stages of the process. Defendants in the non-stranger case were more likely to make bail, to receive reductions of charges in plea bargains, and to receive lighter sentences on conviction than defendants in stranger cases.

Interestingly, they were also less likely to accept the plea bargain than defendants in stranger cases. Although these findings are consistent with expectations about court behavior based on the problems of reconstruction and uncertainty, it should be noted that the findings are not confirmation of this hypothesis. Because of the lack of a variable evaluating the strength of evidence in these cases, it is not possible to accurately assess the impact of reconstruction problems on the treatment of cases directly. That the findings are consistent with this hypothesis is encouraging, however.

The findings are even more significant when one considers the selection bias of the data. These cases are felony cases, cases which the court defines as most serious. One would expect, then, that the differences in treatment would be more pronounced if the data included



all cases which were brought to the court by the police, rather than simply those which were accepted for prosecution as felonies.

Prosecutors may evaluate cases from the standpoint of organizational needs of certainty. To them, the non-stranger case represents the "nickel-and-dime" case. These cases are not very important, can take a lot of time, and the prosecution may be discontinued by the complainant. But for the victim, the non-stranger case may be very important. Despite the personal nature of the case, the victim in these cases had to be moved enough by it to seek intervention by an authoritative agency. Why do victims in these cases take their assailants to court? What do they think the court will do for them? And what do they think about the court's treatment of their case? These questions provide the basis for the next chapter.

CHAPTER 5

VICTIMS' DESIRES IN THE NON-STRANGER CASE

"They made ME feel like I was the no-goodnik."
---comment by an assault victim

In recent years, increasing attention has been focused on a previously ignored group: the victims of crime. As public attention was caught by the higher crime rates of the last 20 years, public awareness of the problem of crime also grew. As more people were affected by crime, a number of observers noted that the victims of crime were not privy to services and protection that were available to the accused. This realization, coupled with increased public furor over "law and order" and the problem of plea "bargaining," has led to a resurgence of retribution as a goal for the criminal justice system. As such, the focus has moved from trying to serve public goals through criminal prosecution. The focus instead has come to rest on the needs and desires of the victims. Indeed, the Reagan Administration has designated as one of its goals the assistance of victims in the criminal justice process.¹

¹See U.S. President's Task Force on Victims of Crime, Final Report (Washington, D.C., December, 1982).

The relative lack of attention to victims of crime in the criminal justice process is historically based. One of the major theoretical reasons for the victim's lack of control over the process is that fairness demands that victims not determine sanctions.² Because of the emotional involvement of victims, it cannot be expected that they could decide on an equitable punishment. Moreover, the criminal process is conceived of not as a means for private redress, but for public redress. Criminal punishment is seen as action which serves the public good-- either because it shows public condemnation for the criminal conduct or because the defendant's behavior will be affected in such a way that the safety of the public is preserved. Thus, various schemes of punishment rest on notions of public benefit. Punishment is desirable because the defendant will be rehabilitated, incapacitated, or deterred. Failing this, punishment is justified on the grounds that criminal behavior inflicts some harm on society which must be repaid.

This "public" conception of criminal justice is reflected in the institution of the "state's attorney"-- i.e.: the attorney who represents the interest of the state. The state's attorney prosecutes crime on

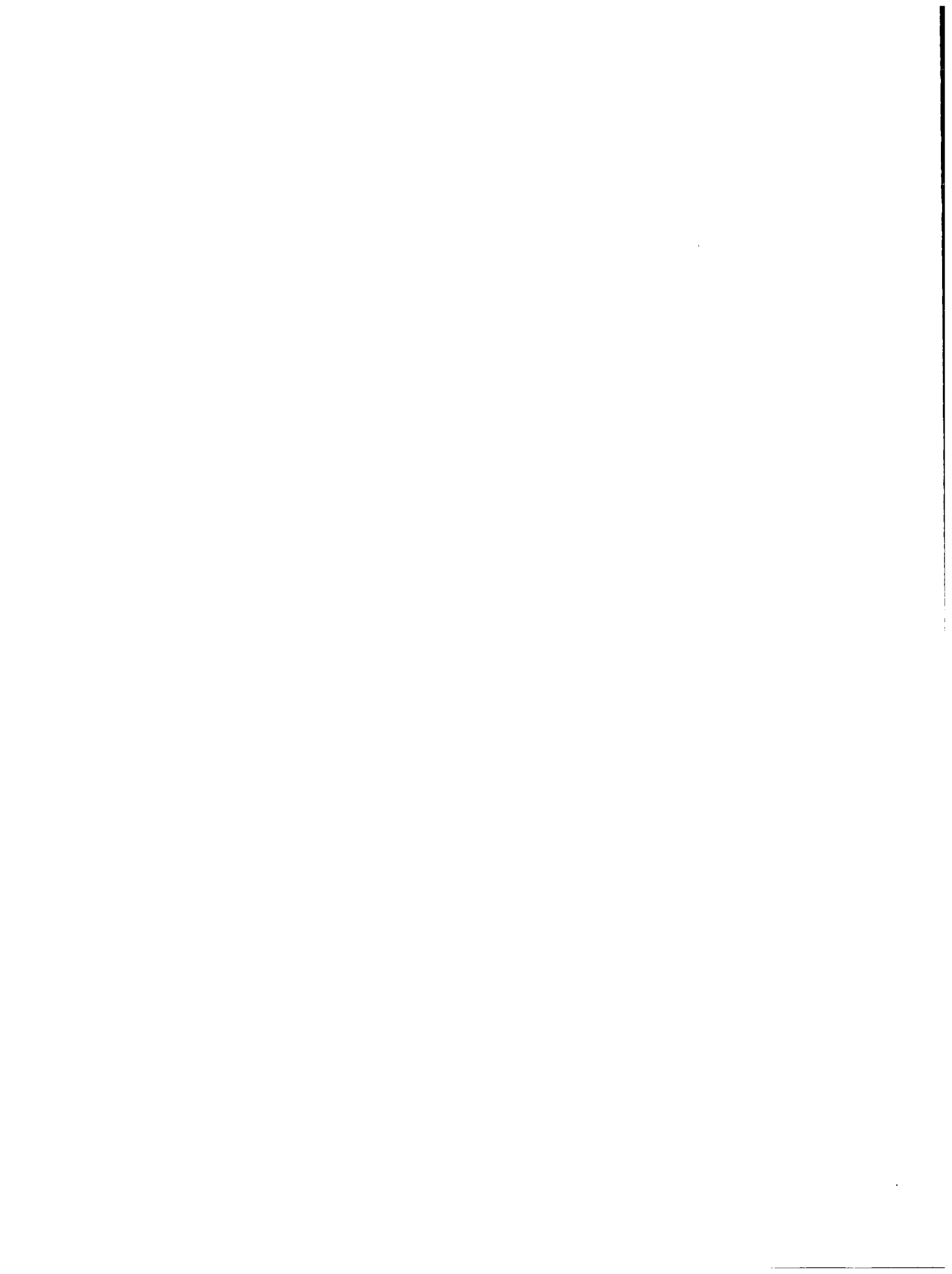
²See Stephen Schaefer, The Victim and His Criminal: A Study in Functional Responsibility (New York: Random House: 1968), pp.7-38; Michael J. Hindelang, Criminal Victimization in Eight American Cities: A Descriptive Analysis of Common Theft and Assaults (Cambridge, Mass.: Ballinger, 1976), Chap. 1.

behalf of the public, rather than on behalf of the individual victim. The actual injured party in criminal prosecution is therefore the public, not the individual victim. The individual victim is accorded the status of a witness; he or she provides the testimony which constitutes the state's case.

The role of the victim as an accessory to the state's prosecution of the defendant means that the victim has virtually no formal control over the court's procedures. Since the prosecution is undertaken by the state, the balance of power in criminal prosecution is assumed to be in favor of the state. Hence, the legal safeguards available to the defendant were defined with this goal in mind. The state, with its vast resources, is restrained by a variety of legal procedures in presenting its case. For example, the defendant may not be coerced into confessing his or her guilt. Police may not conduct random searches of homes in hopes that they will find criminal evidence.

