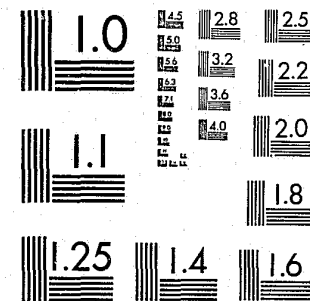


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**FEMALE VICTIMS OF CRIMES
AND HOW THE CRIMINAL JUSTICE SYSTEM REACTS TO THEM**

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FEMALE VICTIMS OF CRIMES AND HOW THE
CRIMINAL JUSTICE SYSTEM REACTS TO THEM

ACQUISITIONS

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1. Introduction.

A considerable number of sometimes alarming publications have appeared about the reactions of the criminal justice system to crimes of which women were the victims. This was the reason for a closer investigation of the basic data of some research which provide data on this topic¹⁾.

What is known in this context about rape and indecent assault²⁾ gives some indication of the attitude of the police and the judiciary towards these crimes and their victims. This attitude shows itself in the approach towards women who report the crime to the police (scepticism because of a possible false statement, or suspicion that the victim may have provoked the crime, etc.) and also, after a written police-report is made, if at all, in the way the case has been dealt with³⁾.

About the same can be seen with (non-sexual) assault, of which a woman was the victim, especially when a relationship existed between the offender and the victim. If such a case is ever reported to the police, the chance that it will finally end in a conviction is not very great.

- 1) F.J.M. van Straelen, The prosecution policy of the Public Prosecutor (report (in Dutch) in preparation).
O.J. Zoomer, Sentencing (including requested and given sentences) in cases of serious crimes (report (in Dutch) in preparation).
J.J.M. van Dijk and C.H.D. Steinmetz, RDC - victim surveys 1974-1979, July 1979.
Central Bureau of Statistics, Maandstatistiek Politie en Justitie Jan. 1973 and Jan. 1974, and also data about the proportion of dismissed cases by the Police Prosecutor in 1970-1976.
- 2) Although feminists in Holland argue that no discrimination should be made between rape and indecent assault, the Penal Code; where an offender forces a woman by violence or threat of violence to have sexual intercourse with him, and indecent assault: to force someone by violence or threat of violence to commit or endure indecent acts.
- 3) See e.g. G.D. Robin (1977), S. Griffin (1977), K. DeCrow (1974), S. Brownmiller (1976), L.H. Bowker (1978), and about the situation in the Netherlands J. Doomen (1976).

Rape, indecent assault and wife beating can be seen as the more or less logical consequences of the unequal power relationship between men and women as it exists in our society. From this situation proceeds a (psychological) threat which has a broader meaning than the simple likelihood (as is estimated on the basis of victim surveys) of a woman becoming a victim of these crimes. It is through this threat that women are being intimidated and "kept in their place" and it seems that such intimidation is not only tolerated but wilfully maintained. The reactions to these crimes from the side of the police and judiciary (and indeed from society in a larger context) must therefore rather be recognised as a reprimand of the victim than of the offender.

We expect that the data available to us will support our assumption that the reactions to these crimes (which we consider to be a function of the power relationship between man and woman) are affected by moral judgements and therefore will in general lead to a relatively lenient prosecution and sentencing policy.

It is not unlikely that this situation will be reversed if certain bounds are exceeded, that is to say, if e.g. (tolerated) wife beating degenerates into (very reprehensible) manslaughter of a woman. In connection with this we can refer to the American researcher Murray A. Straus, who wrote: ".....Many policemen personally believe that husbands do have a legal right to hit their wives, provided it does not produce an injury requiring hospitalization - the so called 'stitch rule'....." ¹⁾ In fact, this rule has been supported by the legal systems of Europe and America even up to the late 19th century ²⁾.

1) M.A. Straus, Wife beating: How Common and Why? in: Victimology, Vol. 2, 1977-1978

2) R.E. Dobash and R.P. Dobash, Wives: the "Appropriate" Victims of Marital Violence, in Victimology, Vol. 2, 1977-1978

In the following some data are presented about the way the criminal justice system deals with rape and indecent assault. Also a comparison is made between the ways cases of simple assault and (attempted or accomplished) manslaughter or murder are dealt with regarding whether women or men were the victims.

2. Rape and indecent assault

It appears from the investigation on demanded and given sentences in cases of serious crimes ¹⁾ that the prison terms for rape were not only lower than those for manslaughter or murder but also lower than those for robbery with violence or extortion. Only burglary in conjunction was less severely punished, as is shown in Table 1:

Table 1: Prison sentences requested and given for some serious crimes in the jurisdictions of Den Haag, Den Bosch and Amsterdam in 1973-1976, expressed in number of months imprisonment.

