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Elected Texas District and County Attorneys' Perceptions of Crime Victim Involvement in Criminal Prosecutions

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ARTICLE

ELECTED TEXAS DISTRICT AND COUNTY ATTORNEYS' PERCEPTIONS OF CRIME VICTIM INVOLVEMENT IN CRIMINAL PROSECUTIONS

John W. Stickels, Bradley Joseph Michelsen, and Alex DelCarmen

ARTICLE ABSTRACT:

This study tested the utility of the Victim Satisfaction Model of the criminal justice system by surveying elected District and County Attorneys' perceptions of victims' involvement in the charging and plea bargaining stages of the criminal justice process. This study used a cross-section research design. Every elected District and County Attorney in Texas received self-administered questionnaires. The results of this study support the utility of the Victim Satisfaction Model of the criminal justice system, further our understanding of prosecutorial decision-making, and have important implications for the American criminal justice system.

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I. INTRODUCTION

The American prosecutor exercises a remarkable degree of discretion. All decision makers in the American criminal justice system utilize a large amount of unchecked discretionary power, but the prosecutor stands apart from the rest.¹ The prosecutor decides who will be charged, the type of charge that will be filed, whether to offer a plea bargain, and the type of plea bargain that will be offered.² Further, American prosecutors exercise unfettered discretion in three crucial areas of decision-making: the circumstances under which a criminal charge will be filed, the level at which a suspect will be charged, and when to discontinue prosecution.³

Most of the research regarding prosecutorial decision-making has focused on factors that influence prosecutors' decisions in the charging and plea bargaining process. These studies provide evidence that prosecutors are affected by legal and non-legal factors during these two critical stages of the criminal process.⁴ Interestingly, little research has examined the effects of the victim-prosecutor relationship during the charging and plea bargaining process. More specifically, no researcher has studied prosecutors' perceptions of victim involvement in charging and plea bargaining.

During early English and American history, the victim was the center of the criminal justice system.⁵ However, as society became more organized and complex, state governments relied more heavily on public prosecutors.⁶ This shift caused the victims' role in the criminal justice system to diminish.⁷ In the 1970s, a victims' movement began to form.⁸ Members of this movement claimed that they felt

1. See Cassia C. Spohn, et al., Prosecutors' Charging Decisions in Sexual Assault Cases; A Multi-Site Study, Final Report, at 1 (2001), available at http://www.ncjrs.gov/pdffiles1/nij/grants/197048.pdf [hereinafter Spohn, et al., Prosecutors' Charging Decisions in Sexual Assault Cases, A 2001 Multi-Site Study].

2. Id.

3. Celesta A. Albonetti, Prosecutorial Discretion: The Effects of Uncertainty, 21 LAW & SOC'Y REV. 291, 292 (1987) [hereinafter Albonetti, Prosecutorial Discretion: The Effects of Uncertainty].

4. See id. at 293 (discussing the effect of the nature of evidence and offense).

5. See Josephine Gittler, Expanding the Role of the Victim in a Criminal Action: An Overview of Issues and Problems, 11 PEPP. L. REV. SYMP. 117, 125-26 (1984).

6. Lucy N. Friedman, The Crime Victim Movement at Its First Decade, 45 PUB. ADMIN. REV. 790, 790-91 (1985).

7. See id. at 790; see Gittler, supra note 5, at 131-32.

8. Friedman, supra note 6, at 790.

alienated⁹ and that criminals were treated better by the criminal justice system.¹⁰ Over the last forty years, this movement has helped change criminal justice policy and procedure to address victims' interests.¹¹ As a result, victim input is now a significant part of all aspects of the criminal justice system.¹² For instance, most states have enacted legislation that provides victims an opportunity to participate in a criminal case by attending hearings and discussing the case with prosecutors.¹³