In such a system, individual victims are often ignored. Although they may suffer from physical injury and psychological trauma, services to deal with these injuries must be obtained by the victim. Any expenses incurred as a result of the crime or as a result of prosecution must be borne, in many cases, by the victim.³

³President's Task Force of Victims of Crime, Final Report; Janet L. Barkas, Victims (New York: Charles Scribner's Sons: 1978). However, this situation is



To add insult to injury, the victim may never find out what happens to the case. Often, the case is settled by plea bargaining, a process which does not involve the victim.

These problems are apt to plague all victims of crime. They are exacerbated, however, when the victim knows the accused. Although the victims in non-stranger cases suffer injuries and inconvenience, the fact that the victims know their attackers often results in a strong presumption that these victims somehow "deserve" what happens to them, that the victims have provoked the attack. Thus, there is a strong presumption that these victims share some responsibility for the crime.

Moreover, the victim in a non-stranger case must often work against the skepticism of prosecutors and other court personnel. The skepticism revolves around two points. The first involves the determination of the victim to prosecute. The second involves the question of whether the court is the proper place to resolve the situation at all.

In this chapter, I will focus on the victims of non-stranger crimes and prosecutor's perceptions of them. What do prosecutors think that victims in non-stranger cases want? Do they think that the victims in these cases

changing with the advent of victim compensation programs. See Deborah M. Carrow, Crime Victim Compensation: Program Model (Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, Feb. 1980).

want something different from the court than victims in cases involving strangers? And is it the case that non-stranger victims really do want something different than stranger victims?

To answer the first set of questions, interviews with prosecutors at the Recorder's Court will be used.

Interviews with 54 victims of assault were also conducted at warranting. These interviews, while neither numerous nor fully representative, will provide some indications about victim's assessments and expectations of the court.

Prosecutors' Perceptions of Victims in Non-Stranger Cases

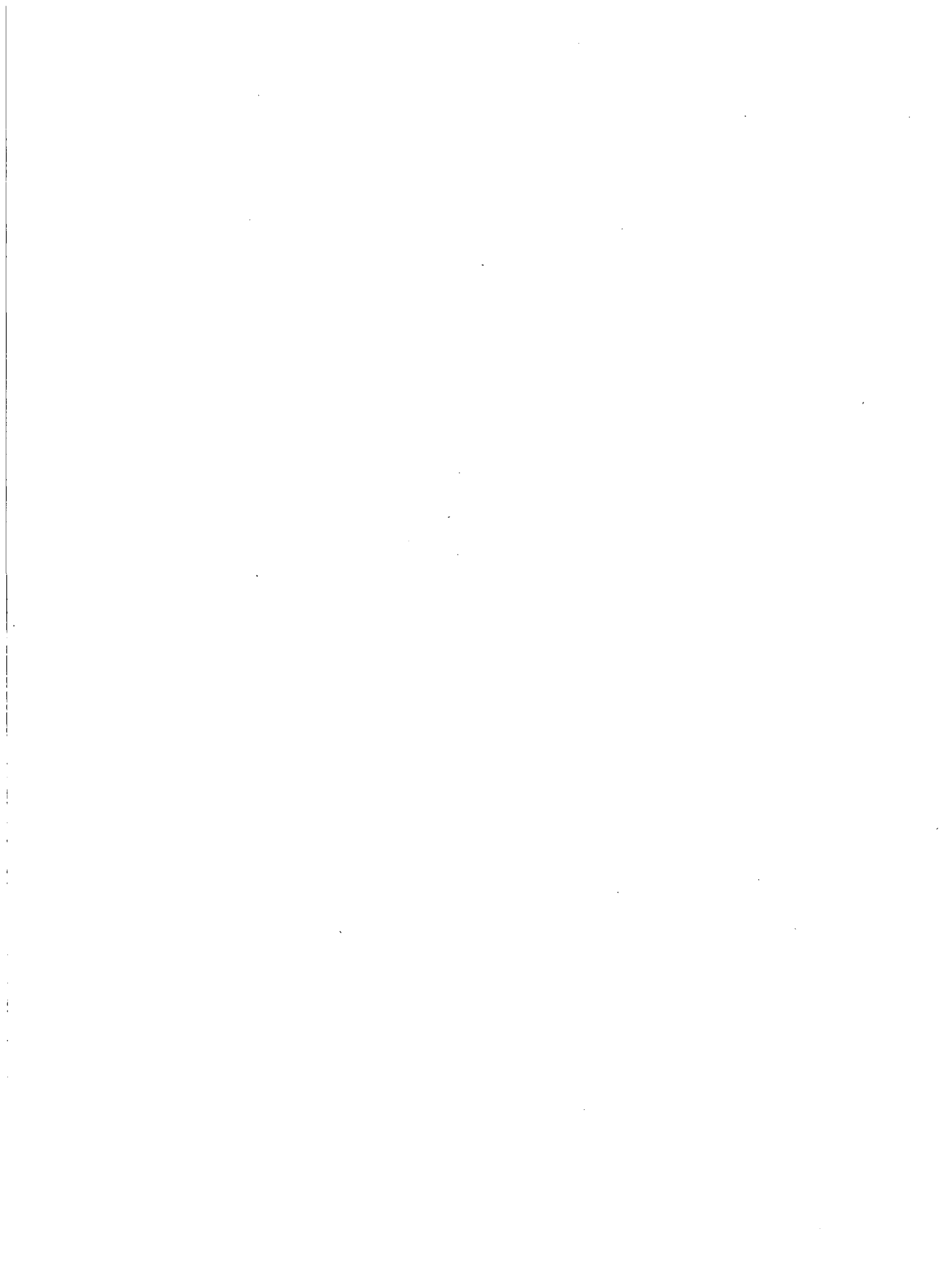
In preceding chapters, I have argued that prosecutors treat non-stranger cases differently than stranger cases because they believe that non-stranger cases are plagued with more uncertainties. Besides the uncertainty about continued victim cooperation, the non-stranger case is a problem because of the uncertainties involved in trying to reconstruct the case. The problem of reconstruction, I argued, is a result of the "Rashomon syndrome"-- the highly emotional nature of the non-stranger case produces difficulty in determining what actually happened given a number of alternate stories.

However, prosecutors also have trouble with the non-stranger case for other reasons. Prosecutors note that victims in non-stranger cases often fail to consider what criminal prosecution really signifies.

R:...[M]ost of the time what so many of these people are interested in is just some kind of assurance that this person will stop what they've done and not do it again, and some kind of guarantee that they are-- safe and that they don't have to put up with it. But when you tell 'em that well, he'll either be put on probation if you go through and there's an eventual conviction-- that's one hammer you can have over that person.... [O]r you tell 'em that they may go to jail. And a lot of times they start going, "Oh-h-h." Are they gonna be worse off because they sent that person to jail? And your other acquaintances are gonna be perturbed-- as a result of your actions, that person's in prison. And that [complainant] starts to think, "Well, I really don't wanna hurt that person that badly." [13]

The high emotional level of the non-stranger case is significant to prosecutors because it is based on two very strong, but contradictory, elements. The first element is the element of anger. Prosecutors often see complainants shortly after a crime has occurred. Many of these complainants are angry. Although prosecutors recognize that the anger is real, they also argue that the anger felt by the complainant is likely to dissipate. Since this is often the initial motive for bringing the case to the court, the likelihood that complainants will "cool off" is the explanation offered by prosecutors for the high dismissal rate.

R: Cases involving neighbors-- ongoing altercations-- if the police bring them down on a warrant request the day after they happened-- which they have done-- [with] incidents involving members of a family or something like that-- tempers are still hot! And I don't like to process them. I don't wanna make a decision, because a prosecutor's decision in cases like that is almost always based on the willingness or the desire of the complainant to prosecute. And a lot of these things-- after a week or ten days, people change their minds.... And the more-- the closer [the parties] are



[related]... the more difficult it is for them to make a decision. And that's why I think they need time.... to come to terms with all the alternatives and all the possible repercussions their action can bring. [4]

The complainant's anger in the non-stranger case abates because anger is a highly volatile emotion. However, the presence of a relationship between the complainant and the defendant means that some bond exists between the two parties. This bond is likely to reassert itself once the complainant "simmers down." Thus, not only is the prime motivation for bringing the case to the court likely to weaken over time, but another strong emotion which mitigates against prosecution is likely to take its place. This is not as likely to be true with stranger cases. In the stranger case, the complainant may "cool off." However, the emotions which replace the anger are more likely to be supportive of prosecution. People attacked by strangers may continue prosecution because of "civic duty," or because they want to see the guilty punished.