	Average prison term in months.					
	Requested			Given		
	total	accomp- lished	attempt- ed	total	accomp- lished	attempt- ed
Manslaughter committed in furtherance of another crime	79,8	95,3	44,8	82,0	-	-
Murder	37,1	62,8	25,2	43,0	68,7	17,3
Manslaughter	22,7	57,1	14,9	18,7	41,2	13,6
Robbery with violence	15,6	16,1	12,3	12,5	12,9	9,7
Extortion	13,8	14,9	10,1	12,1	12,2	11,9
Rape	10,8	12,5	6,7	8,8	10,0	5,6
Burglary in conjunction ^{*)}	7,6	7,7	6,6	6,4	6,5	5,3

^{*)} Only the more serious cases, which were not dealt with by the police magistrate but by a council of more than one judge, were included.

¹⁾ see note 1. This investigation concerns the requested and given sentences in the jurisdictions of Den Haag, Den Bosch and Amsterdam in the years 1973-1976 for manslaughter (also committed in furtherance of another crime), murder, robbery with violence, extortion, rape and burglary in conjunction.

Sentences other than non-suspended terms in prison were rarely given in any of these cases; for rape 85% of the convicted offenders were imprisoned. In the remaining 15% of the rape cases suspended imprisonment, or a fine, were requested and given.

The terms of (suspended or non-suspended) imprisonment in rape cases were mostly less than 1 year (that is to say, in 81% for imprisonment requested and 84% for imprisonment given). When the offender and the victim were strangers (54% of the cases) higher sentences were more often given. Where a sentence of more than 3 years imprisonment ever occurred, it was usually in such a case.

Similar data for cases of indecent assault are not available, so it is not possible to say anything about the sentences requested and given for such crimes.

However, the proportion of indecent assault cases dismissed by the public prosecutor in the years 1970 to 1976, shows that most such cases never achieve an appearance in court, as may be seen in the following table.

Table 2: Proportion of cases dismissed by the prosecutor for indecent assault compared with some other crimes in 1970-1976

	1970	1971	1972	1973	1974	1975	1976
Indecent assault	62%	65%	70%	66%	65%	69%	75%
Rape	52%	40%	50%	57%	40%	47%	51%
Simple assault	44%	48%	49%	52%	51%	52%	53%
Aggravated assault (except on public officials)	37%	43%	39%	46%	45%	44%	48%
Larceny	48%	51%	54%	57%	59%	58%	60%
Burglary in conjunction	52%	52%	48%	48%	44%	41%	45%

We see that indecent assault cases are substantially more often dismissed by the Public Prosecutor than cases for the other crimes in the table. We should at the same time realise that those

cases brought before the Public Prosecutor already represent a small proportion of cases which happen in real life. This is also true for the other crimes, but to a lesser extent.

It appears from the RDC-Victims Surveys 1974-1979 that as a consequence of the publics' relative unwillingness to notify the police and reservations of the police in making a written report, in the years 1976, 1977 and 1978 respectively only 23,7%, 7,4% and 5,5% of crimes described as "indecent assault in the street", officially came to the knowledge of the police. (This means that, after notification, a written report was also made; only then are such cases inserted in the registered crime statistics). For "violence against or threatening a person in the street", the corresponding proportions for the same years were 7,7%, 7,3% and 12,9%. A comparison with some property crimes also included in the Victim Surveys ¹⁾ shows that the latter were roughly 5 times more likely to be registered. (i.e. 50% of such crimes were registered). These data show that the so-called "dark number" for rape and indecent assault increased during those years and was greater than that for simple assault and differs even more from the "dark number" for property crimes.

This means, roughly speaking, that as a consequence of the various filters (willingness to notify, policy to make a written report, and prosecution policy) about 2 or 3% of all indecent assaults and rapes might end in a conviction. For assault, this proportion is estimated at 5 or 6% and for the above-mentioned property crimes the proportion is 25%.

3. Simple Assault

The official police reporting data mentioned in paragraph 2 all concern incidents which took place in the street. This restriction does not hold for the assault cases in the investigation on prosecution policy in the jurisdiction of the Hague ²⁾. In

1) Car theft and theft from a car, pick pocketing, bicycle theft, moped theft, burglary.

2) See note 1, page 1.

this investigation the decision to bring the case to court for this particular crime was found to be dependent primarily on the kind of relation between offender and victim and, to a lesser extent, on the sex of the victim¹⁾. Note that all offenders in these cases were men.

