



Graduate School of Development Studies

**Situated at the Crossroad:
A sociological exploration of law enforcement decision-
making on the subject of rape and sexual violence**

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Contents

Acknowledgements	iii
List of Acronyms	v
Abstract	vi
Keywords	vii
Chapter 1 Setting the Stage: Introducing the issue, the players and the purpose	1
1.1 Situating the Research Query	2
1.2 Language and Concepts	3
1.3 A Brief Overview of the Context	4
1.4 Statement of the Research Problem	8
1.5 Research Questions and Sub-Questions	9
1.6 Research Methods and Methodology	9
1.7 Ethical Considerations	14
1.8 Justification and Objective	15
1.9 Scope and Limitations of Research	16
Chapter 2 The Intersection of Law and Social Reality: Applying the theory of the sociology of the law	18
2.1 Theoretical Framework	18
2.2 Analytical Tools	21
Chapter 3 The Crossroad of Formal Law and Social Reality	24
3.1 Perceptions of Practice: Formal law or social reality?	25
3.2 Pernicious Stereotype or Prudent Practice: The false report	29
3.3 Reinforcing, Contesting and Reconstructing ‘Real Rape’	37
3.4 Challenging the Dominant Paradigm of Gender Asymmetry	44
Chapter 4 Drawing Conclusions and Deriving Meaning	48
4.1 Epistemology and Social Change	49
4.2 Sociology of Rape and Sexual Violence	50
4.3 Redefining Success	50
Notes	53
References	54

List of Acronyms

SART	-- Sexual Assault Response Team
LE	-- Law enforcement (officer)
EVAW International	-- End Violence Against Women International
MAD	-- Making a Difference
U.S.	-- United States of America

Abstract

This research paper is concerned with identifying law enforcement officer perceptions of what constitutes rape and sexual violence as well as what informs law enforcement officer decision-making. The research is based on a limited number of in-depth interviews with law enforcement officers from seven U.S. states and the District of Columbia. Particular attention is given to understanding the responses of law enforcement through the rigorous application of the sociology of the law. Gender and other social identity constructions are used as analytical tools to tease out the relationship between formal law and socio-cultural norms and values as perceived by individual law enforcement. Thus it is argued that LE officers are situated at the crossroad of formal law and social reality—their daily practice therefore includes multiplicity, nuance, inconsistency and tension. Nonetheless, from a sociological perspective, individual law enforcement can be seen reinforcing as well as contesting and reconstructing the social meaning of rape and sexual assault in the U.S.

Relevance to Development Studies

Why is research on law enforcement decision-making practices on the subject of rape and sexual violence in the U.S. relevant to the field of development? While the notion that development is something that occurs *out there in the third world* may be the current conventional wisdom within development studies, this is a theoretical position well worth contesting. In fact, the work of development theorists like Andre Gunder Frank (1966), Arturo Escobar (1995) and Amartya Sen (1999) have long challenged, in theoretically varied ways, the largely accepted dichotomy of the ‘west’ as representative of developed, modern, liberal and virtually unproblematic political, social, and economic nation-states in comparison to the traditional, undeveloped and highly problematic nation-states of countries who are not considered a part of the ‘west’. This research therefore begins by making an epistemological contestation that the socially constructed binaries between north and south do not take into consideration the complexity and multiplicity of social reality—a reality that transcends political, economic, social and geographic borders.

Perspectives that divide the world into north-south, east-west or developed-undeveloped are politically motivated and epistemologically questionable. In the first place, the issue of identifying and addressing violence against women and gender violence, as well as poverty, illiteracy, access to basic needs and other similar social problems, are at the core of development. Moreover, the social reality that many developed countries operate with a significant portion of their population struggling to overcome homelessness, poor health, hunger, violence and lack of access to basic social opportunities (education, transportation, etc.) is testament to the relevance of conducting development research throughout the world. For if we envisage development

as a means for attaining social justice and realizing individual capabilities (Nussbaum 2000), then addressing rape and sexual violence in the U.S. is one step toward that vision.

Moreover, as this research and writing process begins and ends with my own individual reflections on recognizing the value of social complexity, it is also worth noting that this epistemological position was also informed by my day-to-day experience as a North American at the International Institute of Social Studies (ISS). It was a great opportunity to be introduced to the field of development studies by a diverse group of faculty and fellow students at the ISS. It was also interesting to witness the surprise of other students when they heard me speak about the homelessness, poverty and violence that occur in the U.S. Equally notable was my own surprise at the level of sophistication, rigour and theoretically informed work being done to elevate the status of women in other countries categorized as ‘underdeveloped’. This experience leads me to conclude that the research and writing I have done for this paper on the sociology of the law within the realm of rape and sexual violence is relevant to people in other countries just as their work on similar subjects is relevant to my efforts in the U.S.

This research is therefore relevant to the field of development studies in addition to making a humble contribution to the fields of the sociology of the law, gender and intersectionality.

Keywords

Rape, sexual assault, sexual violence, law enforcement, sociology of the law, gender, intersectionality.

Chapter 1

Setting the Stage: Introducing the issue, the players and the purpose

Rape is a culturally fostered means of suppressing women. Legally we say we deplore it, but mythically we romanticize and perpetuate it, and privately we excuse and overlook it.

~ Victoria Billings

Rape and sexual violence has generally been recognized in the U.S. as a social problem worth time, money and attention. What continues to be debated and argued, often vitriolically, is what constitutes rape and sexual violence. As the introductory quote illustrates, rape and sexual violence are perceived and operate uniquely in different spheres of society – whether legal, private or socio-culturally. This paper asserts that individual law enforcement (henceforth referred to as LE), in particular, represent an important area of inquiry into better understanding how rape and sexual violence are perceived and defined (whether socially or legally). In the first place, LE is a professional field responsible for enforcing the U.S. legal criminal code. Secondly, individual LE officers bring their values, beliefs and perceptions to bear in their professional response to rape and sexual violence on a daily basis. This combination of legal authority and individual decision-making discretion situates LE officers at the crossroad of formal law and social reality.

I will therefore make the argument that social norms importantly influence LE decision-making, sometimes in fact, trumping the law itself. The first Chapter of this research paper will focus on providing a context for the research query as well as situating the researcher, the methods of data collection and the methodology. Chapter 2 will review the theory used to frame the research query and findings as well as the analytical tools used to identify and uncover meaning. While the practice in research that examines the LE response to rape and sexual violence has been to use a formal legal model supported by empirical and statistically significant quantitative data, this research seeks to frame the query within a social constructivist model. In order

to provide sufficient flexibility, tease out nuance and uncover meaning, the sociology of the law will be used as the theoretical framework. Gender as a power relation will serve as a primary analytical tool in combination with other social constructions.

In the third Chapter I will review and analyze the results of 21 interviews with individual LE officers from seven states and the District of Columbia. The prominent themes will be noted as well as the contexts in which individual LE both contest and support dominant socio-cultural notions about rape and sexual violence.

I will conclude in Chapter 4 with a summary of my research conclusions as well as identification of additional meaning in relationship to epistemology, research and notions of success.

1.1 Situating the Research Query

When I originally designed this research paper I was interested in investigating the extent to which gender and the intersections of identity influence individual LE officer's decision-making in the context of rape and sexual violence. This research inquiry was largely developed on the basis of my own professional experience with LE and the U.S. criminal justice system, familiarity with existing quantitative and qualitative research on sexual violence and my pre-conceived assumptions about the factors that influence police officer decision-making.

Perhaps as a reminder of the importance of maintaining an open-mind and positioning oneself to actually learn from a graduate research experience, the results of my field research resulted in the emergence of themes and insights that challenged my own assumptions and professional experience. Additionally, the research findings also presented a new dilemma for me – the challenge of interpreting and understanding the themes and insights provided by the data without rigid imposition of a theoretical framework or analytical tools.

Given the emergence of unexpected insights, the focus and design of the research paper, research query and process of analysis necessitated a reflexive response. To that end, the research paper will undertake a flexible exploration of the multiplicity of factors that influence individual LE officer decision-making. Rather than apply sociological concepts in a unidirectional manner, e.g. gender asymmetry is always bad for women and good for men, I will attempt to use the sociology of the law to demonstrate the ambiguity, multiplicity and fluidity of what informs LE officer decision-making. Through this explorative process I will attempt to acknowledge the socio-cultural values, beliefs and perceptions reflected by the individual LE interviewed, but not necessarily in the broader field of LE or the criminal justice system itself.

1.2 Language and Concepts

Throughout this paper several important terms with particular contextual significance will be used. These terms merit a brief explanation in order that both the paper and the research query are accurately situated. The first term that is widely used throughout the paper is **victim/survivor**. The decision to use these two words together throughout the paper are intended to acknowledge both the conference of the legal status of 'victim' granted upon making a police report of rape or sexual assault as well as the pain, hardship and trauma experienced by those who have survived a sexual assault.

Additionally, the dual reference, **rape and sexual violence** or **rape and sexual assault**, are also used to denote an important legal and socio-cultural distinction. That is, rape is a very specific criminal act defined as penile penetration of the vagina most notably through force or threat of force. Joining the term 'rape' with the term 'sexual violence' or 'sexual assault' is meant emphasize both the broad range of possible acts of sexual violence and assault beyond penile-vaginal rape as well as acknowledge that ALL rape and sexual assault is a form of violence, whether or not force is used. Finally, the term 'real rape' is used and assumed to be already well defended and established within the last three decades of literature. Real rape is a reference

to the commonly held stereotype in the U.S. of rape as a physically violent assault beyond the rape itself, often committed by a stranger who uses a weapon (Estrich 1987, Campbell et al. 1991a, Campbell 1999b, and Koss 2006 among many others). This is in striking contrast to the reality that the vast majority of reported rapes and sexual assaults occur between people known to each other, with minimal to no physical violence, no weapon and often times the presence of alcohol and other drugs (Lonsway and Archambault).

1.3 A Brief Overview of the Context

The U.S. criminal justice system is designed to enforce federal and state laws. Federal laws typically only apply on federal lands (e.g. federal parks, buildings, etc.), Indian reservations and in the event of criminal activity that occurs while crossing state borders (e.g. kidnapping). As there are 50 states in the U.S. there are also 50 similar, yet unique state criminal laws. While every state has its own specific set of criminal laws, there remains a certain degree of thematic consistency among and between state criminal laws. Rape and other crimes of sexual violence are typically defined in four criminal element categories: force or threat of force, age, incapacitation and custodianship. The wording, burden of proof or particular evidentiary requirements among states can be and often are different, but in general, the crime of rape and sexual assault is generally understood in similar, though not exactly the same, legal framework across the United States.

