

## **Rape and Attrition in the Legal Process:**

### **A Comparative Analysis of Five Countries**

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- The findings presented here are preliminary and may change. Please do not quote without the permission of the authors.  
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## Research Questions

- What is the overall rate of conviction for sexual offences?
- Do rates of conviction vary over time, by country, by age of victim, or by other factors?
- What is the proportion of cases that proceed past each stage of the legal process?
- What is the proportion of cases going to trial? The rate of conviction at trial?
- What factors are associated with conviction? (test the “real rape” scenario)

## Four major sources of information helped inform our hypotheses

- Existing literature on attrition (e.g., Liz Kelly 2001)
- Legal reform and variation in timing
- Official rates of report to police
- Published court data

## Hypotheses

- H<sub>1</sub> There is a decrease in overall rates of conviction over time.
- H<sub>2</sub> Countries that initiated legal reform earlier (US, Australia, Canada) have higher rates of conviction than England & Wales and Scotland.
- H<sub>3</sub> Attrition is highest in England & Wales, where rates of report to police have increased over time, trial rates are higher, and conviction at trial, lower.
- H<sub>4</sub> The “real rape” scenario remains relevant to police and court decisions, but it is more relevant for adult victims than child victims.

## Data

- Search of all English-language studies in five common law countries
- 90+ papers reduced to 75 unique cases (or samples); data range 1970-2005
- Harmonised the findings from different methodologies (detail in ASTR)
- Two types of studies:
  - Flow (N=38): from report to police to court outcome; provides best estimate of overall conviction
  - Snapshot (N=37): one or two stages of the CJS; used to generate estimates of overall conviction

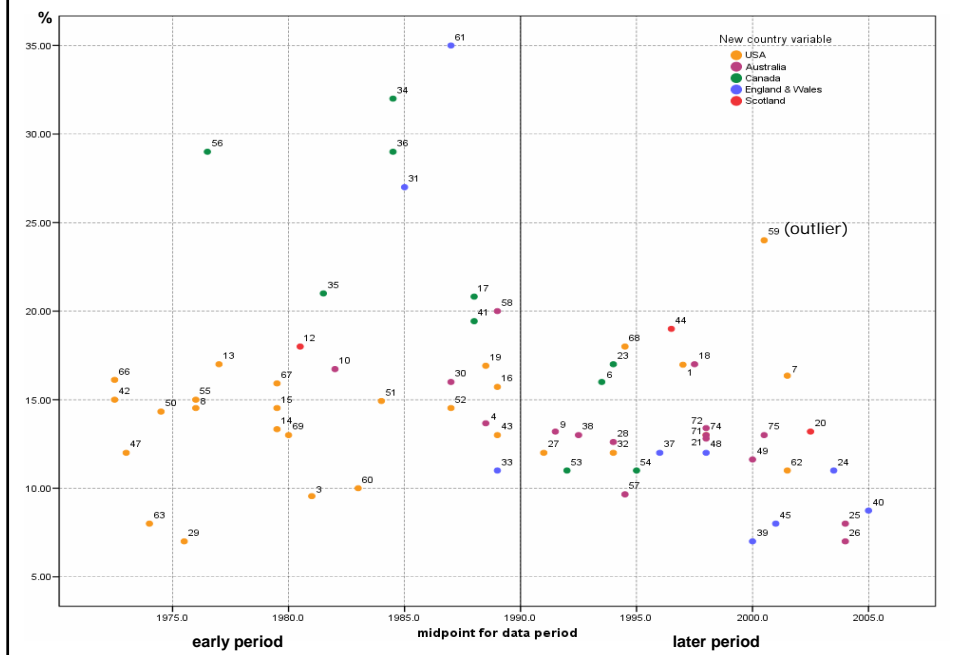
## Description of sample of studies (N=75)

- **Countries:**
  - USA: 48%
  - Australia: 23%
  - Canada: 13%
  - Eng & Wales: 12%
  - Scotland: 4%
- **Victims**
  - Adult only (16+): 17%
  - Mixed ages: 54%
  - Child/youth only (<18): 29%
- **Time periods**
  - Earlier, 1970-1989: 51%
  - Later, 1990-2005: 49%
  - (16% before any legal reform)
- **Offences**
  - Rape & penetrative only: 53%
  - Mixed types of sexual offences: 47%

## Results

- **Findings in three areas**
  - Overall rate of conviction
  - Percent of cases that proceed past different legal stages (police, prosecution, court)
  - Factors associated with cases proceeding past legal stages