Table 3: The relation between offender and victim and the proportion of dismissed cases regarding to male and female victims.

	victims				proportion of dismisses cases	
	abs.		in %		woman	man
	woman	man	woman	man		
Family	51	27	40,8	4,4	56,9	44,4
Acquaintances	45	208	36,0	34,4	46,7	37,5
Strangers	19	261	15,2	42,6	26,3	24,1
Non-personal contact	9	85	7,2	13,8	31,8	31,3
Other *)	1	27	-	4,4	100,0	25,9
totaal	125	608	17,1	82,9	47,2	30,8

*) in these cases the victims were policemen or public officials.

The table shows that, on the whole, male and female victims had different relationships with the offenders. Thus almost half the number of female victims suffered abuse from a member of their own family, whilst this relatively seldom happened to male victims. On the other hand, men were more often assaulted by strangers than were women.

Overall, one-third of these assault cases were dismissed, and the remaining two-thirds were prosecuted. Yet, as seen in the table, the cases concerning female victims were considerably more often dismissed than those cases concerning male victims. This difference appears especially if the victim and the offender were of the same family or known to each other. ($\chi^2=5.3$).

The percentage of dismissed cases shown in table 3 cannot be explained by difference in severity of injury. On the whole, the

1) F.W.M. van Straelen (1978)

injuries received by women were not more or less severe than those received by men, nor was there any connection between the severity of the injury and the relationship between offender and victim. Yet, the differences in percentages of cases dismissed for female victims as against male victims were smaller when the injury was more severe. In most cases though, an injury would require treatment by a doctor no more than once, or not at all.

Did the same factors play a role in the punishment demanded by the Public Prosecutor? As mentioned before, two-thirds of the cases were prosecuted. In more than half the cases which the prosecutor decided to bring to court only a fine was recommended. Where this happened, it made no difference whether the victim was a man or a woman. In the remaining cases the sentences recommended depended strongly on the kind of relationship between offender and victim. A fine, combined with detention (or imprisonment) was demanded relatively often when the victim and the offender had a family relationship (in which cases female victims predominated). Detention (or imprisonment) only was most often demanded when the victim and the offender were strangers (in which cases male victims predominated). When the victim and the offender were acquaintances, a fine would be demanded in most cases.

In the foregoing we saw that a woman generally had a different relationship with the person by whom she was assaulted than did a male victim. However, even if we reckon with this we must conclude that the Public Prosecutor uses different standards in dealing with cases concerning female victims as against male victims.

4. Murder and manslaughter

To find out what happens with cases in which the victim received more severe injury we looked at the data about (attempted and accomplished) manslaughter and murder, taken from the investigation on sentencing in cases of some serious crimes.

It seems justifiable to extend the line from assault to murder and manslaughter. The circumstances in which women were victims of the latter crimes (or attempts) did not differ substantially from the circumstances in which women were assaulted. Similarly, circumstances for (attempted or accomplished) murder or manslaughter of male victims showed a similarity to circumstances concerning a male victim of assault. In general however, it is evident that these crimes were more often committed in the circle of relatives or friends, and less often by strangers than holds true for crimes of assault. In fact, women in nearly two thirds of the cases became the victim of a relative¹⁾, and men for nearly two-thirds of the cases of people known to them.

Although the sentences demanded and sentences given for murder generally turned out to be more severe than those for manslaughter, the differences in sentences between cases with female and male victims showed similar tendencies for both crimes. We shall therefore discuss the two crimes together because, amongst other things, the description "murder" in the summons not infrequently changes in "manslaughter" in the verdict. (This has to do with whether or not premeditation can be proven).

One-third of the victims of attempted or accomplished murder or manslaughter were women. For these latter the proportion of attempts was 73% whilst for men the equivalent proportion was 83%. With attempts, women received serious injury generally less often than men. This might explain the fact that, as a rule, lower imprisonment terms were demanded for female victims as against male victims. However, these differences are not shown in the imprisonment sentences given.

When a woman was the victim of an attempted manslaughter or murder committed by a relative, just a higher term in prison was usually demanded and given than when in such cases a man was the victim.

1) In most cases these were relatives with whom they lived. In the original investigation no distinction was made between a legally married spouse or one related by "common law".

When a female victim did not survive the crime an imprisonment of longer than 3 years was more often demanded and given than in cases in which a male fatality resulted.

This picture is yet more clear when the offender and the victim were relatives. In such cases an imprisonment of over 3 years was always demanded (and in more than half of the cases also given) when a woman was the victim.

Where a man was the victim the sentences were only occasionally as high.

Although the picture of the cases described here is quite superficial it gives the impression that with murder and manslaughter within the family resentment is higher where the victim was a woman. This is even more pronounced when her injuries were fatal. Because these data are based on small numbers, only tentative conclusions can be drawn. In no way however are these data contrary to the assumption that the reserved reaction to wife beating is reversed if the serious crimes murder and manslaughter are concerned.