To examine the effect of this movement, Stickels completed a study that explored crime victims' role in the criminal justice process, demonstrating that this system evolved from one that focused primarily on the defendant to one that also focuses on the victim.¹⁴ The results from this qualitative study led to the "Victim Satisfaction Model" of the criminal justice system.¹⁵ The Victim Satisfaction Model contains three characteristics: first, victims have become *de facto* parties to prosecutions and take active roles in the criminal cases;¹⁶ second, prosecutors assume the role of representing these victims;¹⁷ and third, the attempt to satisfy victims' interests is the primary determinant of the criminal justice system.¹⁸ The attempt to achieve victim satisfaction is an indication that the criminal and civil judicial systems are merging.¹⁹

II. LITERATURE REVIEW

The American colonists' legal system was largely influenced by English common law and procedure, including the practice of private prosecutions.²⁰ The colonists brought the practice of private prosecution with them.²¹ Before the American Revolution, the victim was the

9. Abraham S. Goldstein, *The Victim and Prosecutorial Discretion: The Federal Victim and Witness Protection Act of 1982*, 47 *LAW & CONTEMP. PROBS.* 225, 226 (1984) [hereinafter Goldstein, *The Federal Victim and Witness Protection Act of 1982*].

10. See generally Gittler, *supra* note 5, at 117–25 (discussing the poor treatment of victims by the criminal justice system).

11. See John William Stickels, *Victim Satisfaction—A Model of the Criminal Justice System* 4 (Dec. 2003) (unpublished Ph.D. dissertation, The University of Texas at Austin) (on file with author) [hereinafter *Victim Satisfaction Model*].

12. *Id.* at 3.

13. *Id.*

14. *Id.* at 11.

15. See *id.* at 45–46.

16. *Id.* at 60.

17. *Id.* at 91.

18. *Id.* at 112.

19. *Id.* at 121–22.

20. Juan Cardenas, *The Crime Victim in the Prosecutorial Process*, 9 *HARV. J.L. & PUB. POL'Y* 357, 359, 366 (1986); Friedman, *supra* note 6, at 791; see Paul G. Cassell, *Balancing the Scales of Justice: The Case for and the Effects of Utah's Victims' Rights Amendment*, 1994 *UTAH L. REV.* 1373, 1380 (1994); Gittler, *supra* note 5, at 125–27.

21. See Gittler, *supra* note 5, at 125–26.

key decision maker in the criminal process,²² serving as policeman and prosecutor.²³ In addition, crime victims who chose to apprehend an offender and initiate a prosecution did so at their own expense.²⁴

During colonial times, separate rights for victims were unnecessary because victims, through private prosecution, were able to protect their own interests.²⁵ Private prosecution continued in the colonies until the American Revolution and existed when the United States' Constitution was drafted.²⁶ According to Federal Judge and law professor Paul G. Cassell, "[i]t seems possible that the institution of private prosecutions explains why the drafters of the Bill of Rights of the colonies and the United States' Constitution saw no need for including rights for crime victims."²⁷ It has also been argued that the Bill of Rights was adopted after the Constitution was enacted because our founding fathers were concerned with the mistreatment of alleged criminals, not victims, under the authority of the crown.²⁸

Over time, public prosecutors replaced the system of private prosecution.²⁹ As a result, victims lost the ability to manage and control the prosecution of crimes that had affected them.³⁰ Further, the victims' role in prosecutions was reduced to a piece of evidence that would be used by the government to obtain a conviction.³¹ Ultimately, victims were gradually excluded from participation in the criminal justice process.³²

A. *The Victims' Movement*

It was not until the 1960s that reform took place and restored some rights to victims.³³ Several factors stimulated the increased support of the victims' rights movement in the United States.³⁴ One such factor was a series of 1960s Supreme Court decisions that dramatically increased the rights of the criminally accused. Cases such as *Mapp v. Ohio*³⁵, *Gideon v. Wainwright*³⁶, and *Miranda v. Arizona*³⁷ attracted

22. Cardenas, *supra* note 20, at 366.

23. William F. McDonald, *Towards a Bicentennial Revolution in Criminal Justice: The Return of the Victim*, 13 AM. CRIM. L. REV. 649, 649 (1976).