Beginning in the early 1970's feminists and anti-rape activists across the U.S. initiated systematic efforts to reform Federal and State rape laws. Reformers generally understood the laws at the time to reflect values, beliefs and perceptions in support of rigid gender roles —namely defining what women could and could not do with rape and sexual violence seen largely as a consequence for stepping outside of accepted social rules. For example, marital rape was not legally recognized in all 50 U.S. states until 1994 (Caringella 2009); arguably this law was a reflection of marriage as a property

contract entitling husbands access to the bodies of their wives. Rape legal reform efforts in the U.S. are therefore responsible for attempting to remove the influence of rigid constructions of gender and historic legal remnants from a time when women did not share equal legal autonomy. As noted by Spohn and Horney (1996), these legal reforms were largely expected to change the climate within which the criminal justice system responds to rape and sexual assault or from a socio-legal perspective, to change the values and beliefs that underpin the law. “[Reformers] expected the new laws to improve the treatment of rape victims and thus to prompt more rape victims to report the crime to the police...[and] also predicted that [these changes] would make arrest, prosecution, conviction and incarceration for rape more likely (Marsh et al. 1975, Cobb and Schauer 1982 cited in Spohn and Horney 1996).

In actuality, legal reform has resulted in limited quantitative change in terms of reporting, arrest, prosecution, conviction and incarceration related to rape and sexual violence (Seidman and Vickers 2005). However, it is also true that the nature or characteristics of rape and sexual assault reports has changed. That is, following legal reform efforts in the U.S. more victims/survivors began to report non-stranger rape (Spohn and Horney 1996). As Susan Estrich argues in her book, *Real Rape*, it is this type of rape case that has notably had the most difficulty making its way through the criminal justice system.

...all women and all rapes are not treated equally. As the doctrines of rape law are developed...distinctions were drawn, explicitly and implicitly, between the aggravated, jump-from-the-bushes stranger rapes and the simple cases of unarmed rape by friends, neighbors, and acquaintances. It was primarily in the latter cases that distrust of women victims was actually incorporated into the definition of the crime and the rules of proof (Estrich 1987: 29).

So perhaps in the sense that more victims/survivors of non-stranger rape began reporting legal reform has been successful. On the other hand, research suggests that the criminal justice system itself has reflected limited improvements in its response to non-stranger rape and sexual assault following

legal reform. For example, Seidman and Vickers (2005: 470) argue that “trial, appellate and state supreme courts are still arguing over the same old ground: the meaning of consent, degrees of force, the victim’s role as an active or passive participant in the event, and the victims’ privacy”. In other words, the stereotype of ‘real rape’ continues to play an important role in determining the criminal justice system response to rape and sexual violence and therefore presumably the individual decision-making of LE officers.

Research on the response to rape and sexual violence by various members of the criminal justice system, including the response of LE, has also been conducted in order to identify where the barriers or challenges exist that have perhaps impeded the anticipated benefits of legal reform. As a LE report and investigation is a necessary first step to gain entry to the criminal justice system, LE officers have long been identified as an important early contact for victims/survivors within the criminal justice system. It is estimated that less than 10% of the total number of cases reported to LE result in conviction or prison sentences and the greatest area of attrition, roughly 60%, is located before the arrest of a suspect (Frazier and Haney 1996). In other words, the vast majority of discretionary case attrition is located within the purview of LE decision-making preceding the involvement or review of other members of the criminal justice system. As well, LE officers “are the only [criminal justice system] officials who participate in cases from initial report to final disposition” of a case (LaFree 1981: 582).

Thus it is critically relevant when research reveals that LE definitions of rape vary in relation to the actual law as opposed to socio-cultural norms and values. For example, “[a] content analysis of police officers’ definitions of rape revealed that 19% of officers had definitions consistent with reformed rape statutes, 31% focused their definitions primarily on penetration and consent, and 51% had mixed definitions based on old law and victim blaming views (Campbell and Johnson 1997, and Campbell 1988 in Koss 2006: 210-11). Here we see the emergence of the notion of ‘real rape’ playing a critical role in determining LE officer response.

Of further importance are the structural and social changes that have been made to how LE operate over the last several decades. With the advent of legal reform efforts, many LE agencies created specialized investigative units to address rape and sexual violence (as well as domestic violence). Advocates (individuals who provide support, crisis intervention and information and referral to victims/survivors) also began to appear with increasing consistency as a part of the formal response to rape and sexual violence. While advocates have historically operated from community-based organizations, they are increasingly being based in (and funded by) LE agencies, prosecutor's offices and the court. Finally, beginning in the late 1990's Sexual Assault Response Teams (hereafter referred to as SARTs) began to emerge across the U.S. The idea behind the concept of SARTs was to mirror the multidisciplinary coordinated response initiated for child abuse and domestic violence in the decades prior. To that end, the U.S. Federal government began to fund research, training and the coordination of SARTs all across the U.S. One such example was the emergence of the biennial National SART Conference beginning in 2001. The National SART conference, funded by the Office for Victims of Crime, U.S. Department of Justice, has been bringing together nearly a thousand victim/survivor advocates, LE officers, prosecutors, medical forensic experts and other allied professionals for training, networking and collaboration biennially since 2001.

It is the combination of structural and institutional changes that have taken place, the critical role that LE officers play as gatekeepers to the criminal justice system and existing research that shows limited quantitative gains that make qualitative exploration of LE officer decision-making on the subject of rape and sexual violence in the U.S. an interesting and worthwhile area of inquiry.

Statement of the Research Problem

While the impetus of legal reform was grounded in feminist recognition of the social consequences of rigid gender role construction, analysis of the success of legal reform has focused almost exclusively on quantitative successes and failures (e.g. reporting, arrest, prosecution and conviction numbers).

Moreover, developments like the institutionalization of advocacy, creation of specialized sexual assault investigative units and the emergence of SARTs have undoubtedly resulted in creating important nuances to the landscape of LE response and what influences individual decision-making.

The question remains, despite exhaustive research on how many victims report to the police, how many of those reports are investigated, and how many of the reports investigated are forwarded to the prosecutor, what influences individual LE decision-making and does their decision-making reflect the progressive legal, structural and social changes made during the last thirty years?

This problem, at least in part, can begin to be addressed by looking at the values, beliefs and perceptions that underpin the LE officer response to rape and sexual violence. Moreover, examination of both SART and non-SART participating LE may provide insights into the efficacy of institutionalizing socio-structural mechanisms aimed at increasing collaboration, broadening understanding and reducing service gaps. Finally, as members of the broader society who are positioned to enforce the law, LE officers can provide a unique look at the status of rape and sexual violence in U.S.

This research, therefore, proposes an alternative method to increase understanding and gain insights into rape and sexual violence broadly and LE decision-making practices specifically; a qualitative method focused on shedding light into the values, beliefs and perceptions of LE in the U.S. Indeed, to gain insights into the status of rape and sexual assault in America we can look to LE officers who are situated at the crossroad of law and society.

1.4 Research Questions and Sub-Questions

By way of qualitative investigation this research paper will explore three thematic areas: 1) individual LE officers' perception of rape and sexual violence; 2) the factors that inform individual LE decision-making whether socio-cultural, legal or structural; and 3) whether individual LE perception's of rape and sexual violence reflect progressive improvements to the law and structural/institutional changes in the criminal justice system response (e.g. advocates, SARTs, and specialized investigative units).

The main research question is therefore:

How do individual LE perceive what constitutes rape and sexual violence?

In combination with the main research questions, the following sub-questions will be used to help deconstruct and understand the research findings:

- What socio-cultural, legal or structural factors influence LE decision-making?
- How do these factors result in tensions for individual LE; and
- How do gender, class, race, age and other intersections of social identity factor in to LE officer decision-making?

1.5 Research Methods and Methodology

Methods

I employed a qualitative method in order to illuminate the nuance and tension present within individual LE officer decision-making. As Sue Jones has noted on the issue of in-depth interviewing, "...to understand other persons' constructions of reality we would do well to ask them (rather than assume we can know merely by observing their overt behaviour)... and to ask them in such a way that they can tell us in their terms (rather than those imposed...)..." (Jones cited in Walker 1985: 258). Thus a semi-structured in-

depth interview format with six demographic questions and ten open-ended descriptive questions was designed. The questions largely focused on the day-to-day work of individual LE specific to the area of sexual assault response and investigation. When needed additional questions were asked in order to further prompt a participant to provide a more thorough response. As well, additional questions were asked in order to explore a particular issue in more detail. However, the objective was always to provide interviewees with as much space and freedom to answer questions in their own way. To that end, questions were worded carefully in order to minimize any attached value or indicative meaning. It is also worth noting that in order to create as much comfort and ease between myself and the interviewees I avoided questions about the age, race, ethnicity, religion, educational level or gender of interviewees as well as any reference to these categories with respect to victims/survivors. Joan Scott importantly argued that in fact, “categories of representation and analysis—such as class, race, gender, ...” have achieved an uncontested foundational status that is well worth contesting, considering and contextualizing (Scott 1999: 796). In order to avoid researcher created categories *a priori*, I refrained from referencing categories of social construction, and rather, waited for individual LE to select their own language of representation and corresponding descriptions. I did, however, ask the number of years of experience in the field of LE as well as the number of years, if any, specifically investigating rape and sexual assault.

The questions themselves were developed and reviewed in combination with Joanne Archambault, Executive Director of the End Violence Against Women (EVAW) International organization (also a retired sex crimes Detective Sergeant with the San Diego Police Department), and Dr. Kim Lonsway, Director of Research for EVAW International. Additionally, a pilot interview was conducted with Anne Burghess, the current Executive Director of the Gwinnett Sexual Assault Center in Duluth, Georgia and former LE officer of ten years.

In addition to the technical support I received from the EVAW International Executive Director and Research Director, I was also fortunate

enough to partner with the organization for the purpose of my research. Beginning in 2003 EVAW International undertook a combined technical assistance and research project, "Making a Difference" (MAD) that involved three specific phases, two countries and 16 locations throughout the U.S. and Canada. Most importantly for my work, the MAD project included the participation of eight SARTs, including LE representatives, from across the U.S. The individual LE officers participating in the MAD project SARTs made up the majority portion of the interview subjects.

Twenty-one interviews with individual LE officers were conducted during the week of July 13-17, 2009. The LE officers interviewed consisted of patrol officers, detectives (those who investigate crimes), supervisors of detective units and higher level supervisors within LE agencies (e.g. Lieutenants, Captains, Chiefs, etc.). Additionally, the LE interviewed consisted of two distinctive groups. One group represented the individual LE participating on SARTs who were a part of the MAD Project, while the other group was LE officers who were not a part of the MAD Project and were therefore not necessarily affiliated with a local SART.

The actual interviews were conducted in Austin, Texas during the course of a technical assistance meeting for MAD project participants. The MAD meeting included LE officers from seven states plus the District of Columbia and 13 individual agencies. Following the MAD meeting a two-day criminal justice multi-disciplinary training on sexual assault investigations and prosecution was presented by Joanne Archambault, Executive Director of EVAW International and held at the same conference center. In this instance LE from Austin and surrounding counties within Texas attended along with prosecutors, advocates and forensic medical examiners. On the first day of the MAD meeting and the sexual assault training respectively I was introduced by Joanne Archambault as a graduate student doing research in the area of LE officer response to rape and sexual assault. It was noted that I was partnering with EVAW International and that prior to attending graduate school I had worked in the field of ending violence against women in the U.S., most recently at the Oregon Attorney General's Office. LE officers were

encouraged to sit with me for an anonymous interview. I interviewed all of the LE except one in attendance at the MAD meeting. As there were a large number of LE officers at the two-day training following the MAD meeting, I simply conducted as many interviews as time would permit.