R: I--I think the... complainant in a prior relationship might want something different [from the complainant in the stranger case]. For instance, if it's a husband-wife situation, sometimes what the complainant really wants is not jail. [They] want the party to stay away from 'em, behave, you see. [He or she] doesn't necessarily want jail, because there's, you know, there's so many considerations. There's children, there's support, and so on. Whereas, you know, if there's no relationship there between the parties, ... usually, that type of a complainant wants blood. [15]

Besides anger, prosecutors recognize another motivation for prosecution in the non-stranger case. This motive is a kind of despair. In these cases, the complainant has tried to change the defendant's behavior, but to no avail. Criminal prosecution is the final and most extreme measure the complainant can take. The problem with these cases is that oftentimes the complainant does not want the court to be punitive. Rather, they would like the court to somehow resolve the dispute, or correct the defendant's behavior by communicating to him or her that it is undesirable or dangerous. Alternately, the complainant may want the court to coerce or convince the defendant to get some help to control his or her behavior. This use of the courts often strikes many prosecutors as inappropriate.

R: ...[A] lot of times they come in and say, "I don't...want to put him in jail." But,...I can't put up with that anymore. Well, really, I don't have anything to say about whether he's going to jail or not. It's the judge's function, if they find somebody guilty, to decide what the punishment is gonna be. And that's basically what the court-- what it's set up for. All the statutes-- none of the statutes say anything about rehabilitation. They talk about maximum time to be served, or maximum fine,.... And...sometimes I say to people, "Well, I can't promise you...he won't go to jail." I can look at his record, you know....

Q: But does that have an effect on you?.... I mean, I've seen cases where people have come in and said, "I don't want to send him to jail."... Does that--?

R: Well, that tends to make me say, "Well, then,...don't recommend that warrant." [2]

These two types of motivations for the complainant in the non-stranger case provoke an interesting response from prosecutors. Because of the high likelihood that complainants will change their minds about prosecution, prosecuting attorneys reported that they spent more time with these victims. One reason for this increased time was to make certain that the complainants had not changed their minds. Closer attention is paid to the complainant to make sure that if the complainant wants to drop the case, that it can be done early enough to avoid wasting time.

R: See-- we recognize this: that...every time we have a warrant, a domestic warrant-- husband vs. wife, wife vs. husband, brothers, sister, etc.-- some sort of relationship either by marriage or blood, if we have those parties involved and a warrant is recommended, we recognize that oftentimes those parties make up. So, there is, there is a lot of attention paid to those particular cases, and recognizing that oftentimes these parties like to kiss and make up, we like to try to determine as quickly as possible if this is gonna happen. Now at the warrant stage, for instance, I'm sure each warrant prosecutor...goes over the process with each complainant,...explaining that this oftentimes does happen, how serious are they about the particular case and so on and so forth. And we seem to have quite a bit of contact with these kind of complainants down the road. Oftentimes, they might come in and not want to prosecute. You know, we're very careful [then] to go over it with them as to whether this is in their best interest, whether it's in the best interest of the people, and so on.
[15]

The other reason for increased time with non-stranger complainants has to do with prosecutor's beliefs that non-strangers were more likely to need information and counseling. In the first place, prosecutors were quick to

sense if the victims were hesitant about prosecution. Indications by complainants that they were still concerned with the defendant are interpreted as reflecting uncertainty about prosecution. Counseling in this case was provided by prosecutors as a way of telling complainants about the consequences of dropping the case. It was hoped that this advice would discourage the complainant from dropping the charges.

The second type of counseling sometimes overlaps with the first. This type of counseling however, takes on a clinical psychological aspect. Prosecutors here act as counselors, explaining alternatives and services available to the complainant and trying to clarify what the complainant's goals and objectives are.

R: [W]ithin the constraints of time, you know, I will [counsel victims]. You know, you don't have that much time to spend with the victims. I'm not trying to rebuild their marriage, I'm not trying to get them back together, but I'm trying to clarify for them-- they may have never been involved with the system before-- what the alternatives are and find out what they really want. [10]

Q: But do you see yourself in-- when you're doing murder and robbery and drug cases, do you see yourself, your job, as much more of a law enforcement job, then? Much more legal, or cut-and-dried,...as opposed to--

R: Well, yeah. You said something earlier about being a social worker, a lot of that, you know. I mean,...if I have any social worker skills, that's where they come into [play]. [Q: You mean in family cases?] Right. That's where they come out. And that's when I'm inclined to, to wanna know from people-- see, I'm not gonna ask somebody who just got robbed at gunpoint, you know, on the street....I'm not gonna ask him if he really thinks having this person go to jail is the...right thing,

okay? 'Cause that's what they think. I mean, you know, there's no question about it. [2]

This latter counseling mode is of interest because it reflects a different role for the prosecuting attorney. Utz discusses two kinds of prosecutorial roles-- magisterial and adversarial-- in her research.⁴ The non-stranger case suggests that there might be a third role: that of counselor or helper. Interestingly enough, some prosecutors seemed to feel reasonably comfortable with this role, arguing that it was a "part of the law."

Q.: What really surprises me is that the court seems to work in these cases like a social agency.

R: But that's a part of the law! You know, when I was a kid, there was a radio show--...called "Mr. District Attorney." And at the beginning of every show, this fine old gentleman's voice would say, "And it shall be the duty of the district attorney to prosecute the guilty and with equal vigor to defend the rights of the innocent."...[Y]ou look at some cases and I think the jury took some social factors under consideration. And who's to say that's wrong? Maybe we should back off.... [C]rime is a social problem.

....[O]f all the considerations, moving the docket is maybe fourth or fifth on the list. So it's important, but it's not overriding. We're much more concerned with disturbing a relationship, causing a breach to widen or making a situation worse than it was to begin with. We're very sensitive to that. We don't want to split up something that should be kept whole. [14]

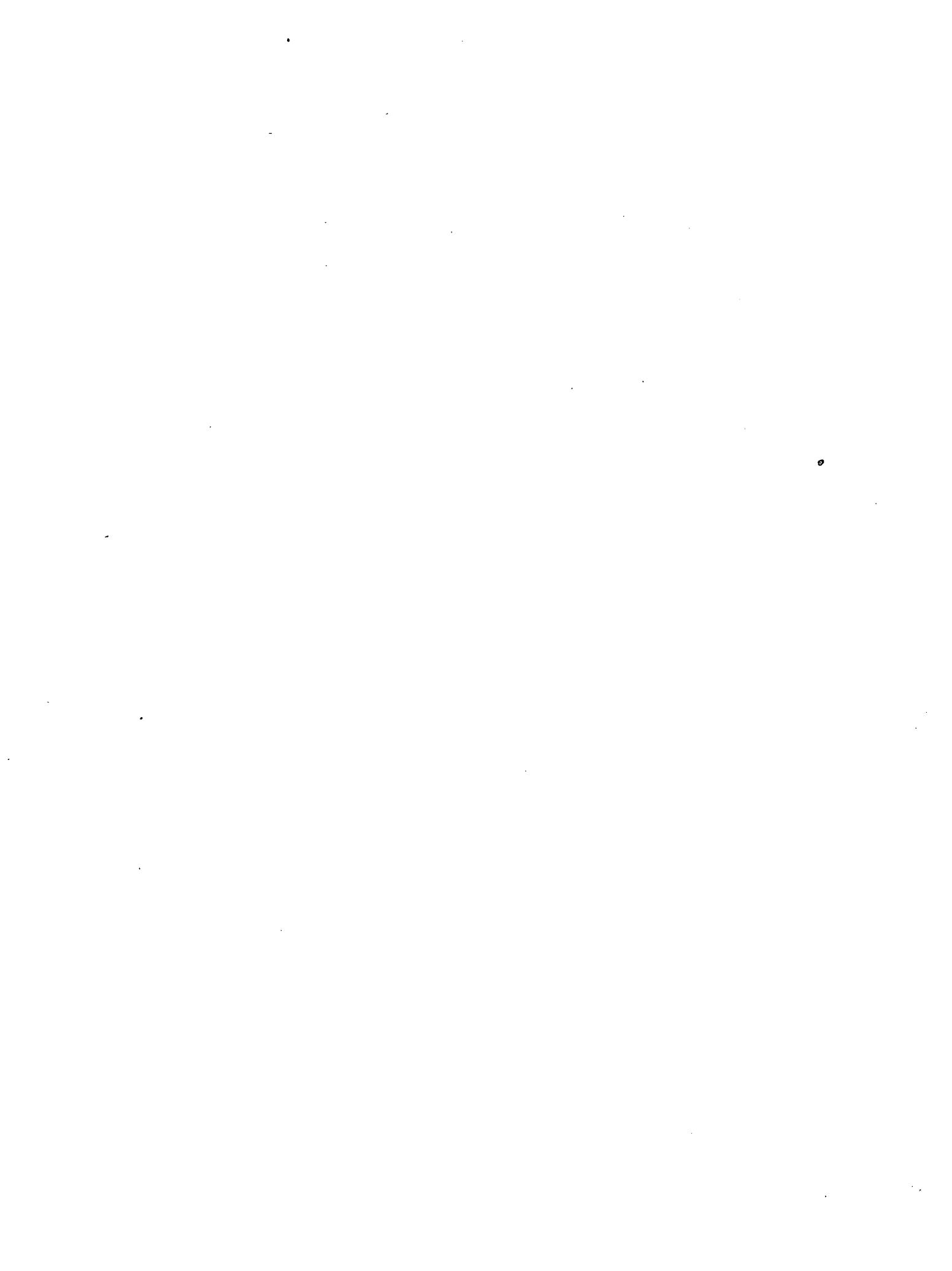
Thus we see that prosecutors can identify legal differences between the stranger and non-stranger case,