24. *Id.*

25. Cassell, *supra* note 20, at 1380.

26. *See id.*

27. *Id.*

28. *See* Sue Anna Moss Cellini, *The Proposed Victims' Rights Amendment to the Constitution of the United States: Opening the Door of the Criminal Justice System to the Victim*, 14 ARIZ. J. INT'L & COMP. L. 839, 845-46 (1997).

29. Friedman, *supra* note 6, at 790-91.

30. The reasons for this transformation are unclear. *See* Gittler, *supra* note 5, at 131-32.

31. Cardenas, *supra* note 20, at 371.

32. Cassell, *supra* note 20, at 1380.

33. Friedman, *supra* note 6, at 791.

34. Thad H. Westbrook, Note, *At Least Treat Us Like Criminals!: South Carolina Responds to Victims' Pleas for Equal Rights*, 49 S.C. L. REV. 575, 579 (1998).

35. *Mapp v. Ohio*, 367 U.S. 643 (1961).

an enormous amount of attention and heightened the public's perception that the criminal justice system was more interested in releasing criminals because of technicalities, rather than administering justice.³⁸ Additionally, these decisions highlighted the fact that, unlike the accused, crime victims have no constitutionally protected rights in the criminal justice process.³⁹

Another factor that increased support for the victims' movement was the alienation of victims from the criminal justice system, a consequence of the shift from private to public prosecution.⁴⁰ This shift caused victims to play a distinctly secondary role in the prosecution of their perpetrators.⁴¹ Essentially, the victims' role was reduced to one of reporting the crime, with public law enforcement officials taking new control over the decision on whether the perpetrators would be prosecuted and punished.⁴² Members of the victims' movement claimed that a notable reduction in crime reports to the police, in victims' cooperation with prosecutors, and in public confidence in the administration of justice directly resulted as a consequence of this alienation.⁴³

The sense of alienation felt by crime victims,⁴⁴ combined with the lack of court protection, further increased the public's perception that defendants were treated better than victims by the criminal justice system.⁴⁵ In order to address these problems, crime victims began to form "consciousness-raising" groups, self-help support groups, and organizations that engaged in public education, outreach, research, and lobbying.⁴⁶ One such group focused on the way the male-dominated criminal justice system handled violence against women.⁴⁷ Another group challenged the way that white authorities treated minority victims of Klan terrorism, segregationist mobs, and police brutality.⁴⁸ A

36. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

37. *Miranda v. Arizona*, 384 U.S. 436 (1966).

38. Westbrook, *supra* note 34, at 579.

39. See Cassell, *supra* note 20, at 1381.

40. Cardenas, *supra* note 20, at 389; Friedman, *supra* note 6, at 791; Goldstein, *The Federal Victim and Witness Protection Act of 1982*, *supra* note 9, at 226.

41. Cardenas, *supra* note 20, at 388; Abraham S. Goldstein, *Defining the Role of the Victim in Criminal Prosecution*, 52 *MISS. L.J.* 515, 519 (1982) [hereinafter Goldstein, *Defining the Role of the Victim in Criminal Prosecution*].

42. Goldstein, *Defining the Role of the Victim in Criminal Prosecution*, *supra* note 41, at 519.

43. Goldstein, *The Federal Victim and Witness Protection Act of 1982*, *supra* note 9, at 226.

44. *Id.*; Friedman, *supra* note 6, at 791.

45. See Richard Barajas & Scott Alexander Nelson, *The Proposed Crime Victims' Federal Constitutional Amendment: Working Toward a Proper Balance*, 49 *BAYLOR L. REV.* 1, 2-4, 11, 13-14 (1997).

46. Andrew J. Karmen, *Who's Against Victims' Rights? The Nature of the Opposition to Pro-Victim Initiatives in Criminal Justice*, 8 *ST. JOHN'S J. LEGAL COMMENT.* 157, 158 (1992).