A brief introduction to the LE officers interviewed

I interviewed 21 LE officers with a wide range of police and investigative experience. While all of the officers interviewed were generous with their time and insights, there were several officers who were notably reflective in their responses. Perhaps also importantly, the officers who tended to be most reflective were also those who were participating with the MAD project and therefore on a community SART. LE participating on the MAD project included (all names are pseudonyms): Russ, an Assistant Chief with 16 years of police experience and four years as a former detective; Craig a Lieutenant (high ranking supervisor) with 17 years of experience in LE and five years previous experience as a detective; Steve, a Detective with 15 years of LE experience and five years of detective experience; Tom, a Sergeant with 17 years of police experience and three years as a detective; Linda, a Captain (very high ranking supervisor) with 17 years of police experience and seven years as a detective; Elisa, a Detective Sergeant (supervisor of the Detective unit) with 18 years of police experience and eight years as a detective; Gus, also a Detective Sergeant, has 20 years of LE experience and 15 years as a detective; Doug, also a Detective Sergeant, has 31 years of police experience and five years as a detective; Chris, a Detective with 23 years of LE experience and 11 years as a detective; Kevin, a Detective Sergeant with 22 years of police experience and 15 years as a detective; Scott, an Investigator (Detective) with 20 years of LE experience and one year of experience as a detective; and Leslie, also an Investigator, with 16 years of police experience and 12 years as a detective.

The non-MAD project participating LE officers interviewed included (again, all names are pseudonyms): Allan, a Detective Sergeant with 23 years of police experience and 14 years as a detective; Stan, an Investigator with 23 years of police experience and ten years as a detective; Mick, a Lieutenant with

23 years of police experience and no specialized experience as an investigator; Evan, a patrol officer with two years of LE experience and no experience as a detective; Betty, a Detective with 28 years of experience in police work and seven years as a detective; Garret, a Sergeant with 20 years of police experience and eight years as a detective; Ross, an Investigator with 16 years of LE experience and five years as a detective; Dirk, a Chief of Police with 35 years of LE experience and no specialized experience as a detective; and Hugo with 12 years of LE experience and no specialized experience as a detective.

Perhaps also important, of the 21 interviews conducted four were female officers and 15 were male officers. It is also interesting that three of the four women participated with the MAD project; two of who demonstrated themselves to be exceptionally reflective on the issue of rape and sexual violence. Similarly, two of the 15 male officers interviewed stood out in the same way.

Methodology

I began this research inquiry thinking that I would learn about social relations of power; specifically how the gender, age, class and race of victims and perpetrators plays a role in the decision-making practices of individual LE. While during the course of interviews some illumination of these very interesting and real dynamics certainly emerged, the most notable finding was my own surprise at the extent to which LE articulated compassion, understanding, empathy and concern for victims/survivors. Moreover, rather than support my assumption that LE officers continue to reflect the dominant socio-cultural norms and values surrounding rape and sexual assault – the stereotype of ‘real rape’ – on the contrary, I found LE officers to be keenly aware of many of the issues and biases confronting victims/survivors. While all of the interviews did not reflect the same level of awareness or sensitivity, a notably consistent tension between compassion for the victim/survivor, the reality of the institutionalized structure of the criminal justice system and individual values, beliefs and perceptions was present during the interviews.

As a result of this experience my initial methodology, to take a feminist standpoint epistemological position, was importantly challenged. That is, I began my research from the position that while knowledge is subjective, my standpoint as a woman and other factors of social location as well as my professional experience in the field of rape and sexual violence provide me with an important epistemological privilege for understanding and interpreting the world. While I believe I still have a certain epistemological privilege related to how I am situated (sex, gender, age and professional experience), I also understand that my epistemic privilege can work as both an aid as well as a barrier inasmuch as it may lend itself to making assumptions and pre-judgments. In other words, "...[people], ...construct meaning and significance [from] their realit[y]... [t]hey do so by bringing to bear upon events a complex personal framework of believes and values, which they have developed over their lives to categorize, characterize, explain and predict the events in their worlds" (Jones cited in Walker 1985:257).

1.6 Ethical Considerations

As noted earlier, I was introduced to the two groups, the MAD meeting participants and the professional training participants, as a graduate student at the beginning of each event. My introduction also included a reference to my prior work experience at the Oregon Attorney General's Office. While LE officers were encouraged to participate in an interview, they were not obliged to do so and as such they neither risked penalty nor professional disapproval should they choose to not participate. To that end, no person other than myself was specifically aware of who participated in an interview and who did not. At the beginning of each interview participants were asked if there was anything they wished to know about the background of the researcher, the purpose or intention of the research or the hope for the completed research paper. While names, agencies and email addresses were obtained for all of the participants, anonymity was guaranteed. In fact, it was further guaranteed that any information that could generally identify either a participant or a case story

would be further de-identified. In terms of the actual completed research paper, interview participants were told they would receive a copy following final submission in November 2009.

1.7 Justification and Objective

The important role that LE officer decision-making plays in the criminal justice system requires further examination, particularly in an era following the legal, social and structural reforms that have taken place. Moreover, this research query will enrich an existing body of research by providing a qualitative and therefore nuanced social examination of LE officer decision-making.

Indeed, research serves a critical function in providing insights and understanding into social relations and processes. These insights and understandings can subsequently enhance the effectiveness of policy reforms, professional training efforts and social change campaigns. As Kerstetter asserted (1990: 276), "...discerning the motivation behind an inappropriate decision is important because efforts to change practices are more likely to be successful if the dynamics are correctly perceived". Moreover, in the words of Sally Falk Moore (1978: 4),

If partial rule by rules is all that can ever be managed, the fact has considerable import for planning and regulation. Awareness of the limitations on regulation should affect the research objective of those responsible for drawing up rules, predicting their effects, and monitoring their application. A central concern of any rule-maker should be the identification of those social processes which operate outside the rules, or which cause people to use rules or abandon them, bend them, reinterpret them, sidestep them, or replace them.

Thus, the broad objective of this research is to increase understanding of the current status of rape and sexual violence as a social problem within the context of the socio-cultural factors that inform and influence LE officer response, whether social or legal, formal or informal. More specifically, the objective is to contribute insights and understanding into LE decision-making

in order that policies, procedures and training can be effectively tailored for continued improvement on behalf of victims/survivors of sexual violence.

1.8 Scope and Limitations of Research

While this research query will focus on individual LE and their decision-making practices, it is important to note that LE represent but one component of a complicated and extensive criminal justice system response in the U.S. Prior research has examined the decision-making practices of prosecutors (Frohman 1991, Spohn et al. 2002, Spohn and Holleran, 2004) as well as the influences on jury decision-making (Borgida and White 1978, Mullin et al. 1996).

Moreover, this research does not seek to prove that LE officers are gatekeepers by virtue of their decision-making practices. Rather, this research will contribute to an existing body of research by using a different theoretical framework, the sociology of the law, and a feminist constructivist methodology, to uncover the interplay between law and social reality by inspecting the perceptions of individual LE officers. This research therefore represents an attempt to theorise about and make an analysis of the discrepancy between law as a formal vehicle presumed to be objective and the perception/practice of practitioners who are situated at the crossroad of law and socio-cultural reality. This research is based on a limited number of interviews with individual LE. While it does not attempt to disqualify or contest other similar research, whether from a quantitative or qualitative perspective, it does hope to contribute to an understanding of the ways in which we think about the individual LE response to rape and sexual assault.

Similarly, this research query will focus on LE in general with observation and notation about any distinctions that may emerge between SART and non-SART LE. However, this inquiry does not specifically intend to examine or compare and contrast SART and non-SART LE response. For research on SARTs see Visher, Newark, and Yahner 2008, Wilson and Klein 2005, and Nugent-Borakove et al. 2006.

While U.S. criminal codes are both similar and importantly distinct from state to state, this research will not include an analysis of the formal legal codes from the seven states represented plus the District of Columbia. Rather, the research will operate from the assumption that each state has formal legal codes of which individual LE are both aware of and informed by in their professional capacity. Nonetheless, existing research on rape legal reform has supplied an extensive body of literature outlining the nuances between state laws including, Tempkin and Krahe 2008, Seidman and Vickers 2005, and Horney and Spohn 1990.

Finally, and most importantly, this research does not include the input or insights of victims/survivors. Thus, I do not claim to analyze the viewpoint of the victim/survivor. There is significant qualitative literature available with the insights, experiences and perceptions of victims/survivors in the aftermath of rape and sexual violence including, Campbell 2005a and 2006b, and Koss 1988a, 2000b, and 2006c.

Chapter 2

The Intersection of Law and Social Reality: Applying the theory of the sociology of the law

“In each instance, law is so inextricably entwined in culture that, for all its specialized capabilities, it may, indeed, best be seen not simply as a mechanism for attending to disputes or enforcing decisions, not solely as articulated rules or as evidence of differential power, and not even as the reification of personal values or superordinate beliefs, but as a framework for ordered relationships, an orderliness that is itself dependent on its attachment to all the other realms of its adherents’ lives” (Rosen 2006: 7).

A theoretical framework provides an abstract concept to frame a concrete experience in order to enhance understanding of a phenomenon. The broad theoretical framework applied to this research inquiry is the sociology of the law or the theoretical argument that: law is neither neutral nor impartial; it is inherently infused with the social relations of power; and law and culture are relational and mutually constitutive.

This chapter will therefore articulate the theory of the sociology of the law and the importantly corresponding social constructions, like gender and intersectionality, that will serve as a framework for understanding the research query and findings. Moreover, the analytical tools that will be employed to interpret and situate the data within the theoretical framework will be also be explained and justified.

2.1 Theoretical Framework

If law is a reflection of culture and culture is a reflection of law, then indeed we should expect to see representations of dominant socio-cultural values, beliefs and perceptions present within formal laws as well as the subsequent interpretation and application of laws by practitioners themselves. For example, Wayne Kerstetter (1990) in his landmark research, “Gateway to

Justice: Police and Prosecutorial Response to Sexual Assaults Against Women” noted that notions of traditional sex-role norms and the ascribed sexual property value of women has significant import in how police and prosecutors understand and respond to individual cases of rape and sexual assault. Kerstetter (1990: 267) found in his research that, “...[women who failed] to act consistently with prevailing ideas about appropriate female behavior [were]...not be[ing] accorded the full protection of the law. ...[And moreover,] the vigor with which officials would act to redress a sexual assault was determined by the victim’s sexual property value”. This quote importantly illustrates two things: 1) the relevance of gender as a critical social construction within the context of rape and sexual assault and 2) the distinction between formal laws and law as practice; laws influenced by and applied through socio-cultural values, norms and beliefs. In other words, “...the ways in which race or gender have been constructed in society at large [are] inseparable from the rules of evidence or the presumptions at work in police stations or courthouses” (Rosen 2006: 65). In principle this means “...people may exploit the fixity of the codified law on one occasion or emphasize the indeterminacy and flexibility of customs on another” (Moore 1978 cited in Shehada 2005: 13).

