

# The Relationship between Verdict, Defendant Characteristics, and Type of Crime in Sex-related Criminal Cases

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In an earlier study, we unexpectedly found that defendants charged with sex crimes were four times less likely to be convicted than were all other defendants. We now report that failure to convict for rape was associated with failure to come to trial and that minor sex crimes were tried, but often continued without a finding, even when the judge found sufficient facts to make a guilty finding. Whether a minor crime involved a victim and whether the defendant has a criminal record both relate to verdict, but psychiatric history did not. The implications for understanding "acquittal of the guilty" are discussed.

In a recent study of defendant characteristics related to outcome in a district court, we unexpectedly found that defendants charged with sex-related crimes were four times less likely to be convicted than were defendants charged with any other type of crime.<sup>1</sup> This finding was independent of the defendant's prior criminal record, sex, marital status, race, psychiatric history, or type of counsel.

Our purpose in this report is to investigate further the relationship between defendant characteristics, type of crime, and outcome in the criminal justice sys-

tem, in order to understand why the unexpected result described above occurred. Reviewing the literature, we found many studies of defendant characteristics related to outcome of rape cases<sup>2,3</sup> but no studies of defendant characteristics related to outcome of relatively minor sex crimes such as open and gross lewdness or lewd and lascivious behavior.

Failure to convict after arraignment occurs, for example, on a motion to dismiss charges initiated by the defense, the prosecution, or the judge; after a trial when the judge or jury finds the defendant not guilty; or after a trial in which the judge finds sufficient facts for a guilty finding but continues the case without a finding. Judges continue without a finding those cases in which the defendant has committed the crime, but the judge wishes to avoid criminalizing the

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defendant. Typically, cases are continued for 6 to 12 months; if the defendant has no further criminal appearances during that time, the case is filed.

According to Halleck,<sup>4</sup> society views persons who commit sex-related crimes as mentally disordered and treats such persons as "sick" or "sick and bad" rather than "bad." In his pioneering study, Newman<sup>5</sup> observed cases in which mentally ill, apparently guilty defendants were exonerated. He said " 'acquittal of the guilty' is a process by which defendants who are recognized as law violators are let free because, in the circumstances, punishment according to the formal terms of the law appears to the concerned officials to be useless, unduly harsh, or destructive of the very objectives the criminal law aims to achieve"<sup>5</sup> (p. 131). He added, "particularly where the defendant appears to be emotionally disturbed (although not insane) the judge may acquit in an effort to separate the 'sick' from the 'criminal'"<sup>5</sup> (p. 131). And he observed further, "homosexuals, transvestites, window peekers, and similar 'mild' sex offenders are at best thorns in the side of most courts"<sup>5</sup> (p. 152). Following Halleck<sup>4</sup> and Newman,<sup>5</sup> we expected defendants charged with minor sex crimes to be continued without a finding rather than found guilty, especially when the defendant was identified as a psychiatric case.

### Method

The research was conducted at the Cambridge District Court, an entry level court which arraigns 4,000 defendants annually. The Probation Department

interviews all defendants and routinely asks about medical, psychiatric, and substance abuse problems.

From a sample of 924 defendants appearing consecutively before the court in the summer of 1980, we isolated all cases of defendants charged with sex-related crimes. The crimes included rape, open and gross lewdness, lewd, unnatural, and lascivious acts, and peeping Toms. From probation records, we recorded the age, sex, prior criminal record, and presence of a psychiatric, alcohol, or drug disorder as known to the court. In each case, we also recorded the finding by the court and the disposition. We classified criminal charges as serious or minor; serious if the case was tried in superior court and minor if it was tried in district court.

### Results

As shown in Table 1, all 29 defendants were male. The mean age was 29.3 years; 25 were white, 2 black, one hispanic, and 1 of unknown race. Twenty were single, five separated or divorced, and four married. Seventeen had a criminal record, 11 had none, and 1 was unknown. Seventeen defendants had no known mental disorder; eight were identified at arraignment as having a present or past psychiatric history and four were identified as having alcohol problems.