47. *Id.* at 159.

48. *Id.* at 160.

third group brought victims of drunk drivers to the public's attention.⁴⁹ These factors combined to create a political climate that pressured Congress and the state legislatures to address crime victims' rights.⁵⁰

B. Prosecutorial Discretion

American prosecutors exercise a remarkable degree of discretion in deciding whether and how to prosecute.⁵¹ Prosecutors are required to use this discretion to make decisions that benefit society.⁵² Therefore, if a conflict arises between the victims' and states' interests, prosecutors must give priority to the states.⁵³

Prosecutors decide who will be charged, the type of charge that will be filed, and how a case will be resolved.⁵⁴ Therefore, in assessing prosecutors' perception of victims in the charging and plea bargaining stages of the criminal justice process, it is important to review the legal and non-legal factors that affect prosecutorial decision-making.

For example, prosecutors are more likely to file charges when a serious offense is committed,⁵⁵ when strong evidence exists in a case,⁵⁶

49. Lynne N. Henderson, *The Wrongs of Victim's Rights*, 37 STAN. L. REV. 937, 949 (1985).

50. John W. Stickels, *Victim Impact Evidence: The Victims' Right that Influences Criminal Trials*, 32 TEX. TECH L. REV. 231, 236-37 (2001).

51. Albonetti, *Prosecutorial Discretion: The Effects of Uncertainty*, *supra* note 3, at 292.

52. See Gittler, *supra* note 5, at 144.

53. *Id.*

54. Spohn, et al, *Prosecutors' Charging Decisions in Sexual Assault Cases, A 2001 Multi-Site Study*, *supra* note 1, at 1.

55. LYNN M. MATHER, *PLEA BARGAINING OR TRIAL?* 45 (1979); see FRANK W. MILLER, *PROSECUTION: THE DECISION TO CHARGE A SUSPECT WITH A CRIME* 160-61 (Frank J. Remington ed., 1969); Celesta A. Albonetti, *Criminality: Prosecutorial Screening and Uncertainty: Toward a Theory of Discretionary Decision Making in Felony Case Processings*, 24 CRIMINOLOGY 623, 637 (1986) [hereinafter Albonetti, *Toward a Theory of Discretionary Decision Making in Felony Case Processings*]; George F. Cole, *The Decision to Prosecute*, 4 LAW & SOC'Y REV. 331, 333, 335 (1970); Martha A. Myers & John Hagan, *Private and Public Trouble: Prosecutors and the Allocation of Court Resources*, 26 SOC. PROBS. 439, 441 (1979) [hereinafter Myers & Hagan, *Private and Public Trouble: Prosecutors and the Allocation of Court Resources*]; Albonetti, *Prosecutorial Discretion: The Effects of Uncertainty*, *supra* note 3, at 293; Cassia Spohn, John Gruhl & Susan Welch, *The Impact of the Ethnicity and Gender of Defendants on the Decision to Reject or Dismiss Felony Charges*, 25 CRIMINOLOGY 175, 177, 179-80, 186 (1987) [hereinafter Spohn, et al., *The Impact of the Ethnicity and Gender of Defendants*]. See generally Martha A. Myers, *Common Law in Action: The Prosecution of Felonies and Misdemeanors*, 52 SOC. INQUIRY 1, 9-10 (1982) [hereinafter Myers, *Common Law in Action: The Prosecution of Felonies and Misdemeanors*] (arguing that the prosecutor is more likely to dismiss charges when a property crime has been committed instead of a violent crime).