⁴Pamela J. Utz, "Two Models of Prosecutorial Professionalism," in The Prosecutor, ed. William F. McDonald (Beverly Hills, Calif.: Sage Publishing, 1979), pp.99-124.

and that they also believe that the motivations and desires of the complainants in stranger and non-stranger cases are different. This difference seems to generate a different kind of response from the prosecutor in terms of his or her role behavior. Rather than assume the role of the "legal actor" which is played in the stranger case, prosecutors are apt to act more like social workers in the non-stranger case. But is it the case that complainants in the non-stranger case want different things than stranger complainants?

What Do Victims Want?

Prosecutors believe that the non-stranger victim is ultimately reluctant to prosecute. This reluctance is due to a number of factors-- the victim may be acting out of anger, with no thought to the consequences that criminal prosecution may have. The victim may misunderstand the function and purpose of the criminal court. He or she may think of the court as an institution which mediates and arbitrates disputes, rather than as one which adjudicates questions of law and punishes. Finally, the victim may be acting out of desperation. Prosecution is requested by victims in these cases as a last resort to try to resolve a bad situation. In these cases, however, the victim may be ambivalent about the consequences of prosecution. If the victim simply wants the offender to stop, but realizes that punishment for the defendant will make matters worse,



then the possibility of punitive action by the court is not desirable.

Although prosecutors report this difference, it is far from clear that this is actually the case. It might well be that prosecutors are quick to notice the difference since it would support a policy of differential treatment of non-stranger cases.

To test the validity of this perception, I will examine the results of 54 interviews of assault victims conducted at the Recorder's Court. These interviews were conducted over a period of seven months, from late September of 1981 to May of 1982. The charges that were filed in these cases ranged from assault and battery (a misdemeanor) to assault with intent to murder (a felony). Victims were related to their assailants in roughly 80 percent of the cases. Besides being asked to provide information about what had happened to them, victims were also asked questions about the court and what they wanted the court to do in their case.

When asked what would be the fairest thing the court could do for them, the victims were apt to respond in one of four ways. The first kind of response was where the complainant demanded punishment for their assailant. Complainants in these cases felt that the defendants had hurt them, and the defendant's actions were dangerous either to them or to the community at large.

Q: What do you think would be the fairest thing that could be done by the court in your case?



R: Well, I think the guy should be 'carcerated to learn a lesson. He goin' around shooting people just like he shot me. For what? He had no reason. He needs some help, some psychiatric help, but I think he needs to be 'carcerated. He like an animal, he should be put where animals are. If a dog bite you, what do you do with the dog? You lock him up.

R: To keep the guy in jail. [Q: Why do you think that would be fair?] 'Cause, see, he came out of nowhere and I didn't say nothing to him and he tried to kill me. When people do things like that, I think he should be put away-- it's not safe. Who knows who else he'll try to do this to?

A second kind of response requested some kind of legal action, but not necessarily punishment. So, for example, the complainant thought that the judge might impose some kind of restraining order or peace bond on the defendant which would subject him or her to some kind of punishment if the conditions of the order were breached. Other complainants thought that going through the legal process itself was a sufficient outcome.

R: I think it's up to the-- whoever. I imagine there'll be a judge or jury. Whatever they decide will be all right with me. I don't think this kind of thing should go unnoticed. I could have lost an eye, but it wasn't that serious....I think just going through the process will be a punishment and quite a shock to the [defendant].

The third kind of response emphasized communication. The victims in these cases indicated that they wanted the court to tell the defendant that his or her behavior was unacceptable. In these instances, it was clear that the complainant had been trying to convey the same information to the defendant, but had not been able to elicit any change. Thus, the victims hoped that the defendant would

finally "get the message" if the court were to talk to them. This type of response also included those who hoped that the punishment imposed by the court would have a good effect on the defendant's behavior.

R: [The fairest thing would be] to have him locked up. Maybe he'd learn something. (Q: What do you mean by that?) He's been in jail so much, I doubt that it'd do anything, but if they locked him up for a long time to get his head straight, then maybe it'd help. He's been in trouble with the cops ever since he was born...and they've put him in jail for a few days for drinking and that, but if they put him in jail long enough, it might have an effect on him.

R: If we both go to court, [the fairest thing would be] to let him know that he can't keep acting like this. That it's not right, what he's doing-- that he can't always be the big bad wolf and go around breaking into people's houses and things.

Finally, complainants reported wanting the defendant to "get help." Those who thought that this would be the fairest outcome for them were also explicit about the unacceptability of jail for defendants. Sometimes, they thought that jail would simply make the defendant's behavior worse. Others reported that jail would be too extreme for the defendant.

R: [The fairest thing would be] to make sure that-- to tell [the defendant] that he definitely has to get help. I wouldn't want him to be in jail. But if he needs help, the court is going to have to tell him to get help.

R: [The fairest thing would be to] get him to leave me alone. I don't know if jail's the answer. To tell you the truth, I would like to get him committed.

This last category also includes those who state that they simply want the defendant to be "kept away" from them. Since prosecutors argued that both of these responses were stereotypic responses given by the complainant in the non-stranger crime, it seemed reasonable to put these responses in the same category. Marginals for these responses are presented in Table 5.1.

Table 5.1
Victims' Desired Case Outcomes

	Jail	Other Legal Outcome (e.g., peace bond)	Communicate With Defendant	Help Defendant
(%)	33.3	27.5	21.6	17.6
N	11	14	17	9

If prosecutors are correct in their perceptions of differences between stranger and non-stranger cases, then the complainants in those cases should report a preference for different desired outcomes. According to prosecutors, the complainants in non-stranger cases should be more likely to request that the defendant not be jailed. They should also mention communication as a desired outcome more often. Table 5.2 reports the results of this analysis.

The results in Table 5.2 support the perceptions of prosecutors. Those complainants who are closely related to the defendants are more likely to identify fair

Table 5.2

Victim's Desired Case Outcome by
Victim-Offender Relation

Desired Outcome	Victim-Offender Relation		
	Stranger	Acquainted	Close Relation
Jail (%) N	60.0 6	33.3 5	25.0 6
Other legal outcome: peace bond, "process" (%) N	30.0 3	40.0 6	12.5 3
Communicate with defendant (%) N	10.0 1	20.0 3	29.2 7
Help Defendant (%) N	0.0 0	6.7 1	33.3 8
Total N	100.0 10	100.0 15	100.0 24

Chi-Square=12.605
sig=.0498

outcomes to their cases as outcomes which do not involve incarcerating the defendant. They are more likely to want the court to force the defendant to get help. They are also more likely to want the court to communicate with the defendant.