Inspection of Table 1 suggested that the pathways leading to failure to convict were quite different for serious and minor crimes. All nine serious cases involved an alleged rape, but only one of these defendants came to trial. That defendant was convicted and sentenced to 2.5 to 5.0 years in prison. In Cases 3, 4,

**Table 1**  
**Characteristics of Defendants and Outcome of the Case for Major And Minor Crimes**

#	Charge	Age	Race	Major Crimes		Psychiatric/ Alcohol History	Outcome
				Marital Status	Criminal Record		
1	Rape of child	36	White	S*	No	No	Guilty, 2.5 to 5 years in prison
2	Rape	17	White	S	Yes	No	No probable cause
3	Rape of child	29	White	S	Yes	No	Dismissed
4	Rape of child	26	White	Sep	Yes	No	Dismissed
5	Rape of child	18	White	S	No	No	Dismissed
6	Rape	17	White	S	No	No	Dismissed
7	Rape	29	Black	S	No	No	Dismissed
8	Rape	27	Hispanic	S	Yes	Alcohol	No probable cause
9	Rape	28	White	S	Yes	Alcohol	No prosecution
Minor Crimes							
10	Open and gross	19	White	S	Yes	No	Guilty, 6-month sus- pension
11	Open and gross	20	White	S	Yes	Psychiatric	Guilty, 6-month sus- pension and psychi- atric treatment
12	Open and gross	17	White	S	Yes	Psychiatric	Guilty, probation
13	Open and gross	32	White	S	Yes	Psychiatric	Guilty, psychiatric evaluation, 6 months in jail
14	Open and gross	35	White	M	Yes	No	Guilty, probation and psychiatric treat- ment
15	Unnatural and lascivious act	36	White	D	Yes	No	CWF†
16	Unnatural and lascivious act	33	White	S	No	No	CWF, % probation
17	Open and gross	20	White	S	No	No	CWF
18	Open and gross	59	White	D	Yes	No	CWF, % probation and psychiatric treat- ment
19	Open and gross	25	White	S	No	No	CWF and psychiatric treatment
20	Unnatural and lascivious act	28	White	S	No	Psychiatric	CWF, % probation and psychiatric treat- ment
21	Unnatural and lascivious act	32	White	S	No	Psychiatric	CWF, % probation and psychiatric treat- ment
22	Open and gross	17	White	S	Yes	Psychiatric	CWF and psychiatric treatment
23	Open and gross	29	White	S	?	Psychiatric	CWF
24	Open and gross	29	White	S	No	Psychiatric	CWF and psychiatric treatment
25	Lewd	48	White	M	Yes	Alcohol	Not guilty
26	Open and gross	42	?	M	No	No	Not guilty
27	Open and gross	32	White	Sep	Yes	No	Not guilty
28	Lewd	34	White	Sep	Yes	Alcohol	Not guilty
29	Peeping Tom	24	Black	M	Yes	No	Default

\* S, single; Sep, separated; M, married; D, divorced.

† CWF, continued without finding.

5, 7, and 9 the victim refused to testify, and there was no prosecution. The victim was not acquainted with the defendant(s) prior to the alleged rape in any of these three cases. In two cases, 2 and 8, the grand jury failed to indict and the record was sealed. The judge dismissed one case, 6. No alleged rapist was known to be a past or current psychiatric case; two defendants had alcohol problems.

Twenty defendants were charged with minor crimes. Nineteen were tried, but only five, or 26%, were found guilty. Ten were continued without a finding, in each case after an initial plea of not guilty and then a bench trial in which the judge found sufficient facts for a guilty finding. Four defendants were found not guilty and one defendant defaulted.

Within the category of minor crimes, there is a relationship between verdict and criminal charge. All five defendants who were found guilty were charged with open and gross lewdness, i.e., exposing themselves. All five had prior criminal records.

In 10 other cases the judge found sufficient facts to impose a guilty finding, but in all 10 of these cases the judge failed to do so. All of these cases were continued without a finding. Four of these 10 cases were defendants charged with unnatural and lascivious acts, i.e., homosexual activity in a public place. The remaining six cases continued without a finding involved open and gross lewdness. In only two of these six cases was the defendant known to have a prior criminal record.