Another way to frame this theoretical model is to think in terms of competing ideologies of law as argued by Sally Merry. Merry posits that top down, dominant and formal law works in combination with bottom up, locally constructed informal law. While top down law lays claim to neutrality, it is the practice of the bottom up that applies the law. Therefore the “nature of enforcement” becomes paramount:

Instead of flowing inevitably from a violation of the law, enforcement is viewed as dependent on the social identities of the parties and their relationships. The law is a set of rules that are enforced partially and only when someone complains. ...the person is socially constructed by his or her history, character, rank, and social or ethnic identity. Behavior is judged in terms of customary standards presumed to exist for such persons.

...[Therefore] [e]nforcement can be manipulated depending on how the problem is presented” (Merry 1986: 258).

The relevance of this theoretical framework is in situating it within a qualitative methodological approach. Qualitative data collection methods and a constructivist (feminist standpoint) epistemological position joined with a socio-legal theoretical framework provide a keen opportunity to illuminate and understand the varied and dynamic influences of individual LE decision-making, the relevance of socio-cultural values and constructions, and the importance of daily practice.

If the core of the sociology of law is its recognition that ‘law is culture’ (Rosen 2006), then the theoretical conceptualizations within this framework can provide an understanding of culture itself. Most notably is the theoretical conceptualization that every facet of culture is infused with and embedded within social relations of power -- dominance and subordination, oppression and privilege, and inequity and inequality. However, it is important to note that social relations are fluid. In one moment an individual can hold a position of dominance over another individual, for example a LE officer with a victim/survivor, while moments later, that LE officer can be subject to subordination, perhaps in the case of their commanding officer who is positioned to overrule their decision-making should they choose.

Thus in this research power is used in the Foucauldian sense – power as dispersed, dynamic, discursively created, self-reinforcing and bottom-up (Scott 1986, Sawicki 1991). This conceptualization of power illustrates how “power-relations at the microlevel of society make possible certain global effects of domination, such as class power and patriarchy” (Sawicki 1991: 23). Moreover, it reifies ‘knowledge’ as a constitutive element of power (Ibid). That is, “knowledge of the offence, knowledge of the offender, knowledge of the law; these three conditions make it possible to ground a judgement in truth” (Foucault 1973 cited in Turkel 1990: 180). In the case of this inquiry, knowledge can be seen as playing an increasingly important role in the decision-making practices of LE officers. Therefore power, as conceptualized

in this inquiry, is viewed primarily in terms of individual social relations of power based on constructions of social identity most notably derived from socio-cultural norms, values, beliefs and practices.

Social relations of power are subsequently supported and reinforced through knowledge, authority, and institutional structures (in addition to other elements that will not be discussed). So for example, LE individually embody power as figures of authority, holders of specific knowledge and more often than not, based on their masculine gender and middle-class status. Victims/survivors, on the other hand, are likely to operate from a subordinate position of power in relation to LE on the basis of their lack of institutional authority and lack of knowledge about the law, and more often than not, their feminine gender, low socio-economic status as well as their young age¹ and possible ethnic/racial background. Moreover, this example can help to operationalize the concept of intersectionality whereby gender, class, and age are intersecting social relations of power that relate to granting privilege or creating disadvantage in a particular context. In the context of rape and sexual violence, the intersections of gender, race/ethnicity, age and class play a role in both risk for victimization as well as lack of access to the criminal justice system in the aftermath of victimization (Koss and Dinero 1989)

In summary, the theoretical framework will begin from the sociology of the law and the assumptions this theory purports – namely that the law is neither neutral, nor impartial, fair nor just. Rather, the law is imperfect and culturally derived and subsequently applied contextually (or in other words, situated locally) and on the basis of individual relations of power (between the victim/survivor and the LE official for example). Secondly, gender, in combination with other social identities, will serve as primary indicators for identifying social relations of power and their potential manifestations.

2.2 Analytical Tools

An analytical framework represents the discursive tools employed to evaluate, interpret and understand the research inquiry findings. Constructions of

gender and other social relations of power will serve as the primary method of analysis. In other words, “[g]ender, then, provides a way to decode meaning and to understand the complex connections among various forms of human interactions” (Scott 1986: 45-6).

In order to operationalize gender as an analytical tool, I will use Joan Scott’s two part definition: “gender is a constitutive element of social relationships based on perceived difference between the sexes, and gender is a primary way of signifying relationships of power” (Scott 1986: 42). Scott goes on to explain that there are four primary social fields in which gender is constructed and that using the lens of these social fields as a method of analysis can help identify the ways in which, for example, “politics constructs gender and gender constructs politics” (Ibid. 46). Thus in the case of this research query and analysis, I will seek to uncover the ways in which *rape and sexual violence construct gender and gender constructs rape and sexual violence* in the context of individual LE officer decision-making.

Moreover, as gender is such a profoundly important social relation of power and signifier of social location, the theory of intersectionality will also be applied. Intersectionality as originally theorized was an attempt to explain women’s experience of discrimination, oppression and lack of privilege as a result of sex and gender in combination with race, class, religion and other factors that contribute to the existence or lack of power and privilege in their lives. As Bartolomei and Pittaway (2003: 89) suggest, intersectionality “challenges the notions of ‘layers’ of oppression” and rather, illustrates the “compound effect of being subjected to multiple discriminations” that cannot realistically be separated and addressed one by one. Thus intersectionality recognizes that power and privilege are dynamic and fluid. That is, depending on the context, individual women may experience more or less privilege based on both the context and the combination of their particular multiple identities. Of course this experience may also be influenced by the agency employed by individual women (McNay 2004: 177). Intersectionality therefore offers the flexibility to theorize about and conduct analysis on the intersecting, interwoven and fluid social identities that may denote power or disadvantage.

As gatekeepers to the criminal justice system, LE officers are inherently positioned with (institutional) power that can be used to grant or deny access to the criminal justice system to victims/survivors of rape and sexual assault. Prior research has noted that LE officers tend to associate particular circumstantial and victim characteristics to reports of rape and sexual assault that lead them to conclude whether the report is credible or false prior to conducting an investigation (Holmstrom and Burgess 1978, Randall and Rose 1982, LaFree 1980, Campbell and Johnson 1997, and Campbell 1998). Similar research has found that notions of what constitutes ‘real rape’ importantly influences case attrition, the majority of which occurs within the realm of LE decision-making (Lonsway and Archambault). Additionally, Workman and Freeburg (1999), in their research on attribution theory, found that victim dress and behavior factor significantly in assessing attribution (and/or assigning cause, responsibility or blame) in the case of rape. Victim/survivor characteristics, dress and behavior are all constitutive elements of the feminine gender construction—whether constructed or reinforced symbolically, ideologically, institutionally or subjectively.

The hope, therefore, is to uncover the significant and persistent themes within gender and other social constructions that influence, shape and reinforce perceptions of practice among individual LE officers. This research inquiry and analysis ultimately seeks to add insight and to expose the differential factors that influence LE officer decision-making rather than presuming that law is applied objectively and consistently or that socio-cultural factors do not operate within the context of the application of the law.

Chapter 3

The Crossroad of Formal Law and Social Reality

Sexual assault is probably the most underreported crime because of the perpetuation of myths and biases; who victims are, who perpetrators are and what is sexual assault. This is perpetuated through society and Hollywood and is related to what is interesting to people.

~ Elisa, Detective Sergeant, Sex Crimes Unit

This chapter analyzes individual LE officer decision-making perceptions of practice based on a limited number of qualitative interviews. Contrary to common stereotypes in the field of ending violence against women, as well as much of the empirical research available, LE officers importantly demonstrated compassion and sensitivity for victims/survivors, and awareness about issues such as ‘real rape’ and victim/survivor credibility. This chapter will therefore argue that individual LE, who are situated at the crossroad of formal law and socio-cultural norms, are informed by a complex interplay of these two realities rather than a clear dichotomy between the two. That is, “...the study of social processes reveals diversity, multiplicity and complexity rather than mere dichotomy” (Shehada 2005: 114).

This chapter contains four sections. Section 3.1 will situate the study in the relevant paradigm of the sociology of law. Through analysis of the interview data, this section will illustrate that while LE may see themselves as neutral and impartial enforcers of the formal law, their discourse and justification shows a complex interplay between formal structures and socio-cultural values, norms and beliefs. Section 3.2 will evaluate the relevance of the false allegation as a socially constructed stereotype as opposed to a prudent legal consideration that informs LE decision-making. In the third section the well-documented socio-legal construction of ‘real rape’ will be considered in contrast to individual LE accounts of victim/survivor credibility versus non-credibility and report legitimacy versus non-legitimacy. Finally, Section 3.4 will

conclude the Chapter by addressing and analyzing two examples of gender asymmetry and reflect on their meaning.

3.1 Perceptions of Practice: Formal law or social reality?

While the role of LE in the context of responding to rape and sexual assault necessarily includes being compassionate, professional and even patient with victims/survivors, this is a relatively new socio-cultural value. Rather, the primary, and often argued sole function of LE is to determine whether a crime occurred and then support that determination with the identification of evidence and corroboration. LE officers and other criminal justice system professionals are inclined to argue that this is done by upholding the ‘objectivity’ and ‘neutrality’ of the law or in other words, letting the facts of the investigation lead the way. However, as noted by Moore (1978), Merry (1986), Rosen (2006) and other scholars who have theorized about and done research on the sociology of the law, socio-cultural norms routinely trump the law itself. Thus, the law is produced, reproduced and reflected subjectively through culture broadly and the individual beliefs, values and norms of LE officers (and other criminal justice system professionals) specifically.

Gus, a Detective Sergeant with 20 years of LE experience who is also part of the MAD project nicely illustrated the subjective production of law when he remarked, “you have to bear in mind the rights and wishes of the victim and balance this with public safety”. This quote importantly reflects the interplay between perceptions of social norms and rules in contrast to formal legal requirements – namely that as an enforcer of the law, Gus is individually liable to protect the community, particularly when he is aware of criminal risk or activity. At the same time, however, the obligation of the law is balanced against socio-cultural values that emerge in this instance in the form of perceived victim/survivor needs. It is not an either-or scenario, but rather a delicate balance between the unique circumstances of the specific case, as perceived by the officer, and the requirements of the law. It is therefore easy

to see how in one case the wishes of the victim/survivor to discontinue the investigation might be met with resistance and insistence by the officer – for example, a case involving a stranger – while conversely, a case involving circumstances that are much more difficult to prove, as a result of the law as well as socio-cultural values, may be met with some degree of relief. It is in this way that the formal law becomes inseparable from social rules.