The difference in expectations between non-stranger and stranger victims does not appear to affect the way that prosecutors warrant the case, however. As can be seen in Table 5.3, there is no significant association

between the outcomes desired by the victims and whether the charge is warranted as a felony or a misdemeanor. This finding suggests that the prosecution finds other aspects of the case more important to making the warranting decision than the victim's desires.

Table 5.3

Felony or Misdemeanor Warrant by
Victim's Desired Outcome

Warrant Type	Desired Outcome			
	Jail	Other	Communicate With Def.	Help Defendant
Felony (%) N	47.1 8	28.6 4	18.2 2	12.5 1
Misdemeanor (%) N	52.9 9	71.4 10	81.8 9	87.5 7
Total (%) N	100.0 17	100.0 14	100.0 11	100.0 8

Chi-Square=n.s.

This can also be seen in the regression equation presented in Table 5.4.⁵ When deciding whether the case is a misdemeanor or a felony, the use of a weapon is

⁵The variables for this table were coded as follows:

Warrant type: 1=felony, 2=misdemeanor.
Victim's sex: 1=male, 2=female.
Victim-offender relationship: 1=stranger,
2=acquainted, 3=close.
Whether a weapon was used: 1=yes, 2=no.
Degree of injury: 1=no injury, 2=minor injury,
3=serious injury.

clearly the most important determining factor. The degree of injury, surprisingly, is not very important. Other factors which are not significant in determining the level of the charge are the sex of the victim and relationship. If we look at the characteristics of non-stranger cases, as well as the characteristics of cases involving women, there is some explanation for this.⁶

Table 5.4

Regression of Warrant Type on Victim
and Incident Characteristics

Variable	b (s.e)
Constant	1.258** (.437)
Victim Sex (male, female)	.126 (.432)
Victim-Offender Relation (stranger, acquainted, close)	.059 (.089)
Weapon Used? (yes, no)	.414** (.122)
Degree of Injury (none, minor, major)	-.128 (.128)

$R^2 = .423$
**sig. = .01

⁶Although note that these findings are based on a much smaller sample than in the previous chapter; thus, the findings are less conclusive.

Table 5.5 shows that non-stranger cases are less likely to involve use of a weapon of any kind by the defendant. Seventy percent of the stranger cases involved weapon use compared to 37 percent of the non-stranger cases. A larger proportion of non-stranger cases involve injury to the victim (see Table 5.6), but those who are closely related to the offender tend to receive minor injuries. Incidents involving acquaintances have the greatest proportion of major injuries (about 86 percent).

Table 5.5
Victim-Offender Relation by Weapon Use

Used Weapon?	Victim-Offender Relation		
	Stranger	Acquainted	Closely Related
Yes (%)	70.0	73.3	37.0
N	7	11	10
No (%)	30.0	26.5	63.0
N	3	4	17
Total (%)	100.0	100.0	100.0
N	10	15	27

Chi-Square=6.412
sig.=.04

The pattern of weapon use is duplicated when looking at this characteristic by sex. In Table 5.7, we see that female victims are less likely to be attacked with a weapon. Approximately 65 percent of female victims were

attacked by an unarmed assailant; by contrast, only 20 percent of the male victims were assaulted by an unarmed offender. Women are also less likely to be seriously injured. As the data presented in Table 5.8 show, women generally receive minor injuries (about 60 percent), whereas men receive serious injuries (70 percent). Thus, by the two most important criteria used by prosecutors to gauge the "seriousness" of a case, cases involving female victims and victims with a prior relationship to the offender are less likely to be considered "serious."

Table 5.6

Victim-Offender Relationship by Degree of Injury

Degree of Injury	Victim-Offender Relation		
	Stranger	Acquainted	Closely Related
No Injury (%) N	50.0 5	0.0 0	3.7 1
Minor Injury (%) N	20.0 2	13.3 2	66.7 18
Major Injury (%) N	30.0 3	86.7 13	29.6 8
Total N	100.0 10	100.0 15	100.0 27

Gamma=-.0884

It is also interesting to note that, like victims of non-stranger crime, female victims may also have different desires than male victims. Although the early literature

Table 5.7

Victim's Sex by Weapon Use

Weapon Used?	Victim's Sex	
	Male	Female
Yes (%)	80.0	35.3
N	16	12
No (%)	20.0	64.7
N	4	22
Total (%)	100.0	100.0
N	20	34

Chi-Square=10.081
sig=.002

Table 5.8

Victim's Sex by Degree of Injury

Degree of Injury	Victim's Sex	
	Male	Female
No Injury (%)	15.0	8.8
N	3	3
Minor Injury (%)	15.0	61.8
N	3	21
Major Injury (%)	70.0	29.4
N	14	10
Total (%)	100.0	100.0
N	20	34

Gamma=-.4744
Chi-Square=11.296
sig=.004

and research on wife abuse, for instance, suggests that the victims of wife abuse are prevented from prosecuting their assailants, there is evidence to suggest that these victims may often be ambivalent. Wexler, in her research on the development of the battered women's movement, suggests that many programs created to help the victims of wife abuse prosecute their husbands failed.⁷ In part this failure was attributed to client hostility towards the program personnel. Clients in these programs felt that they were losing control over their cases and that comprehensive work on battered women, also suggests that forcing prosecution in all cases may not be what the victims want.⁸

Finally, Gilligan's work on women's moral development also provides some evidence that women may enter the criminal courts with different expectations than men.⁹ Gilligan suggests that men and women develop along different moral "tracks." Whereas men are encouraged to develop moral constructs which emphasize rights and stem from individual claims against others, Gilligan argues that women's moral development is based on constructs of

⁷Sandra Wexler, "Battered Women and Public Policy," in Women, Power, and Policy, ed. Ellen Boneparth (New York: Pergamon Press, 1983), pp.184-204.

⁸Susan Schechter, Women and Male Violence: The Visions and Struggles of the Battered Women's Movement (Boston: South End Press, 1982), pp.174-183.

⁹Carol Gilligan, In a Different Voice: Psychological Theory and Women's Development (Cambridge, Mass.: Harvard University Press, 1982).

community and social relationships. Men are apt to think of moral claims in terms of whether individuals have a right to get some good, almost regardless of the harm that it may do to relationships. Women, by contrast, are apt to think more about claims in terms of achieving a consensus. They try to settle moral claims without hurting others. Thus, women were more likely to suggest increased communication with others as a means to settle disputes since they were likely to think that hurtful behavior was generated by misunderstanding.

If Gilligan's work is right, then it would not be surprising if we find that female victims are likely to identify fair outcomes differently from males. Thus, we would expect that women would emphasize help or communication with the defendants as fair outcomes. By recoding the fair outcome variable and collapsing responses which identify help for the defendant with those which emphasize communication, we can group the expected female responses together.

As can be seen from Table 5.9, female victims do tend to give different responses than male victims.¹⁰ Female victims were twice as likely as male victims to suggest some kind of help for, or communication with, the defendant. Male victims, by contrast, were twice as

¹⁰It would be useful to be able to run Table 5.9 controlling for relationship and for degree of injury. Unfortunately, because of the small sample size, this is not possible.

Table 5.9

Victim's Sex by Desired Outcome

Desired Outcome	Victim's Sex	
	Male	Female
Jail (%)	50.0	22.6
N	10	7
Other legal outcome (%)	30.0	25.8
N	6	8
Help or Communication with Defendant (%)	20.0	51.6
N	4	16
Total (%)	100.0	100.0
N	20	31

Chi-Square=5.918
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likely as female victims to want jail and punishment for the defendant. The difference between the two classes of victims can be seen by comparing the responses of a male and a female victim. The woman respondent had been threatened in a fast food restaurant by another patron. Her assailant was not known to her, and although the victim was unharmed, her assailant had tried to slash at her with a knife. The male respondent was "punched out" by his girlfriend's former boyfriend. In the scuffle, a new coat that the respondent was wearing was ripped. The female respondent's comments are given first, then the male's.