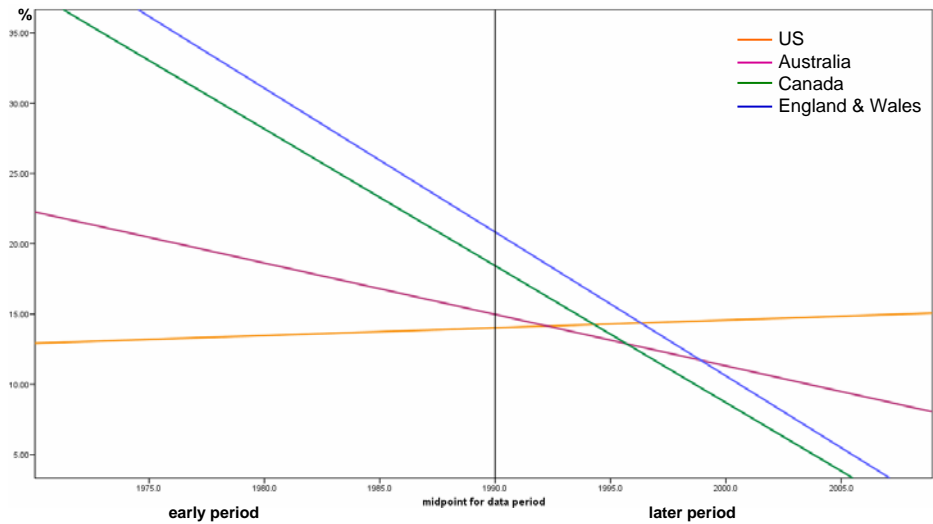
Estimated overall conviction rate to any sexual offence from each study (N=66)



### Overall conviction rates, all countries, 1970-2005 (N=65)

- To any sexual offence: **15%**
- To original sexual offence: **9%**
- By age of victim:
  - Adult (**12%**), mixed age (**15%**), child/youth (**18.5%**)
- By offence type:
  - Rape & penetrative only (**13%**), Mixed types of sexual offences (**17%**)

## Mean estimated rate of conviction to any sexual offence, by country, 1970-2005



## Rates of conviction (%) to any sexual offence (flow & snapshot combined, N=65)

(N=early, later period)	Early	Later	Difference
US (N=20, 7)	13 **	14	+1
Australia (N=4, 12)	17	11.5	-5.5 *
Canada (N=6, 4)	26.5	14	-12.5 *
Eng & Wales (N=3, 6)	24	10	-14 *
Scotland (N=1, 2)	--	17.5	--
4-country (N=14, 24) (a)	23 **	12	-11 *
All, any sex offence	18	12.5	-5.5 *
All, original sex offence	11	6.5	-4.5 *

(a) 4-country: Australia, Canada, England & Wales, and Scotland

\* Difference between early & later period,  $p < .05$

\*\* Difference between US & 4-country, early period,  $p < .05$

## Rates of conviction (%) to any sexual offence by age of victim & type of offence (N=65)

	Early	Later	Difference
<b>Age of victim</b> (N=early, later period)			
Adult only (N=3, 6)	14	11	-3
Mixed age (N=20, 18)	16.5	13	-3.5 *
Child/youth only (N=11, 7)	22	13	-9 *
<b>Type of offence</b> (N=early, later period)			
Rape & penetrative only (N=16, 18)	15.5	11	-4.5 *
Mixed types of sexual offences (N=18, 13)	20.5	14	-6.5 *

\* Difference between early & later period,  $p < .05$

## Cases proceeding past each stage, all countries


- Of assaults experienced, **14%** of victims report to police (based on 12 victimisation surveys in 5 countries, 1993-2003)
- Of cases reported to police, **35%** are referred to prosecution
- Of cases referred to prosecution, **66%** proceed to court
- Flow into court:  $35\% \times 66\% = 23\%$

Of cases in court:

- **66%** conviction by plea or trial
- **38%** go to trial
- Of cases at trial, **58.5%** found guilty

## Percent of cases proceeding past each stage

	P x P flow into court		Court conviction		Rate of trial		Trial conviction	
	early	later	early	later	early	later	early	later
US	20	19	69	82	32.5	20	68.5	82
Australia	20.5	20	74	61	36	45	60	41
Canada	35	26	72	53	31.5	--	62	--
England & Wales	34	17	68	57	--	51	--	46
Scotland	38	--	49	35	43	47	44	60
4-country	33	20.5	70	57	36	47	58	44
All cases	26	20	69.5	62	34	41	64	54.5
All / no time	23		66		38		58.5	

 denotes significant difference ( $p < .05$ )