There is tension present, however, between individual LE officer perceptions and their obligation as enforcers of the law. No doubt this tension is a natural consequence of the conflicting value that the institution of LE is fair, neutral and impartial – “just the facts ma’am”². Moreover, as illustrated in the following case analysis, the perception of individual LE is importantly influenced by socio-cultural information and values. Kevin, a Detective Sergeant and participant of the MAD project, questioned whether taking a victim/survivor directly to the hospital for a sexual assault medical forensic exam was really the ‘best practice’ if an immediate interview could result in valuable information for LE. Kevin noted that while it is generally recommended that victim/survivors have their medical as well as psychological needs addressed first, this can and does result in valuable details and sometimes evidence being overlooked, lost or forgotten. While Kevin was able to easily articulate the common reasons for prioritizing the emotional well-being of the victim/survivor, he also recognized the objective need to avoid losing evidence or information. In the end, Kevin confided that in cases where the victim/survivor has not suffered physical trauma (beyond the sexual assault itself) he prefers to collect a victim statement to the extent that the victim/survivor is willing. To that end he commented that he “doesn’t teach his detectives to cut an interview short if the victim wants to talk, on the other hand, if you have a victim that makes a limited statement you get what you can and move on”. Kevin’s comments reflect the level of dynamism and indeed, multiplicity, present in the application of the law. In one case he will conduct a more thorough victim/survivor interview while in another he may not. We might also presume that there are additional factors, both legal and socio-cultural, which may contribute to his perception of the need for an immediate

thorough victim/survivor interview and it is the combination of these factors together that ultimately result in a specific decision. Therefore, the decision of how and when to conduct a comprehensive victim/survivor interview may not be as simple for individual LE officers as it first appears to those of us who are not practitioners in the field.

It is also notable that consideration for the victim/survivors emotional well-being was a theme that emerged during several interviews. Allan, who has over 23 years of LE experience and is not involved with the MAD project demonstrated significant awareness about trauma and memory as well as concern for the victim/survivor when he suggested that “[due to the] stress impression left by trauma you can capture better information following the second sleep period”. Similarly, Linda a Captain with 17 years of LE experience and a MAD project participant noted that “after victims have a rest they remember more”, and Mick, a Lieutenant with 27 years of experience remarked that they “never [conduct] a lengthy interview until the [victim] has had a chance to sleep on it”.

I would argue that these insights reflect at least two relevant nuances. In the first place, the institution of LE is subjectively practiced in the day-to-day response of individual LE. Decisions are made, not necessarily based on formal obligations specific to the legal code or the requirements of the institution of the law, but rather, in relation to the individual knowledge of the officer, their beliefs and perceptions related to the needs of the victim/survivor and their belief about the flexibility of the law in that context. In addition, the knowledge base of individual LE related to trauma in the aftermath of rape and sexual violence seems to be well grounded and understood. Arguably the individual knowledge of LE officers, in this case specific to victim/survivor trauma impact, bears an important influence on LE officer decision-making. Perhaps as well, LE officers’ daily encounter with victims/survivors has influenced their perception and sensitivity to issues of trauma which has resulted in either a change in practice, or at the very least, a change in their perception of practice; namely that individual LE at least perceive that they

consider the emotional well-being of victims/survivors as a part of their decision-making practices.

The interplay between social rules and formal law in the context of LE decision-making was also reflected specifically in relationship to investigative practices. I believe this is a particularly important finding as it demonstrates the extent to which socio-cultural norms and values become imbedded in the formal practice of the law itself. The law then, is not just applied through the lens of society, but rather, society becomes a critical and integral construct of the practice of the law—an inseparable part of the law.

For example, Stan, a non-MAD project participating LE officer with twenty-six years of police experience and ten years of detective experience noted that:

[victims can] put themselves in a situation, or do things to survive or cope. They may be afraid this will be viewed as complicity but this has to come out [in the investigation]. Sometimes [victims] shut down and allow [the rape] to happen as a means of coping.

This statement importantly reflects Stan's knowledge about the reality of non-stranger rape and sexual assault; victim/survivors may not behave or respond to a known assailant in the way society might expect (e.g. fighting, resisting, etc.). More importantly, however, is Stan's keen awareness that this is not a well-understood behaviour within society and therefore it needs to be confronted and explained through the formal investigation. Thus, the officer has integrated the social reality of rape and sexual assault into his formal investigative practice. Stan, therefore, is not so much responding to the individual circumstances of the rape, but actively working to address dominant socio-cultural values within his application of the law through his formal legal investigation.

There were many other comments by LE that denoted a blurring of lines between formal law and social rules. These comments serve as a testament to the notion of the 'social working' of legal rules (Griffiths 2003: 4). In other words, the extent to which the law influences social behaviour and social behaviour influences the law, thereby becoming mutually constitutive.

Indeed, a tension is present between the individual knowledge of LE officers, socio-cultural norms and the formal law. Sometimes this tension is felt by LE officers as reflected in their statements about how they go about making decisions; like for instance in the case of Kevin and the issue of a victim/survivor interview ‘best practice’. On the other hand, socio-cultural values, knowledge and the formal law can become sufficiently intertwined thereby overcoming any particular decision-making struggle, as in the case of Stan incorporating socio-culturally driven objectives into his formal investigation as a matter of standard procedure. What remains true, however, is that LE officers operate at the crossroad of social reality and formal law in their day-to-day practice.

3.2 Pernicious Stereotype or Prudent Practice: The false report

It continues to be recognized that one of the greatest, and perhaps most persistent stereotypes about rape is the belief that women routinely falsely report rape and sexual assault to police (Rumney 2006). As Rumney (2006) noted in his research, data on the actual number of false allegations is methodologically problematic, often contradictory and mostly outdated. Nonetheless, we know the issue remains a central concern for police as well as prosecutors, judges and juries (ibid).

More recently, however, research has examined whether there are quantifiable indicators associated with false allegations. In fact, it has been asserted that there is a connection between specific complainant reporting factors and a truly false report of rape (Rassin and van der Sleen 2005, Woodhams and Grant 2006, and Norton and Grant 2008). Norton and Grant (2008: 276, 282) hypothesized that a truly false report “would reflect rape myths found in the general population” and subsequently concluded in their research that indeed “...false rape allegations contained significantly more rape stereotypes than true allegations.”

This analysis is in striking contrast to the mainstream stereotype of revenge, regret and behavioural concealment as motivation for making a false report. That is, if as Norton and Grant conclude, women who falsely report do so in a manner consistent with rape stereotypes, then it is more likely they are reporting an incident of violent stranger rape that includes physical injury and the use of a weapon in addition to a lack of any possible assignment of behavioural culpability to the complainant herself. Conversely, revenge and regret, at the very least, necessitates making an allegation against someone known to the complainant rather than an unknown person.

The historical roots of the social perception that women make false rape allegations out of malevolence is nicely illustrated from a line in William Congreve's (1697) play, "The Mourning Bride", 'hell hath no fury like a woman scorned'— meaning a woman rejected in love (or sex) can be dangerous. Similarly, the following quote from Sir Mathew Hale, a 17th century English Chief Justice, which has been used and reused over the course of two centuries to confer power to the female complainant and assign disadvantage, and indeed, victimization, to the male being accused:

...rape is an accusation easily to be made, hard to be proved, and harder yet to be defended by the party accused.

In this section I am therefore interested in putting Norton and Grant's analysis to the test as a method of identifying the contemporary relevance of false allegations for individual police officers. As a result of their daily practice, we should expect to see officer awareness of and knowledge about common characteristics associated with a truly false report. More pointedly, "...false allegations [should] contain a greater frequency of rape stereotypes than true allegations because they are dependent on individual beliefs and social concepts rather than an actual experience" (Morton and Duck 2003 cited in Norton and Grant 2008: 277). The question then, is have LE, by way of their daily practice, also concluded that false reports are linked to rape stereotypes familiar to society and the complainant or do LE officers also embrace this pernicious stereotype accepted within the mainstream culture?

While I previously made a point of contesting the utility of creating a binary in the context of the social application of the law, I have largely done so by posing the above question. It is therefore relevant to note that in actuality, the LE officers I interviewed reflected a continuum of responses. As the continuum has particular importance for the purpose of this analysis, I will attempt to convey the spectrum of responses collected beginning with those that were most pernicious and ending with those that were consistent with the analysis posited by Norton and Grant (2008).

Of course there are many possible reasons why someone would make a false report ranging from malicious intent to confusion or lack of legal understanding. It is therefore relevant that Allan, a seasoned officer, specifically commented that “being vindictive is the largest common denominator” among false reports. Similarly, Ross, a detective with 16 years of experience who is not a member of the MAD project explained that adolescent girls and women may falsely report rape as a result of ‘buyers’ remorse’. ‘Buyers remorse,’ he described, is fuelled by both regret for consensual sexual activity on the part of the female as well as hurt feelings by the female when the male does not respond to or contact her following sexual activity (therefore akin to revenge). Ross further remarked that adolescent girls maybe inclined to report rape or claim rape to their parents in an attempt to obscure behaviour they believe could get them into trouble with their parents. Similarly, returning to the theme of ‘buyers’ remorse’, Stan, who like Allan and Ross, is not affiliated with the MAD project, stated the following: “changing your mind after the fact does not make it rape, and I’m sure that happens”.

While revenge and regret emerged as motivation for making a false report, the desire to conceal behaviour was the most common characteristic noted by the LE officers who elected to provide specific attributes of a false report. For example, Doug, who participates on the MAD project noted that “usually the victim is trying to cover up for something else, otherwise they wouldn’t be making a report”, while Betty, who has 28 years of police experience and is not associated with the MAD project said that “[reporters] are covering up for having sex with someone or not being home when they are

supposed to be”. Doug further noted that you may have to “look for potential false reports, a lot of which are unknown suspects”, other false reports may involve individuals who are attempting to cover up a sexual relationship or hide some kind of information. Notably, however, concealment as a motivation was also largely associated with adolescents. For instance, Betty remarked that false reports represent a “pretty low percentage [of] mostly juveniles com[ing] up with a story to cover a story”.

These comments arguably reflect the contemporary relevance of the pernicious stereotype that women (and adolescent) intentionally and maliciously falsely report rape. Perhaps the most important analysis up to this point is located in teasing out the social constructions that underpin the historic values which assert that women report rape out of vindictiveness with relative ease, and yet at the great expense of men (Congreve 1697, Hale 17 c). I would argue that the underlying social constructions are largely, if not exclusively, derived from assigned gender characteristics which depict women as dependent, emotional, vulnerable and subject to reactive and irrational behaviour. These characteristics viewed through the lens of gender in the context of false reporting could translate into making a false report for reasons associated with financial and emotional dependence, the need and desire for security and protection offered by men or a relative lack of understanding related to the consequences of making a false report as a result of irrational thinking. The LE interviewed, while not emphatic about these stereotypes, importantly continue to identify vindictiveness, ease of deception and regret as factors that do influence false reporting. It is particularly notable that by most accounts within the interviews, false reports of rape represent a small minority of reports, and yet the issue continues to be present in the minds of some officers—illustration of the perniciousness of the stereotype despite the reality of their practice.