R: [The fairest thing would be] to see that the lady gets psychiatric help. (Q: Why?) Because I know she's unbalanced. I don't want her to go to jail, and before I came down I was tempted not even to sign the warrant. But they [the police and prosecutor] convinced me that the only way to get her help was to sign the warrant, or they'd let her out and turn her loose and she might go out and do it to someone else.

R: Well, I want to get him [the defendant] down here-- make him pay for what he's done. And I want restitution for my coat. He should pay for the damage he did! [Then] they could lock him up for 10 years for all I care.

In the woman's comments, concern is expressed for the defendant. The woman thinks of ways to help her. This is not only true when the assailant is a woman, either. The following response was given by a woman whose car had been "appropriated" by a male relative. The relative had thrown a brick through her car window when she tried to drive the car away, dragged the respondent out of the car, and then proceeded to beat her.

R: Well, I'm trying to get my car back. If I could just get my car and they could make sure that he just doesn't bother me anymore. I don't want him to go to jail. If I get my car back, then I don't have anything to do with him and he doesn't have anything to do with me. I want my car fixed-- (Q: You don't want him to be put in jail?) If they do, it's okay with me, but I hate to see anyone put in jail. I'm just soft-hearted, I guess.

Although prosecutors may not use the victim's desires to decide whether a case will be charged as a felony or a misdemeanor, the hesitation of female complainants to prosecute may work against them. One of the prosecutors I

interviewed mentioned that this kind of attitude made him skeptical about issuing a warrant. This type of response also seems to provoke a "counseling" response from the prosecutor. He or she will interpret the reluctance of the victim to punish the defendant as a cue to providing the complainant with information about other (non-criminal) avenues to pursue. This type of information may be misinterpreted by the complainant as an attempt to discourage the complainant from prosecution.

R: Nothing really [happened with the prosecutor]. He didn't tell me anything that I really didn't know.... But what was really funny was that he said that if I put out a warrant that he [the defendant] couldn't work. Why should I care? [B]ut he showed where he was at. He was thinking about it, and he made it [sound] like I should, too. [H]e was concerned about my support. He showed he wasn't too cool.

At the very least, the different desires of victims in the non-stranger case perpetuates the attitude that these cases are a "can of worms."

Conclusion

It is clear that prosecutors believe that the complainant in the non-stranger case has different preferences for the case outcome than complainants in stranger cases. This difference is characterized as a kind of vagueness, or alternately, as a reluctance to punish the defendant. Complainants in these cases are more likely to want the defendant to be "kept away" or



given some kind of counseling or help. Neither of these desires is considered altogether appropriate for the court. Although these desires do not seem to affect warranting decisions made in these cases, they are apt to frustrate prosecutors. The court, with its huge caseload, has little time to spend on cases where the complainant seems confused.

The analysis of victim interviews confirms this image. Complainants who have a prior relationship with the defendant are more likely to express hopes that the defendant's behavior will somehow be changed by the court. They are also less likely to want the defendant to be punished and more likely to want the defendant to stay out of jail. Why this is so cannot be answered by the data. However, part of the reason may lie in the fact that the complainant and defendant do know each other. The desire for help may be a way for the complainant to deal with a harmful incident without harming the relationship too much.

Whatever the reason, the different preferred outcomes of stranger and non-stranger complainants leads to frustration for the prosecutor. This frustration does not seem to have much of an effect on the level of the charge he assigns to a case, however. The felony data examined in the previous chapter suggests that there are strategies for dealing with non-stranger cases after they have been accepted for prosecution. That analysis also found that

non-stranger cases tended to be dismissed more often because of complainant non-cooperation than stranger cases. Although the interview data are not definitive, they suggest that in a significant portion of non-stranger cases, criminal prosecution may not be what the complainant wants. Whether this reflects a need for different institutions for these cases, or whether it reflects a failure of the courts to address the needs of a legitimate constituency, is a question I will address in the next chapter.

CHAPTER 6

CONCLUSION: THE NON-STRANGER CASE IN THE CRIMINAL COURT

"Well, I'm afraid I can't help you, Lestrade," said Holmes.

"The fact is that I knew this fellow Milverton, that I considered him one of the most dangerous men in London, and that I think there are certain crimes which the law cannot touch, and which therefore, to some extent, justify private revenge. No, it's no use arguing. I have made up my mind. My sympathies are with the criminals rather than with the victim, and I will not handle this case."

Sherlock Holmes in "The Adventure of Charles Augustus Milverton"

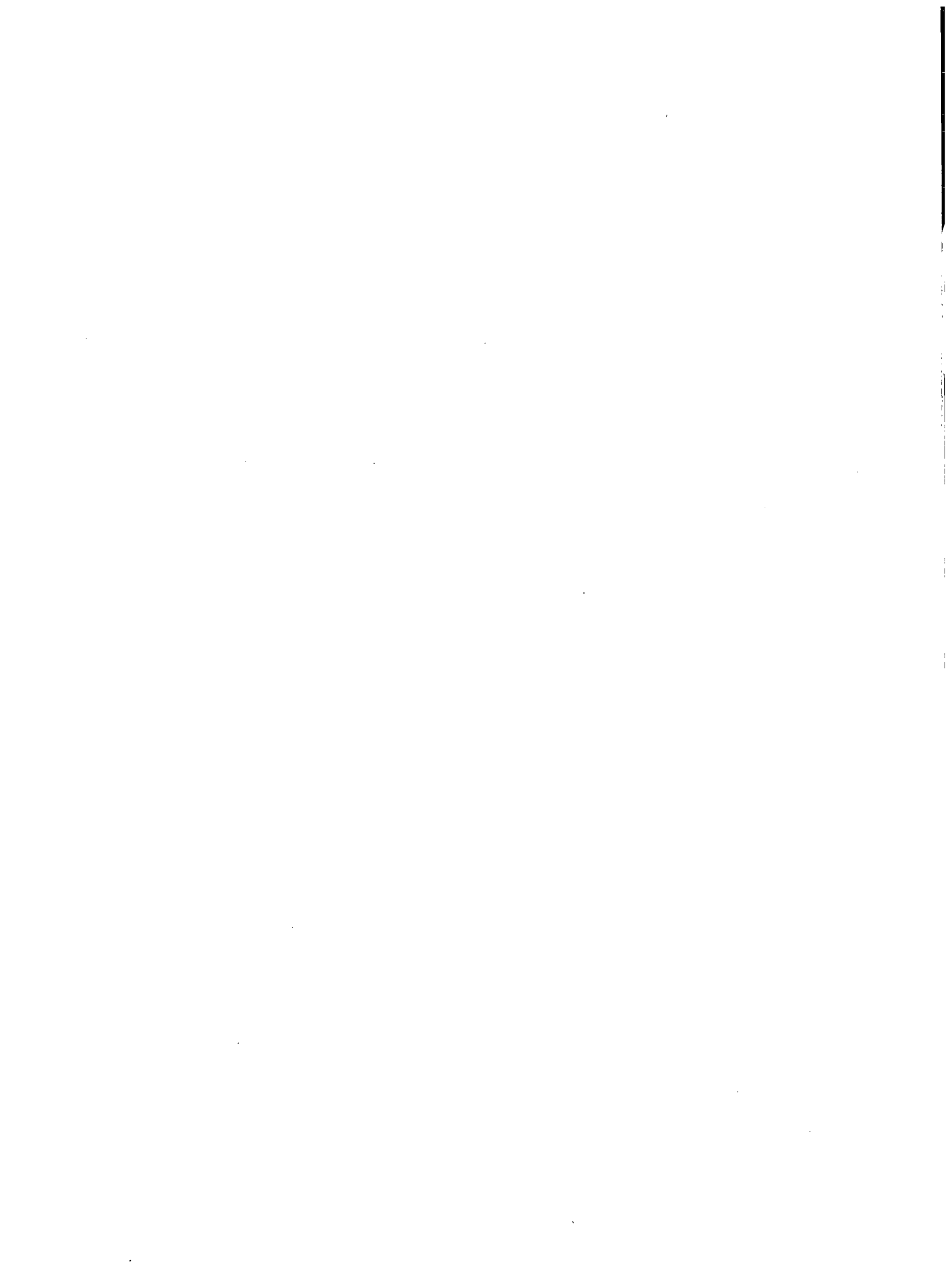
The purpose of this research has been to look at the problem of crimes that involve people who know each other, known as non-stranger crimes, and the ways in which criminal cases involving non-strangers are handled by the criminal courts. We find that, like Sherlock Holmes, the court is often reluctant to deal with the non-stranger case, and for much the same reasons.