P x P = police x prosecution stage

## Factors associated with case outcomes

The literature suggests:

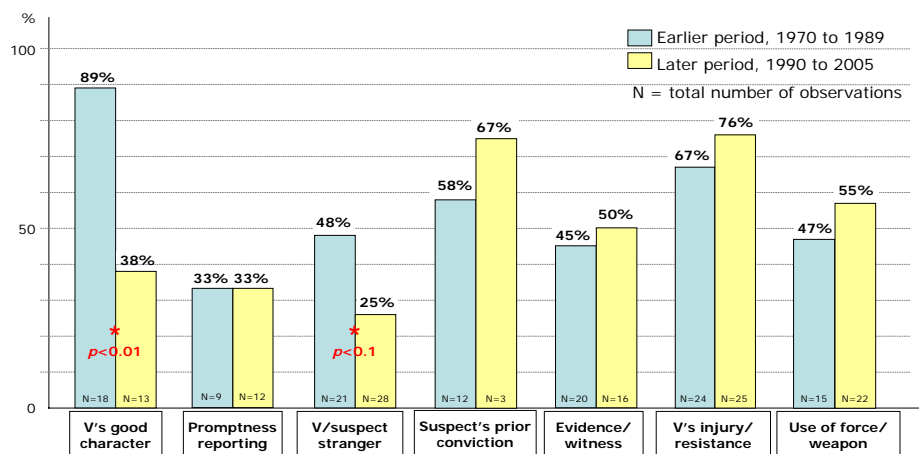
- Victim age (younger)
- Victim's good character and credibility
- Promptness in reporting to police
- Victim & suspect relationship
- Suspect's prior conviction
- Evidence or witnesses
- Victim injury or resistance
- Use of force or weapon
- **The "real rape" scenario**
  - Victim and suspect are stranger
  - Victim is respectable and of good character
  - Victim resisted and is injured

## Coding of factors Adult and mixed age cases

- N=33 studies with an analysis of factors (one to seven factors)
- Police stage and prosecution/court conviction stage
- Result for each factor x two stages = 238 observations

V good character	Prompt report	V/susp. stranger	Suspect priors	Evidence/witness	V injury/resist	Force/weapon	Total N
<b>Police stage</b>							
12	7	20	5	14	20	15	93
<b>Prosecution/court conviction stage</b>							
19	14	29	10	22	29	22	145
<b>Total</b>							
31	21	49	15	36	49	37	238
13%	9%	21%	6%	15%	21%	15%	100%

## Factors (+) related to cases proceeding past police & prosecution/court conviction, by time period, adult and mixed age victims



## What factors are associated with cases proceeding?

- **Adult and mixed age victims**
  - “Real rape” scenario present in early period, but loses strength in later period.
  - Evidence factors (witness & physical evidence, injuries, use of force or weapon) consistently associated with proceeding past police and prosecution/court conviction across time periods.
- **Child/youth victims**
  - “Real rape” scenario not relevant; unclear what is related to cases proceeding past police and prosecution/court conviction.

## Assessing hypotheses

- H<sub>1</sub> Decrease in conviction?** Mixed support. Confirmed for England & Wales, Canada, and Australia but not the United States.
- H<sub>2</sub> Legal reform?** Mixed support. In the later period, conviction rates somewhat higher for two early reform countries (United States and Canada), but not Australia. In the later period, conviction rates lower for one later reform country (England & Wales), but not Scotland.
- H<sub>3</sub> Attrition higher in E & W?** Confirmed, but raises questions for other countries (e.g., Canada, with a decline in both reported sexual assault and overall conviction rate).
- H<sub>4</sub> “Real rape” relevant?** Mixed support. (a) “Real rape” scenario for adult and mixed age cases more strongly evident in the early than later period. Evidence factors remain as, if not more, important over time for adult and mixed age victim cases. (b) “Real rape” relevant to adult victims but not child victims.

## Concluding Points

- Based on sample of jurisdictions that have been researched, not all jurisdictions.
- Averages mask temporal and country variation.
- Increasing country convergence in the recent period, although it arises from different configurations of police, prosecution, and court outcomes.
- Advocacy and policy may benefit from drawing on knowledge from other countries.
- Reform emphasis needs to shift from the trial to the plea bargaining process. Need mechanisms to encourage early guilty pleas.