It is also relevant that age bore an important influence in the characterization of who and how false reports of rape are made. For example, Evan, a patrol officer with only two years of LE experience described how young adolescent girls may lie about their age and sneak out of their homes at

night to meet older men and have sex with them. At the same time, Evan unequivocally identified the girls as having no culpability and rather expressed frustration and disgust with the twenty-something men who would “have sex with minors”. In contrast, Betty described adolescents as girls “who sneak out at night and go with people they are not suppose to be with”. She further described that sometimes it is a “date rape” situation and other times the girls are “willing”.

Here the theory of intersectionality can be applied in order to further understand the social constructions that underpin the assertion by some officers that adolescents use false reporting as a means of obscuring bad behaviour. Arguably the way in which the social construction of age is operationalized within this context is twofold. In the first place, age operates as a vulnerability. In general younger people have less power, less status and less credibility. Mainstream society largely justifies the lack of legal autonomy of children and adolescents in relation to limited emotional and intellectual maturity. Youthful age can create vulnerability in the form of access (e.g. school, sports, etc.), perceived lack of credibility (associated with a grater likelihood for deception) or naiveté (associated with emotional and intellectual immaturity and gullibility). This vulnerability, in the context of rape and sexual violence, translates into higher rates of victimization (Tjaden and Thoennes 1998, Kilpatrick et al. 1992). That is, adolescents may be easier to manipulate or coerce. The second point is closely related to the first; adolescents are also less likely to be believed while simultaneously more likely to be held responsible for bad behaviour or poor judgment as a result of their youthful age. This has a double impact as it makes adolescents less likely to report when they have been victimized, particularly if they believe they were culpable for the assault as a result of poor judgment or risk taking. Moreover, when adolescents do report, they are less likely to be believed and/or more likely to be held responsible for making a poor choice that *lead to their victimization*.

Age can therefore operate simultaneously to disempower and create vulnerability and at the same time, reduce credibility and increase culpability within the context of rape and sexual violence. LE officers may therefore

experience a certain amount of tension or conflict in situating youth who report rape or sexual assault—are they a victim or a deceiver? On the one hand, the law situates minors as not legally able to consent to sexual relations, particularly with adults (e.g. there is usually a minimum age difference that increases the criminal-legal seriousness) and on the other, socio-cultural norms and values situate minors as reckless, irresponsible and deceptive. Indeed, the issue of age plays out in the context of the LE response to rape and sexual violence in very different ways depending on the circumstances involved as well as the individual LE responding – regardless of the clarity of the law.

Somewhere in the middle of the continuum of responses were reflections by LE officers that signalled a certain level of awareness related to the contentious and complicated nature of false allegations of rape and sexual assault. Dirk for example, who has 35 years of police experience but does not participate on the MAD project remarked, “I don’t really know how many [false reports] occur but they do occur, [and] unfortunately that adds to police scepticism about rape reports”. The tone of this comment seems to suggest that police scepticism about false reports of rape is a contemporary problem. Moreover, despite the numbers not being notably high (which I would deduce from his inability to estimate a number), any false report disproportionately adds to police scepticism about the possibility of false reports. As this is a comment from the most senior LE officer interviewed it is not difficult to imagine the extensive perspective that he brings to bear on this issue – a perspective that arguably reflects an era prior to legal reform or broad anti-rape activist efforts. His assessment therefore reflects two important points. First, Dirk, who has 35 years of police experience, demonstrates keen *awareness* about police scepticism within the context of rape and sexual assault. Second, Dirk asserts that police scepticism is (or perhaps continues to be) a *problem* specific to reports of rape and sexual assault. These points nicely relate to the importance of avoiding the creation of dichotomies within the context of social reality. In other words, it is true that individual LE officers continue to hold onto pernicious stereotypes about rape, be sceptical about reports of rape and simultaneously, demonstrate awareness about these issues. Indeed, while

the formal law requires clarity, facts and evidence, social reality is full of ambiguity, doubts and inconsistencies.

An example more specifically related to practice involved distinguishing between a truly false report, where the investigation proves that a rape did not take place, and a report that includes false information. Most notable was the following remark made by Kevin:

“A false report means that the crime did not happen. This happens very rarely. What happens more often is I get cases where false information is provided but that doesn’t mean the rape didn’t happen.”

In this quote a distinction is being made between a victim/survivor who lies about the details of or information related to the rape rather than someone who fabricates a report of rape. The difficulty with this construction is that it eliminates the possibility of drawing clear legal, investigative or social assumptions—e.g. that lying makes you a liar. If LE officers accept that lying does not make you a liar, it confounds and complicates the investigation and subsequent criminal justice system response. There is no formula or consistent pattern of individual or social behaviour and therefore no formula or consistent pattern to apply the law. Thus LE officers struggle with and negotiate between the inconsistent and unpredictable nature of social reality in contrast to the purported clarity of the formal law. The resulting practice of ‘law enforcement’ thereby becomes dynamic, fluid and perhaps most importantly, individualized as a result of the context, the individual identity (and knowledge) of the officer and the flexibility of the formal law itself.

In line with Norton and Grant’s theory that false allegations should mirror mainstream rape stereotypes, Chris, a detective with 23 years of police experience and a member of the MAD project reported that approximately 5.5% of the rape and sexual assault cases he has investigated have been false reports. Approximately 5% of those cases have been ‘the boogey man’ false reports where the reporter does not name a known suspect and .5% has been cases where the reporter named a known assailant. This case assessment is consistent with Norton and Grant’s findings in that the bulk of the false

allegations are ‘stranger cases’—which is the stereotype of rape. Chris also noted that “if she is making it up, she is likely to include all the elements of the crime, if she isn’t making it up, then she is likely to say she doesn’t know or doesn’t remember at times”.

Chris, however, was the only officer among the 21 officers interviewed who specifically articulated a connection between stranger rape reports and false reports. While other officers’ demonstrated a degree of reflexivity and awareness, a palpable scepticism remained present within many of the comments. This finding is consistent with socio-legal theory that argues for the pre-eminence of socio-cultural norms, values and beliefs over formal laws. That is, the law is “...a set of rules that are enforced partially... behavior is judged in terms of customary standards presumed for such persons... [and] [e]nforcement can be manipulated depending on how the problem is presented” (Merry 1986: 258).

The total sum of the comments with respect to false allegations would therefore suggest that while there is a level of awareness about false reports, the persistence of pernicious stereotypes about women’s motivations for making a false report results in notable police scepticism. Also notable is the extent to which age plays an important role in this construction. Adolescents are particularly at risk of being identified as making a false report of rape. Moreover, the dissonance between LE daily practice and their perception of practice is particularly relevant when contrasted with research that denotes a connection between stereotypes of rape and false reports of rape—a connection that was only recognized by one officer during the course of interviews. Indeed, concern regarding false reports of rape continues to influence police perceptions of rape and sexual assault as well as their decision-making practices. It is therefore no surprise that Rumney’s research from 2006 asserted the on-going relevance of false reports as a social construct rather than an empirically founded problem.

3.3 Reinforcing, Contesting and Reconstructing ‘Real Rape’

‘Real rape’ is a term coined by feminist scholars and anti-sexual violence activists to describe what is commonly argued in mainstream society to be the stereotypical and accepted notion of rape; a stranger, jumping from the bushes or breaking into the home of an unknown female victim and committing rape at knife point or with some other terrifying weapon against an innocent woman who can in no way bear responsibility for the assault (Estrich 1987). This term has largely been used to draw attention to the notion that it is our dominant socio-cultural definition of rape and sexual violence which defines the crime, not necessarily the formal law. For example, Susan Estrich in her book, *Real Rape*, provides an anecdote of a prosecutor who describes a non-stranger rape between a woman and her ex-boyfriend as “technically rape” but not a case you prosecute as she had no injuries, he did not beat her and she voluntarily was in his apartment (Estrich 1987: 9). So while the criminal justice system may “technically” recognize this situation as meeting the criminal elements of rape, the people who make up the criminal justice system do not. In other words, it is the practice of the bottom up, locally constructed social rules that are applied (Merry 1986) not necessarily the formal law.

Scholars and activists have argued that in practice this means the majority of reported rapes are ignored or dismissed by the criminal justice system – beginning with LE. In fact, some studies suggest that up to 50% of rape victim/survivor reports to LE are either not officially recorded (e.g. an informational report is taken rather than a criminal report) or the report is not forwarded for investigation (no further police action is taken after the report is made) (Campbell 1998a, Campbell et al. 2001, and Frazier and Haney 1996 cited in Campbell 2006: 2). Decision-making practices have largely been identified in relation to the construction of the ideal victim/survivor, “[a woman] who has little-to-no relationship to the offender, is virtuous and going about legitimate business, was above reproach in behaviour prior to the rape, reports a single occurrence, was raped by an unambiguously bad offender, has demographic characteristics that signal power, influence, or sympathy, shows

visible, appropriate expressions of trauma, and are open to help”; that is, the ideal victim/survivor is defined by social rules and norms rather than the formal law (Dignan 2005 cited in Koss 2006: 212).

This position is in striking contrast to Wayne Kerstetter’s 1990 study on what informs LE (and prosecutorial) decision-making. Kerstetter asserts in his research that formal legal considerations like instrumental and evidentiary factors “predominate in determining the official reaction to sexual assault complaints and define and control access at the gateway to justice” (1990: 313). Kerstetter explains that legal formalism, the statutory requirements of the law, is decisive for LE in arriving at investigative and case clearance decisions. Additionally, incident seriousness, builds on the pre-eminence of law by arguing that the seriousness of a crime, e.g. whether there is an injury or if a weapon is used, is also a significant factor influencing LE. Finally, Kerstetter acknowledges that gender conflict theory, based on the notion that it is “a male-dominated criminal justice system [that] acts to protect men’s property interests in the sexual and reproductive functions of women” (1990: 270) also bears influence, although to a lesser extent.

What Kerstetter arguably fails to do however, is to recognize the inherent elements of the sociology of the law within all four theoretical areas—rather, he identifies only gender conflict as being rooted in socio-cultural values while the other categories of theory appear to remain legally neutral. For example, while Kerstetter does give cursory acknowledgement to the notion that a victim’s decision to decline to participate in the investigation or prosecution of a rape case can be influenced by LE, he otherwise codes this decision-making factor as evidentiary. This assumption fails to acknowledge the social relations of power between LE officers and victim/survivors. As well, and perhaps more importantly, this assumption fails to acknowledge the existence of rape stereotypes among victims/survivors themselves. In other words, as victim/survivors are also a part of the socio-cultural environment, they too are likely to reflect rape stereotypes and demonstrate an understanding of the notion of ‘real rape’.