Although prosecutors do not necessarily see each victim in the non-stranger case as another Milverton, it is surely the case that many of them are uncertain about the criminality of the defendant in the non-stranger case. Because of the difficulty that prosecutors have in sorting out the events which make up the case, prosecutors are

often not quite sure what has happened. This difficulty is the result of what I call the "Rashomon syndrome." Like the story in the Japanese film of the same name, prosecutors are acutely aware that the victim is describing the incident from their own point of view. The relationship between the complainant and the defendant has significance to the prosecutor because the interactions that form the relationship may cause the victim to describe the incident in a way which puts him or her in the best light.

Besides the uncertainty about what has happened and whether the incident is truly a crime, prosecutors also believe that the probability that the complainant will drop prosecution is high. These two factors pose two kinds of uncertainty for prosecutors. These uncertainties are not the same kinds of uncertainties which are found in the non-stranger case. Whereas cases involving strangers raise uncertainties about whether the accused is actually the person who committed the crime, the non-stranger case raises uncertainty about whether the incident is a crime at all. The relationship between the parties increases the probability that the incident might have been provoked by the complainant. The issue of provocation also raises doubt about the guilt of the defendant.

Consequently, prosecutors look at the non-stranger case as a "difficult" case. They tend to offer reductions in the charges more frequently than in comparable cases



involving strangers. This is done in hopes that a plea can be induced, and the case can be settled without the expense of a trial. Nor are prosecutors alone in downplaying the importance of the non-stranger case. The analysis of felony cases handled at the Recorder's Court suggests that non-stranger cases are accorded different treatment than stranger cases, and that this treatment reflects a belief that the cases themselves are less serious. Defendants in these cases were more likely to make bail and received lighter sentences than defendants in comparable stranger cases.

This uncertainty about the non-stranger case is compounded by prosecutor's perceptions that the victims in these cases are often uncertain about what they want the court to do. Even if victims know what they want from the courts, prosecutors argued that what they wanted was inappropriate for the criminal courts. Victims attacked by people they know probably wanted the court to act as a counseling agency-- forcing the defendant to get help to change his or her behavior, or somehow communicating to the defendant that the behavior had to stop. These desires were rejected by prosecutors who argued that criminal courts are punitive agencies, not counseling or social work agencies.

This image of the complainant in the non-stranger case was confirmed in a series of interviews with victims at the Recorder's Court. These victims identified fair

outcomes to their cases as getting help for the defendant or getting the court to communicate with the defendant. They preferred these outcomes more often than victims who had been attacked by strangers.

The different desires of non-stranger victims have provoked a response from prosecutors. Prosecutors would sometimes play an advisory and "helping" role and counsel victims in these cases. This role provides both social and pragmatic benefits. For some prosecutors, playing the counselor role fit in with their own concept of the law. They see the law as helping to maintain social bonds. For other prosecutors, time spent with the victims helps to clarify the victim's own desires. In this case, the advice they dispensed either helped the victim to decide that he or she did not want to pursue the case or it helped strengthen their resolve to prosecute. Either way, the advisory role allows prosecutors to get a sense of the victim's motives, and allowed them to be more certain about the probability that the victim would pursue prosecution.

The problem with the different desires of non-stranger complainants is that they only strengthen the image of non-stranger cases that prosecutors have. The uncertainties that prosecutors have about the case itself make it hard for them to determine whether the incident being reported is a crime. The non-punitiveness of the victims in these cases makes them less certain that the



victims really want to prosecute. It also reinforces the belief that the case is not really a crime, since the victim is not really bent on punishing the defendant. Therefore, the victim's desires only exacerbate the prosecutor's uncertainty. It is the uncertainty about the case and the uncertainty about the determination of the victim to prosecute that feed prosecutor frustration about the non-stranger case.

Besides the problem of uncertainty, prosecutors also felt that non-stranger cases were generally not very important. The vast majority of non-stranger cases do not involve defendants who necessarily pose a danger to society. The same could not be said of armed robbers or drug dealers. These were the kinds of cases that prosecutors felt were most threatening to the public. Not surprisingly, these were the kinds of cases that they felt deserved more of their time.

R: ...[T]he jury is a little bit more relaxed [in a non-stranger case] and jurors, I think... they could believe that the defendant pointed a gun at the girlfriend. And... I think that some jurors, based on my experience, will go into the jury room and even though they believe that [this is what happened] will say... she deserved it. Or... let's give this guy a break.... [J]urors participate in dishing out the penalty by finding "not guilty," even though legally he was guilty. I've had jurors come back and say, "Well, we thought he did it, but we didn't want him to have a felony conviction."

...You know, defense attorneys aren't stupid either. They will play up to [the existence of a prior relationship] and say, "Well, you guys are boyfriend-girlfriend, you guys have had a lot of arguments in the past... This is just one of those little arguments, wasn't it?" And so in terms of actual harm to society, they try to downplay it as

much as they can.... [J]urors have had experiences like this. You've had a friend...threaten you with a stick or an object that technically might be a crime. But it's something that you let time heal those wounds....

Q: What about the public's interest in these kinds of cases?... [Y]ou're an assistant prosecuting attorney and part of that job...is that you represent the people of the county of Wayne. And so, as a representative of the public, how do you see the way you divide your time? ...[D]o you think that the public's interest is better served by your focusing on armed robberies, things like that, as opposed to...felonious assaults--

R: Yeah, I think...ideally, just for example, Los Angeles-- up there, there are many more prosecutors, and their caseload is lower per prosecutor. ...The prosecutors here in Recorder's Court in a year may handle 400, 500 cases. And so you have to make a value judgment. A person who beats up his girlfriend is less likely to be a threat to society as a whole. In terms of the amount of time I have, I'm gonna pick and choose which cases I'm going to spend my time on. [11]

Thus, prosecutors do not feel there is a strong public interest in non-stranger cases. This has an interesting consequence. Feeling that there is little public interest in these cases, the prosecutor is more willing to be directed by the complainant's desires in these cases.

Q: What if [complainants] come in and say, "I...just don't want to go on with this. He seems to be really sorry and he says he's going to, or she says she's going to, go get some counseling..." Do you still try to talk these people into going through with it, or--

R: A little bit. I mean, you're not trying to talk them into going through with it, like that's your position and you're trying to persuade 'em to keep doing it. It's more,...making inquiries of them, to see if they've considered everything, if they understand what they're doing.... If they still say, "Oh yeah, still I don't care," you say, "Okay, fine. Let's put it on the record." [13]

Although prosecutors in the stranger case might try to force a reluctant complainant to continue with prosecution, they are more likely to let a non-stranger complainant drop the case.

In part, this willingness to go along with the complainant may be due to the prosecutor's assessment of the non-stranger case as less serious. But it is also at least partly due to the recognition that the non-stranger complainant, by virtue of his or her relationship to the defendant, has a special interest in the outcome of the case.

R: [Being a prosecutor] is a job you can feel good about doing ...because like I said, I'm just supposed to go down there and do what's right. You figure that our community doesn't really want violent people roaming around.

Q: But what do you mean by "violent people?"

R: People who assault each other.

Q: Yeah, but people in families assault each other, so isn't there a public interest in locking these people up? And yet, you make it sound as if it's not so easy to lock them up.

R: Well, there's not enough room in the inn for all the assaultive people in our society. Some sort of decision has to be made.... [For example,] that father-- he didn't want his son to go to jail for two years. Plus, even though he'd been shot in the chest and hospitalized for a week, I don't know-- how do you deal with that? What do you tell the father? "Sorry, you have nothing to do with this; you're just a witness now." That's what you're supposed to say anyway. "You just tell 'em the story, we'll take care of this. You're out of this." But he's not out of it. It's his son, and he doesn't want to see him in jail. [9]

The recognition of the complainant's interest suggests that the complainant in the non-stranger case might

actually have more impact and control on the outcome and handling of the case than victims in stranger crimes. Although not touched upon in this research, this is a subject that bears further investigation.