5. Some conclusions

Because only women can become victims of rape (at least, as long as we follow the present legal definition) it is impossible for this crime to offer any comparisons between the way cases are dealt with when women or when men are the victims. A comparison with the way other crimes are dealt with indicates that the justice system is lenient when dealing with rape.

From the investigation on sentencing in cases of serious crimes it appeared that, compared with sentences for rape, only those for burglary in conjunction were lower. This latter was the only non-violent crime in the investigation and carries a legal maximum punishment of 6 years imprisonment, which is half the maximum punishment for rape.

For indecent assault - a crime of which mostly women become victims - a high proportion of cases was dismissed, compared with other crimes.

Still, a comparison with other crimes lacks any clear basis of comparison. It might be true that the seriousness of a crime is, roughly speaking, indicated by the statutory maximum punishment. However, other, more specific indications for the seriousness of crimes - physical injury or the amount of material damage or loss - seem less relevant for rape and indecent assault, where the injury is more likely to be psychological. And this seems within the criminal justice system a hardly manageable concept. That rape, and also indecent assault, are underestimated crimes seems clear not so much from the sentences and the number of cases being prosecuted, but more from the "secondary characteristics" of the penal procedure. For victims of rape and indecent assault, more than for victims of other crimes, the confrontation with the justice system is an often very painful experience. It seems all too likely that the low willingness of the victims to report these crimes to the police has something to do with this.

The data about assault do offer an opportunity to make comparison between the ways cases with female and male victims are dealt with. From the data about official police reporting concerning assault¹⁾ one might tentatively deduce that the police tend to make less written reports of cases which were reported by women than of cases reported by men, if the victims were not injured. However, the opposite was true when victims did suffer injuries. (Note that these findings refer only to incidents which happened in the street.)

The prosecuting policy of the Public Prosecutor did not show the same trend. (The cases considered here however, included also incidents which happened indoors.) Cases with female victims were always more often dismissed than cases with male victims, although the difference was less marked when the injury received was relatively serious. At first sight the difference seems attributable to the high proportion of dismissals in cases of assault within the family; a situation in which, as we saw, mainly women were victims. In these cases, it has

1) From the RDC-Victim Surveys 1974-1979

been put forward, the Public Prosecutor preferred to maintain a reserved attitude and to leave the solution of the conflict to the respective members of the family themselves. A similar attitude of the Public Prosecutor may lie behind the rather high proportion of dismissals in cases where the victim and the offender were acquaintances. It appeared that for assaults by relatives and acquaintances, a larger proportion was dismissed than for all other cases, both for male and female victims. Nevertheless, especially in these situations, more cases were dismissed when women were the victims, which could not be explained by a difference in seriousness of injury. So, the reservedness of the Public Prosecutor to enter into such conflicts manifests itself, curiously enough, especially if a woman was the victim!

The assumption that this unequal dealing with cases concerning assault might be reversed if the injury received by the victim were very serious (especially if the victim didn't survive the crime) had some support in the sentencing data for murder and manslaughter. Also here, the picture was most clear when the crimes were committed within the circle of the family (especially between housemates). In short, it looks as though the beating of women by their husbands (or "common law" husbands) can be seen as a means of repression which is not seized upon by the criminal justice system as long as it doesn't overshoot the mark. If it degenerates, however, the offender is doubly blamed for this (as he has abused his "rights"). So, although the law doesn't support these practises anymore, we still find the remnants in the norms of the justice system.

Final remarks

By pointing out the low proportion of official reports made by the police and the high proportion of cases dismissed for rape, indecent assault and assault on women we intended mainly to highlight the apparent priorities of the police and the Public Prosecutor. It was less our intention to plead for a more severe prosecution policy towards these crimes (with consequences for the policy of the police). Still, some remarks can be made about this. Whether the reaction of the police

or the Public Prosecutor is characterized by scepticism towards the victim (as with rape and indecent assault) or by the inability to react adequately to a conflict situation (as with wife beating), the result is about the same, that is, an underestimation of the extent of these crimes and of the problems of the victims. Although, by not making an official report when an close relationship exists between the victim and the offender, the police might prevent an escalation of the conflict¹⁾, this does not necessarily mean that this is the best way to solve the problem.

It is stated that the striving for decriminalization of crimes is served by a reserved acting of the criminal justice system. Doing so, the conflict between offender and victim can be solved by themselves or with the help of non-judicial instances. Apart from the question whether such a selective reservedness is acceptable, it seems not unlikely that especially for women who were beaten by their husbands or "common law" partners, going to the police is the first step in seeking a solution. Besides the manifest social function of (especially) the police in these cases, the symbolic meaning of a greater attention on the side of the criminal justice system should not be underestimated. If nevertheless a more reserved policy is preferred, it is obvious that the government should actively support those institutions that give help to victims of these crimes.

1) J. Fiselier (1976)

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