LE officers almost uniformly described the most typical report of rape or sexual assault as non-stranger; a victim/survivor who reports being assaulted by someone known to them whether as a result of a brief encounter or an established relationship of some kind. This is consistent with national survey data that indicates 75-90% of rape and sexual assault occur between people who are known to each other (Tjaden and Thoennes 1998, Kilpatrick et al. 1992). However, descriptions of what gives a report the appearance of more or less legitimacy or a victim/survivor more or less credibility provided significant insight into the awareness of socio-cultural values by LE officers and the tension present between those values and formal laws.

One anecdote in particular provided a nice illustration of both awareness and tension. When I asked about how investigative steps or procedures might vary between reports that lack credibility compared to those that appear to include all the necessary criminal elements Steve, a detective with 15 years of experience and a MAD participant shared the following anecdote:

We have to investigate every report, no matter how vague or [unlikely] it may seem. For example, last year this woman was arrested for criminal trespass at a park. She was totally intoxicated, even the following day. After she was arrested she claimed all she remembered was walking into the park and being raped by a stranger. I [somewhat reluctantly] authorized a sexual assault medical forensic exam and sure enough, the swabs came back with the DNA of a serial rapist we'd been looking for. You just can't discount any reports no matter how incredible [not credible] they seem.

This story importantly illustrates some of the internal tension that LE is confronted with in their daily practice. On the one hand, Steve recognizes his own inclination to see this report as lacking legitimacy specifically due to the identity of the victim/survivor and her lack of credibility. On the other hand, Steve also sees the experience as confirming his intellectual

understanding that the reality of rape victims is that they do not necessarily conform to socio-cultural beliefs related to ‘real rape’. Indeed, Steve very much characterized the anecdote as a learning moment—an affirmation of what he may know intellectually, but struggles with on a personal level.

Moreover, the influences of the intersecting identities of the victim/survivors in relation to her perceived credibility are nicely illustrated with this anecdote. The victim/survivor’s drunkenness plays an important role, while drunkenness in combination with her gender arguably compounds her lack of credibility—after all, women in particular should not engage in public drunkenness. There is the additional intimation that she is homeless which is also likely to relate to a low socio-economic class and lack of education. Finally, the police have arrested this victim/survivor for criminal trespass—thus she is herself a criminal.

So while Steve did conduct a thorough investigation in this case, he also noted his inclination to perceive this victim/survivor as lacking credibility and therefore more likely to be deceptive. Inherently reflected in this anecdote is Steve’s self-assurance that he has the discretion to decide whether to investigate this case. Moreover, Steve’s comments imply that he does not believe he necessarily needs to identify formal legal, instrumental or evidentiary elements to justify not investigating this case. Rather, the anecdote was almost suggestive of conducting the investigation just to err on the side of caution. This decision-making process is therefore in contrast to Kerstetter’s assertion that LE decision-making is largely informed by formal legal considerations. Rather, this anecdote reflects the interplay of social relations of power between an authority, Steve, and a disadvantaged, poor, drunk, homeless woman who has already had negative contact with LE. It was not the law, or any evidence present at the time of the report or the victim/survivor’s willingness to cooperate that lead to Steve’s decision to investigate, rather, it was his inclination to be prudent and to bear in mind his intellectual knowledge that victims/survivors can be poor, homeless and drunk.

This case demonstrates the multiplicity of factors that influence decision-making and suggest just how arbitrary individual LE decision-making

processes can be. Moreover, this case illustrates the pre-eminence of social identity in determining credibility as well as the importance of the identity of the individual officer—and his or her intellectual understanding (knowledge) of social identity (see Turkel 1990 on knowledge).

As noted in the former example, the issue of victim credibility has often been framed as a reason for identifying some reports as legitimate (‘real rape’) and other reports as not. Credibility appears to be largely, if not exclusively, underpinned by the construction of gender roles. As LaFree (1981) identified in his research, violation of sex role norms specific to women include a surprisingly specific list of “misconduct” including hitchhiking, drinking at the time of the offense, being at a bar without a male escort, engaging in sex outside of marriage and willingly accepting a ride from the suspect or going to his home (LaFree 1981: 586). LaFree’s research is consistent with other scholarly work on identification of ‘real rape’ and its implication within the criminal justice system. It is also, however, contrary to much of Kerstetter’s assertion that formal legal influences bear a larger role in police officer decision-making than non-legal factors. It is therefore particularly notable that many of the LE officers, like Steve, referenced the issue of victim/survivor credibility with a degree of knowledge and awareness. In fact, Craig, a lieutenant with 17 years of police experience and a member of the MAD project consciously confronted the issue of credibility as an issue that has to be confronted in order for the prosecutor or the system to have the best opportunity for a successful prosecution:

It is uncommon to get a stranger rape. Rape can be as simple as “no stop”, but this can make it difficult to get to the point where you can have a successful criminal justice system response (arrest, prosecution and sentencing). It creates challenges in the investigation when there is a relationship between the two – the suspect and the victim. There is a lot of public opinion on the nature of the relationship like why did [the victim] put themselves in a position that they shouldn’t have. From a LE standpoint, we have to be able to prove probable cause; something that

would cause someone to believe that the crime was committed. So in order to prove rape, you have to prove that it was against the victim's will and this is difficult when the suspect and the victim know each other and especially if there are credibility issues on the part of the victim.

This remark is so rich with meaning and nuance that I will attempt to disentangle it line by line. In the first line, Craig makes a simple challenge to the stereotype of 'real rape' by stating that stranger rapes are uncommon. He then furthers this challenge by illuminating just how different rape can be from the stereotype of 'real rape', "it can be as simple as 'no stop'". Implicit is the understanding that there is limited violence and no weapon involved. Craig then acknowledges the reality of the system. Similar to the prosecutor interviewed in Etrich's book some 20 years ago, there is an understanding of the distinction between what the law may formally recognize and what social reality may actually permit. Craig furthers this point by noting that by virtue of the victim/survivor and the suspect being involved in some kind of relationship, there is significant difficulty establishing rape... But notes that this difficulty is situated within social reality, not the formal law necessarily. In other words, if she did not want to have sex, then why did she go to his room...why did she engage in some amount of consensual sexual behaviour...why did she drink or use drugs with him? At this point Craig shifts gears to address the requirements of the law. He notes that he is required to establish probable cause as a threshold. What he does not say, which I believe is equally relevant, is that establishing probable cause is necessary to make an arrest—not necessary to conduct an investigation. I would argue this point is relevant as without the actual context, it almost appears as if the officer must tread lightly with these cases vis á vis a legal mandate. On the contrary, police can investigate whomever they like. Individuals under investigation can refuse to cooperate if they like—the police, however, are under no requirement to be cautious in who and how they investigate. My argument seems to be supported by Craig's concluding comment that it is difficult to prove it was against the will of the

victim/survivor when the victim/survivor and the suspect are known to each other.

This quote illustrates the tension between socio-cultural norms and values in contrast to formal legal requirements. Also notable is the tension between dominant socio-cultural norms in contrast to what LE officers know intellectually and through their daily practice—that ‘real rape’ is not the reality. Craig demonstrates his awareness that non-stranger rape in and of itself is contrary to the mainstream stereotype of ‘real rape’ that is most importantly characterized as stranger rape. Moreover, Craig suggests that victim behaviour preceding the rape is importantly connected to the perceived credibility of the victim/survivor. While Craig does not specifically state what behaviours are problematic, we can surely take from existing research on ‘real rape’ and sex role norms that this is likely to include drinking, being sexually active, going with the suspect and so on.

Also important is the nature of the progression of the comment. Craig starts off by making a strong assertion in direct contrast to mainstream stereotypes about ‘real rape’. He concludes, however, with some degree of back tracking when he begins to justify what he characterizes as a successful criminal justice system response in cases that do not meet the elements of ‘real rape’. This may suggest his own internal struggle with what constitutes rape and sexual assault. Also of interest is how Craig demonstrates his keen awareness of rape stereotypes but in the end, uses the ‘law’ to justify those same stereotypes.

It is clear that the stereotype of ‘real rape’ continues to play an important role in LE decision-making. It is also clear, however, that LE officers importantly reflect awareness of this stereotype. What is not clear is exactly how the tension between mainstream social constructions of ‘real rape,’ that are notably a part of the institutional structure of the criminal justice system, individual LE officers subjective identity (e.g. knowledge, values, etc.) and the formal legal requirements plays out in individual cases. But perhaps it would not be unfair to assume that some cases, like Steve’s case of the drunk woman who was raped in the park, fair better than other cases, like those cases

that are simply not investigated after a report is made as a result of the social reality of the report.

3.4 Challenging the Dominant Paradigm of Gender Asymmetry

The World Health Organization has repeatedly noted that gender, particularly rigid gender roles and a lack of autonomy for women, is a primary risk factor for sexual victimization of women and associated perpetration by men (WHO 2008). Gender roles routinely manifests within the context of rape and sexual violence whether in the form of stereotypes about ‘real rape’ or assignment of a lack of credibility to the victim/survivor based on behaviour that does not conform with gender norms. It is therefore either conformity or lack of conformity with dominant socio-cultural constructions of woman that have largely informed the scholarly analysis of gender within the context of LE response to rape and sexual assault. What has been evaluated to a lesser degree, if at all, is the extent to which gender operates in relation to male or masculine assignment. This section will draw on two examples from LE officer interviews in order to analyze and comment on the existence of gender asymmetry within the context of LE officer decision-making.

LE officers practice at the crossroad of formal law and social reality. It is therefore not surprising that my analysis up to this point has illuminated some of the tension and struggles LE officers experience in their daily practice—including struggles that are in direct relation to gender roles and other forms of social identity. Equally interesting, however, is noting the ways in which the issue of gender might exist outside of the dominant socio-cultural framework. Two of my research interviews were particularly conspicuous in their direct reference to gender. In the first example Linda, while describing the investigative follow-up to an initial report of rape noted that:

Not every police officer is cut out for sex crimes, but for some sex crimes is their niche. All of my investigators are male and they have no trouble handling female rape cases.

Linda is clearly asserting that sex crimes detectives are a unique brand of law enforcement distinctly qualified to handle cases of rape and sexual assault regardless of their sex/gender. Simultaneously Linda is directly challenging the mainstream socio-cultural value that female officers are in a better position to handle cases of rape and sexual assault than male officers. Thus there is both an assertion that sex crimes detectives are unique and a refutation that the sex/gender of a detective is relevant to working with female victims/survivors.

This assertion may be supported by research that suggests that the sexual identity of LE is not as relevant to victims/survivors as how they are treated. Or in other words, “[m]aleness per se [does] not appear to determine the quality of an officer’s response to sexual assault victims... while some women found it traumatic being interviewed by a man, others felt this was not so nearly as important as the officer’s attitude (Jordan 2001: 679, 692). Additionally, an anecdote from a member of the New York City (NYC) Rape Analysis Squad further suggests that victims/survivors may not even have a preference between a male officer and a female officer: “Our experience in dealing with sex crimes investigations, however, has shown us that when given the option to choose, a woman rape victim is just as likely to ask for a male officer as she is a female officer. It seems that the criteria are sensitivity, compassion, empathy and professionalism of the officer” (Levine and Koenig 1980 cited in Rumney 2006: 146).