Regardless of the level of satisfaction on the part of the victims, however, there is some sentiment for diverting non-stranger cases from the criminal courts. The Vera Institute suggests that the huge burden that non-stranger cases impose on the courts strains available resources to their capacity.¹ As a result, serious cases are apt to fall through the cracks. An evaluation of neighborhood mediation programs conducted by the National Institute of Justice suggested that these less formal programs were effective in resolving interpersonal disputes, including those of a criminal nature. It is argued that the increased use of mediation agencies would reduce the caseload of the criminal courts, resolve cases more quickly, and reduce the costs of administering justice.²

Despite this argument, there are some caveats. The history of attempts to divert non-stranger cases from the criminal courts, most notably in wife abuse cases, shows

¹Vera Institute, Felony Arrests: Their Prosecution and Disposition in New York City's Courts, rev. ed. (New York: Longman, Inc., 1981), p.xxv.

²Royer F. Cook, Janice A. Roehl, and David I. Sheppard, Neighborhood Justice Centers Field Test: Final Evaluation Report (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, Office of Program Evaluation, Feb. 1980).

that these programs will often divert serious non-stranger assault cases which ought to be in the courts.³ Further, the evaluation of the neighborhood mediation programs showed that the mediated settlement could not be enforced, leading to some dissatisfaction with the programs in the long run.⁴

Finally, there is some recent evidence to suggest that in dealing with at least one category of non-stranger crime-- wife abuse-- legal action decreases violent behavior. In a recent study by the Police Foundation, Sherman and Berk found that the arrest of a violent husband seemed to be the most effective action in reducing violent behavior.⁵ If this finding is confirmed by further research, it would suggest that legal sanctions may be the most effective means of dealing with at least some forms of non-stranger violence. As the social institution with the power to punish individuals, the police and the courts define behavior that is reprehensible. Moreover, their definition of that behavior carries with it more than the preferences of the

³U.S. Commission on Civil Rights, Under the Rule of Thumb: Battered Women and the Administration of Justice (Washington, D.C.: U.S. Commission of Civil Rights, Jan. 1982), pp.61-76.

⁴Cook, Roehl, and Sheppard, Neighborhood Justice Centers Field Test, p.67-69.

⁵Lawrence W. Sherman and Richard A. Berk, "The Minneapolis Domestic Violence Experiment", Police Foundation Reports 1 (Washington, D.C.: Police Foundation, 1984).

single individual who makes the judgment. Since legal actors are generally perceived as enforcing a set of laws, their judgments carry with them the weight of society. Although there has been little research on the impact of legal intervention on the defendants' perceptions of their behavior, one suspects that these actions could have a profound effect on them.

Unfortunately, this is not to say that legal intervention in the non-stranger case is the solution. If this research indicates nothing else, I think it shows that the non-stranger case is complex. And it is the complexity of these cases which makes them hard for the courts to handle. Because the bureaucratic structure of the courts requires certainty, the non-stranger case is at a disadvantage. In fact, in many courts, we see that complainants in these cases are discouraged from prosecuting or that the cases are undercharged to avoid devoting too much of the court's resources to the case. Dockets are too crowded to permit much time to be spent with complainants. In this type of environment, the bulk of cases quickly becomes routine.

The speed demanded in an urban court means that the complexity of cases cannot always be attended to. This is especially damaging for the non-stranger case. The Vera Institute argues that the combination of very serious stranger cases with run-of-the-mill stranger cases and non-stranger cases means that serious cases will slip

through the cracks.' A danger also lies the other way: that many non-stranger cases are relegated to a "non-serious" category, which allows serious cases to go unheeded. The problem seems to me to lie in the tendency of the court to quickly categorize cases. If non-stranger cases have characteristics that make them more complex, then quick categorization is bound to give some of them short shrift.

Besides being a more complex set of events, non-stranger cases are also complicated by what prosecutors consider to be inappropriate or vague desires of victims. If victims want help and not jail for the defendant, what is the public interest in overriding the victim's preferences and prosecuting the case? This is especially difficult when prosecutor's experiences with juries indicate that juries often don't take these cases as seriously as cases involving strangers. Moreover, prosecutor's perception of public interest in these cases is that the interest is low. Both of the factors-- victim's hesitancy to punish defendants and the tendency not to take these cases seriously-- lead to frustration for prosecutors.

This is compounded by the recognition that the victims in the non-stranger case have a very real interest in the outcome of the case. Their relationship to the defendant is a tie between the two parties. Moreover, to

'Vera Institute, Felony Arrests, p.xxv.

pursue one kind of outcome-- mediation or criminal prosecution, for example--without allowing the victim's preferences to be considered can be harmful to the victim. Schechter, in her recent book on battered women, recognizes the dilemma.⁷ Although the woman is the victim of assault, which is a crime, to handle her case without considering her desires is to reinforce the feelings of helplessness and dependency which have contributed to her continued victimization.

Clearly, then, we are on the horns of a dilemma. To treat the non-stranger case as a "private" dispute which is not as serious as the comparable stranger crime may result in serious cases slipping through the system. To treat them as crimes may reduce the amount of influence the victim can have on the outcome of the case. Neither approach is completely satisfying.

The difficulties of dealing with the non-stranger case are highlighted when one considers recent proposals made to help the victims of violent crime. The President's Task Force on Victims of Crime proposes a number of changes in criminal justice administration and procedure to help victims.⁸ Although they would no doubt be helpful to victims, they might not necessarily help

⁷Susan Schechter, Women and Male Violence: The Visions and Struggles of the Battered Women's Movement (Boston: South End Press, 1982), pp.174-183.

⁸President's Task Force on Victims of Crime, Final Report (Washington, D.C.: Dec. 1982), pp.17-36.

victims of non-stranger crime. For example, the Task Force suggests that victims' addresses be kept confidential. This measure would have limited effectiveness in the non-stranger case, since the defendants in these cases often know where the victims live. This measure would be a move to reduce the possibility that the victims would be intimidated by the defendants; it would require relocation services for the victims of non-stranger crimes in order to be fully effective. Measures to make it more difficult for the defendant to be released on bail rely heavily on the judgment that the defendant is a "danger to the community." It should be clear by now that the criminal court is not likely to think of the defendant in the non-stranger case as a danger to the community at large.

Finally, the Task Force supports the idea of victim compensation programs. Unfortunately, because of concerns with cost and to minimize the possibility of fraud, virtually all compensation programs eliminate victims for eligibility in cases where the defendant is closely related to the assailant.⁹ Even if this was not the case, many programs will adjust the amount of compensation to the victim if there is evidence that the victim provoked or otherwise contributed to his or her

⁹Deborah M. Carrow, Crime Victim Compensation: Program Model (Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, Feb. 1980), pp.18, 42-43.

victimization. This would surely be a problem for victims of non-stranger crime since, as we have seen, people are more likely to believe that the victims have provoked the incident. It is clear, then, that the focus for solutions is on crimes which occur between strangers. The non-stranger crime has a secondary status.

This "secondary status," it seems to me, is the root of the problem. All of these solutions would be feasible for the non-stranger victim if we thought of these incidents as crimes. Rather than focus on solutions, then, perhaps the more fruitful approach would be to think about the nature of the problem. It seems to me that a good part of the problem lies in the ambivalence we have towards the non-stranger crime. On the one hand, there is a long tradition of thinking about these incidents not as crimes, but as arguments which have gotten out of hand. Yet it is also clear that assaults, robberies, and other crimes which occur between spouses, lovers, friends and neighbors have some public effect. More than simply threatening our ideal images of social relationships, violent relationships with others can perpetuate themselves in a "cycle of violence."

To the extent that we as a society think about a certain amount of violence in close relationships as normal, we will continue to have problems with the question of what to do with non-stranger crimes. To the extent that we believe that violence can be a reasonable

response to certain kinds of provocations, we cannot be surprised that people who have been attacked by those close to them are ambivalent about prosecuting and punishing them. Perhaps the place to start a discussion on how to think about non-stranger crimes is not, "how and why are they different from other crimes," but rather, "why is it that we think they are different?"

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