56. Albonetti, *Prosecutorial Discretion: The Effects of Uncertainty*, *supra* note 3, at 293; see MILLER, *supra* note 55, at 154-55; DAVID W. NEUBAUER, *AMERICA'S COURTS AND THE CRIMINAL JUSTICE SYSTEM* 233-34 (1979); Albonetti, *Toward a Theory of Discretionary Decision Making in Felony Case Processings*, *supra* note 55, at 634-36; Myers & Hagan, *Private and Public Trouble: Prosecutors and the Allocation*

when the suspect is a repeat offender,⁵⁷ and when the culpability of the defendant is evident.⁵⁸

Non-legal factors that affect prosecutors' charging decisions include suspect characteristics and the victim-suspect relationship. For example, prosecutors are more likely to file charges against non-white suspects,⁵⁹ especially when a black suspect commits an offense against a white victim.⁶⁰ Further, prosecutors are more likely to charge male suspects than female suspects.⁶¹ Finally, a suspect's employment status could influence prosecutors' decisions to charge, as prosecutors are more likely to charge suspects who are unemployed.⁶²

Prosecutors also use victim characteristics to determine if a conviction is likely to occur in a particular case, which affects not only whether the prosecution will be pursued, but also how resources for the case will be allocated and organized.⁶³ For example, prosecutors usually devote limited resources to cases that have victims likely to be perceived by the judge and jury as "stand-up" witnesses.⁶⁴ In assess-

of Court Resources, *supra* note 55, at 441. See generally Myers, *Common Law in Action: The Prosecution of Felonies and Misdemeanors*, *supra* note 55, at 9-10.

57. Kenneth Adams & Charles R. Cutshall, *Refusing to Prosecute Minor Offenders: The Relative Influence of Legal and Extra-Legal Factors*, 4 JUST. Q. 595, 605 (1987); Albonetti, *Prosecutorial Discretion: The Effects of Uncertainty*, *supra* note 3, at 293; see NEUBAUER, *supra* note 56, at 235; Albonetti, *Toward a Theory of Discretionary Decision Making in Felony Case Processings*, *supra* note 55, at 636.

58. MATHER, *supra* note 55, at 45, 47; MILLER, *supra* note 55; see NEUBAUER, *supra* note 56, at 233-34; Albonetti, *Prosecutorial Discretion: The Effects of Uncertainty*, *supra* note 3, at 299; Janell Schmidt & Ellen Hochstedler Steury, *Prosecutorial Discretion in Filing Charges in Domestic Violence Cases*, 27 CRIMINOLOGY 487, 499-500 (1989).

59. See Spohn et al., *The Impact of the Ethnicity and Gender of Defendants*, *supra* note 55, at 184.

60. Thomas J. Keil & Gennaro F. Vito, *Race, Homicide, and Application of the Death Penalty: A Consideration of the Barnett Scale*, 27 CRIMINOLOGY 511, 511-13 (1989); see Gary D. LaFree, *The Effect of Sexual Stratification by Race on Official Reactions to Rape*, 45 AM. SOC. REV. 842, 847-49, 851 (1980); Raymond Paternoster, *Prosecutorial Discretion in Requesting the Death Penalty: A Case of Victim-Based Racial Discrimination*, 18 LAW & SOC'Y REV. 437, 452-55 (1984); Michael L. Radelet & Glenn L. Pierce, *Race and Prosecutorial Discretion in Homicide Cases*, 19 LAW & SOC'Y REV. 587, 587 (1985); Jeffrey Spears & Cassia Spohn, *The Genuine Victim and Prosecutors' Charging Decisions in Sexual Assault Cases*, 20 AM. J. OF CRIM. JUST. 183, 185 (1998) [hereinafter Spears & Spohn, *The Genuine Victim and Prosecutors' Charging Decisions in Sexual Assault Cases*] (discussing a study by LaFree examining the effect of the racial composition of the suspect and victim on prosecutors' decisions, published in 1989).

61. Albonetti, *Toward a Theory of Discretionary Decision Making in Felony Case Processings*, *supra* note 55, at 636; see Myers, *Common Law in Action: The Prosecution of Felonies and Misdemeanors*, *supra* note 55, at 6 (arguing that the prosecutor is more likely to dismiss a case against a female); Spohn, et al., *The Impact of the Ethnicity and Gender of Defendants*, *supra* note 55, at 184.