The relevance of gender in this example, however, is more than just Linda’s challenge to dominant socio-cultural constructions related to who is best positioned to serve victims/survivors. Rather, Linda’s challenge, as well as the research noted on this topic, goes much deeper inasmuch as it inherently reconstructs and modifies assumptions about the masculine gender. What underpins the assumption that women officers are better positioned to respond to rape and sexual violence is both their assumed characteristic, as women, to be compassionate, understanding and caring as much as their ability to be empathetic – to understand viscerally what it would be like to be raped or sexually assaulted. Conversely, the masculine gender is typically assigned no

such characteristics. Therefore recognizing that male officers can also be “sensitive, compassionate, empathetic and professional”, just as the member of the NYC Rape Analysis Squad noted, expands traditionally feminine characteristics to the masculine realm. Moreover, there is a recognition that empathy does not necessarily come from the possibility of having a particular experience (e.g. being raped), but rather, one’s intellectual ability to identify with the feelings, thoughts or experiences of another person. Thus it is through the day-to-day work with victims/survivors that law enforcement officers, whether they are male or female, develop understanding, sensitivity, compassion and indeed, empathy—not necessarily as a result of their gender.

In the second example Stan raised the issue of gender when he shared an anecdote in response to my question about whether there are differences in the way that non-stranger as opposed to stranger rape is investigated. Stan provided an example of some of the challenges related to investigating non-stranger rape and sexual assault – notably the challenge of double standards in relation to sex/gender of the victim/survivor and the perpetrator.

Another double standard is an older woman with a younger male. The attitude is that he is having a good time. I had this case with a sixteen-year old football player who is having a sexual relationship with a 26 years old [exotic] dancer. But there was no indictment. I guarantee you that if the gender were reversed it would have been different.

This quote speaks eloquently to how the attributes, characteristics and assumptions that are assigned to gender can harm both the subordinate group as well as the dominant group. That is, assignment of the characteristics of virulence, ever-present sexual interest and physical strength to the male sex comes with the implication that adolescent males and men cannot be raped by women (physically) and moreover, would never deny the sexual advances of a woman. With respect to adolescent males, the assumption that they are eager for any and every sexual opportunity is presumed – regardless of whether it is in their best interest or harmful. In contrast, adolescent girls, at least those

who are not misbehaving, are more likely to be viewed as needing to be protected – whether with respect to their innocence or chastity. So boys cannot be coerced or manipulated into sex with older women because they are highly sexual and therefore always want to have sex while girls can be coerced and manipulated because they are naïve, innocent and not identified as sexual.

The intersection of age in combination with gender plays a particularly important role in framing this example. The victim/survivor is an adolescent male and the suspect/perpetrator is an adult woman (who works in the sex work profession) thereby framing this anecdote as a titillating story of sexual opportunity rather than its reality as a case of manipulation and coercion. Similar to the mainstream socio-cultural value that adolescent males are always eager for any sexual opportunity is the belief that engaging in sexual intimacy with an older woman, and a woman who is experienced in the sex trade no less, is a great opportunity for an adolescent boy. As Stan noted, it is not difficult to envision how this story would get a different reaction were it a 16 year old girl who was sleeping with a 26 year old male exotic dancer. Indeed, it is the combination of gender and age that situate this story so soundly within the mainstream socio-cultural value of ‘scoring’ rather than being identified, at the very least, as sexual exploitation.

These two variations in examples of who is disadvantaged by gender provide an alternative insight into gender asymmetry. While there is no doubt that gender asymmetry has profound consequences for women and girls in terms of sexual violence and victimization, it is also true that negative consequences can be felt by men and boys, and indeed, the larger society. Moreover, this analysis serves as a reminder of the relevance of Foucault’s theorization on power—that power is dynamic and dispersed (Scott 1986); and Kathy Davis’s (2008) work on intersectionality that recognizes that it is the combination of multiple identities and context that ultimately result in the conference of privilege or experience of disadvantage.

Chapter 4

Drawing Conclusions and Deriving Meaning

I don't like people and society thinking that police don't care. I don't like people thinking that police don't know what they are doing.

- Kevin, Detective Sergeant, Major Crimes Unit

This research paper has attempted to create depth and increase the complexity within the landscape of knowledge—to identify nuance, tension and change, however slight, within the realm of the individual LE response to rape and sexual violence in the U.S. It has sought to demonstrate how individual LE practice at the crossroad of socio-cultural norms and formal law; and how that practice is rife with tension as a result of the ambiguity, multiplicity, and discontinuity present in social reality. Moreover, this paper has attempted to illustrate how individual LE officers, at times, are very much aware of the sometimes conflicting influences and tensions that exist between formal law and social reality. Thus LE officers may struggle with the decisions they are confronted with in their day-to-day work. Conversely, there are other times when the dominant socio-cultural values are so deeply imbedded that they become a part of practice and therefore go without particular notice. As the introductory quote denotes, however, LE officers wish to negotiate this crossroad in earnest, with a goal of doing their job well, including being ‘fair’ and ‘neutral’.

In this final chapter I will therefore review the implications of my findings as well as reflect on my own journey during this research and writing process. In the first section I will revisit the issue of epistemology and how it relates to the notion of social change. In section 4.2 I will summarize the theoretically informed meaning that can be derived from the analysis in Chapter 3. Finally, I will conclude by reflecting on the notion of ‘success’ and how it relates to the individual experience, thereby returning to the relevance of epistemology.

4.1 Epistemology and Social Change

The nuance and tension identified through the course of interviews with individual law enforcement importantly denotes the dynamic, contextual and socio-culturally infused relationship between the application of the law and the law itself. It is notable that during the course of 21 interviews, law enforcement officers by and large spoke about their observations, opinions, beliefs and assumptions—not the requirements of the law. Therefore the combination of legal authority and individual decision-making discretion of LE officers cannot and should not be seen as merely ‘enforcing the law’. Rather, law enforcement represent critically important constructors, reconstructors, contestors and reinforcers of socio-cultural values, beliefs and norms, including social constructions of gender, age, and race and ethnicity.

The relevance of this meaning, I would argue, lies in our approach to social change efforts. If we understand that institutions, like the institution of law enforcement, are made up of individual practitioners, then we must necessarily consider the elements involved in individual change as well as structural change. In other words, feminists and anti-rape activists began in the 1970’s from a social constructivist analysis and subsequently shifted the bulk of their efforts to a more positivist epistemological approach to change, e.g. legal reform. While legal reform is without question important, it should not detract from the value of social change beginning at the individual level. Indeed then, the observable difference in victim/survivor sensitivity and awareness of rape stereotypes by MAD participating LE officers may be indicative that the collaborative, one-to-one approach of SARTs is a successful epistemological approach to improving the response to rape and sexual violence.

Sociology of Rape and Sexual Violence

The overarching research question used to guide this paper, *how do individual law enforcement perceive what constitutes rape and sexual violence*, cannot be answered with a simple definition or a series of numbers and percentages. Rather, analysis of the responses of law enforcement officers in Chapter 3 illuminated the many and complex ways in which rape and sexual violence are constructed, considered, defined and redefined. Moreover, this analysis has demonstrated through the use of qualitative data and LE officer narratives how it is the weaving together of broad socio-cultural norms, individual beliefs and the formal law in combination with the specific context that inform individual LE decision-making. For what constitutes rape and sexual assault in one set of circumstances may not constitute rape or sexual assault in another (e.g. the case of the adolescent male who was sexually assaulted by the adult female exotic dancer in Section 3.4). Thus, while LE perceptions of what constitutes rape and sexual violence are largely informed by dominant socio-cultural norms, those socio-cultural norms can be and are challenged as a result of LE officer day-to-day contact with victims/survivors (e.g. the case of the drunk homeless women in Section 3.3). Thus, the construction of rape and sexual violence by LE officers can be seen as dynamic and contentious, just as it is in the larger social reality. Law enforcement officers, however, are uniquely positioned to be familiar with the law, as well, they have contact with many and varied allied professionals and routinely work with victims/survivors. This unique position enables them to play a persuasive role in defining what constitutes rape and sexual violence as well as take a leading role in contesting that definition.

4.2 Redefining Success

The notion of ‘success’ in the context of rape and sexual violence in the U.S. has largely focused on quantifiable criminal justice system outcomes

(Archambault and Lonsway). I would argue, however, that just as this research paper has taken the epistemological standpoint that individual perspective, understanding and knowledge is what most profoundly shapes practice, our notion of success should be similarly understood and measured. To that end, I would contend that the results of this research can be seen as success inasmuch as *how* one, perhaps two or maybe even 100 individual victims/survivors were treated by the LE officers I interviewed. That is, based on the interview data, LE officers demonstrated considerable attention to the needs and wishes of victim/survivors. For example, Russ, an assistant chief with 16 years of police experience and a member of the MAD project shared at the end of his interview that he likes his work as it gives him an opportunity to “restore [victim/survivor] faith in humanity”. Similarly Allan confided at the end of his interview that he thinks it is “sad that only 20% of sexual assaults get reported”. He further reflected that this must have to do with self-blame and that he hopes more victims will eventually come forward and put their “faith in the system”. These comments and others in Chapter 3 served as a reminder that what is most critical in terms of success, is the individual experience of individual victims/survivors.

Moreover, this notion of ‘success’ as measured by an individual experience rather than achievement of a benchmark or other quantifiable measurement is also consistent with my own experience during the course of this research and writing process. As I indicated earlier, when I began this process I brought all of my existing prejudices, stereotypes and biases about LE to the table. This is not to say that I did not have respect for LE or an appreciation for their work. On the contrary, prior to attending graduate school my work at the Attorney General’s Sexual Assault Task Force afforded me the opportunity to work closely with many exceptional LE professionals, including co-teaching at the Oregon Police Academy on a monthly basis. Nonetheless, my identification as a feminist activist and my ten years of experience working in the ending violence against women field ultimately shaped my perspective such that I tended to believe that while there are individual LE who are knowledgeable about and sensitive to the needs of

victims/survivors, by in large, the field of law enforcement was not particularly aware or sensitive. Through my individual interaction with LE officers I was able to come to the realization that LE officers, whether they are well informed about rape and sexual violence or not, are generally trying to do the best job that they can—they are not attempting to be punitive or to deny access to victims/survivors. Indeed, just as I operate within the complexity and discontinuity of social reality, so to do individual law enforcement.

Notes

¹ The majority of victims of sexual violence from a national survey were young females ages 13-24 (Kilpatrick, Edmunds and Seymour, 1992).

² This quote comes from Detective Joe Friday of the syndicated police TV-show, *Dragnet*, which aired between 1951-59 and 1967-70 on NBC.

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