The proportion of defendants charged

with minor sex crimes who were found guilty is not different from the proportion of defendants found guilty of all other misdemeanors in our larger study. Seventy of 230, or 33% of the adjudicated defendants charged with misdemeanors were found guilty versus 4 of 19, or 21%, defendants found guilty of minor sex crimes,  $\chi^2 = 0.74$ ,  $df = 1$ , not significant.

The proportion of defendants charged with minor sex crimes who were continued without a finding is greater than the proportion of all defendants in our larger sample whose cases were continued without a finding. Ten of 19, or 52.6%, of the defendants charged with minor sex crimes cases were continued without a finding. In our larger sample, 51 of 747, or 6.8%, of the adjudicated defendants' cases were continued without a finding.<sup>1</sup> The result of comparing 51 of 747 with 10 of 19 was  $\chi^2 = 68.0$ ,  $df = 1$ ,  $P < .0001$ . We could not determine the proportion of misdemeanors continued without a finding, because of the way the data were originally coded.

The expectation that mentally ill defendants would less often be found guilty was not supported. Adjudicated defendants who were identified as having a psychiatric disorder were compared with all other defendants. Table 1 shows that the proportions of each who were found guilty or not guilty are similar. Of eight psychiatric defendants, three were found guilty and five were continued without a finding. None was found not guilty. Of 12 other defendants, three were found guilty, five were continued without a finding, and four were found not

guilty. Inspection of the data revealed no relationship between type of psychiatric treatment and verdict or disposition.

For open and gross lewdness, we found a relationship between prior criminal record and verdict. Eleven defendants were found to have been openly and grossly lewd. Five were found guilty; all had criminal records. Six were continued without a finding; five of these six had no prior record.

### Discussion

We found a clear relationship between type of crime and the events in the criminal justice system which led to failure to convict. Persons charged with rape could not be convicted because they were almost never prosecuted. In eight of nine cases, charges were dismissed or dropped before the trial. In contrast, 95% of the persons charged with minor sex crimes were tried, but only 26% were found guilty.

The small proportion of guilty findings for minor charges reflects a large proportion of cases continued without a finding, rather than a large number of cases dismissed or cases in which the defendants were found not guilty. Since every case continued without a finding came after a bench trial in which the judge found sufficient facts, it is clear that this is an example of judicial discretion.

Our findings suggest that for minor sex crimes, there is a relationship between the particular crime and the likelihood of a particular outcome. All of the guilty findings involved defendants charged with open and gross lewdness.

By contrast, no defendant charged with unnatural and lascivious acts was found guilty. All four were continued without a finding. These findings suggest that judges draw a clear distinction between open and gross lewdness in which there is a victim and unnatural and lascivious acts which, in our sample, involved homosexual activity between consenting adults in a public park, a crime without a victim. Judges see the first as criminal and they convict. They see the second as a nuisance, and they make a finding which permits the defendant to avoid a criminal record.

We found no evidence that defendants charged with minor sex crimes would less often be convicted than defendants charged with other misdemeanors. Nor did we find evidence that mental disorder was serving as a rationale for failure to convict in cases of minor sex crimes. Newman<sup>5</sup> observed, and we have also, individual cases in which judges divert a mentally disordered guilty defendant away from the criminal justice system and into the mental health system. However, our data provide no support for the conclusion that this consistently occurs.

### Conclusion

Typically, social science research on the criminal justice system involves examination of broad categories of crime, e.g., rape compared with aggravated assault.<sup>3</sup> Our findings highlight the importance of making discriminations between crimes within broad categories, if we are to understand the determinants of outcome in the criminal justice system.

Judges in our court clearly see their primary role as protecting society. They have different attitudes toward victim-directed and victimless minor sex crimes, and these attitudes are reflected in judicial verdicts. They also have different attitudes toward first offenders and repeat offenders. Where there is a defendant with a criminal history and a victim, as occurs in open and gross lewdness, judges will convict. Where there is no victim, as in lewd and unnatural behavior, judges will not convict even after a trial in which sufficient facts are found. Our data provide no support for the belief that judges avoid convicting

defendants with known psychiatric histories or disorders.

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