62. Schmidt & Steury, *supra* note 58, at 500-01.

63. See Elizabeth A. Stanko, *The Impact of Victim Assessment on Prosecutor's Screening Decisions: The Case of the New York County Attorney's Office*, 16 LAW & SOC'Y REV. 225, 226 (1981-82).

64. *Id.*

ing this “stand-up” quality, prosecutors often rely on societal perceptions of qualities that are deemed more credible and sympathetic.⁶⁵ For instance, prosecutors more often file criminal charges when victims are older, white, male, and employed.⁶⁶ Female victims who deviate from traditional, societal norms of female behavior⁶⁷ or engage in precipitatory⁶⁸ behavior are more often deemed less credible.⁶⁹

The victims’ willingness to cooperate is another extra-legal factor that affects the prosecutors’ charging decisions. Uncooperative victims reduce the likelihood that prosecutors will pursue the case.⁷⁰ In fact, in cases involving a lower level of cooperation on the part of the victims, “no single factor has so large of an impact on what happens to felons after they have been arrested.”⁷¹

Prosecutorial decision-making in sexual assault cases, like other cases, is influenced by legally relevant factors such as the crime’s seriousness, the suspect’s prior record, and the presence of evidence.⁷² However, there are additional and unique factors that affect prosecutors’ decision-making in sexual assault cases.⁷³ Specifically, prosecutors are more likely to use stereotypes about rape and rape victims to determine what sexual assault cases to take seriously.⁷⁴

Prosecutors are less likely to file criminal charges when rape victims have a non-traditional work history in areas such as exotic dancing, erotic massage, or prostitution.⁷⁵ Similarly, prosecutors are less likely to pursue a sexual assault case when rape victims have a history of risk-taking behavior, such as hitchhiking, drinking, or drug use.⁷⁶ Additionally, prosecutors are less likely to pursue a sexual assault case

65. *Id.* at 229.

66. See Myers & Hagan, *Private and Public Trouble: Prosecutors and the Allocation of Court Resources*, *supra* note 55, at 446–48 (discussing statistics tending to show a greater chance that a case will be tried when the victim is an employed, older, white male).

67. GARY D. LAFREE, *RAPE AND CRIMINAL JUSTICE: THE SOCIAL CONSTRUCTION OF SEXUAL ASSAULT* 239–40 (1989).

68. “Victim precipitation” is defined as covering situations in which “the victim agreed to sexual relations, but retracted before the actual act or, . . . she clearly invited sexual relations through language or gestures.” S. BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN, AND RAPE* 355 (1975).

69. See MENACHEM AMIR, *PATTERNS IN FORCIBLE RAPE* 265 (1971) (differentiating between victim character and reputation).

70. CHARLES E. SILBERMAN, *CRIMINAL VIOLENCE, CRIMINAL JUSTICE* 266, 360 (1978).

71. *Id.*

72. Spohn, et al., *Prosecutors’ Charging Decisions in Sexual Assault Cases, A 2001 Multi-Site Study*, *supra* note 1, at 5.

73. See SUSAN ESTRICH, *REAL RAPE* 17–19 (1987).

74. See *id.* at 33–35.

75. Spears & Spohn, *The Genuine Victim and Prosecutors’ Charging Decisions in Sexual Assault Cases*, *supra* note 60, at 197–202; Spohn et al., *Prosecutors’ Charging Decisions in Sexual Assault Cases, A 2001 Multi-Site Study*, *supra* note 1, at 44, 46.

76. LAFREE, *supra* note 67, at 100; Spears & Spohn, *The Genuine Victim and Prosecutors’ Charging Decisions in Sexual Assault Cases*, *supra* note 60, at 197–202.

when rape victims have a questionable reputation or moral character.⁷⁷

Plea bargaining is another aspect of prosecutorial decision-making that is important to review. Plea bargaining is the dominant method of criminal case disposition in the American judicial system.⁷⁸ It involves prosecutorial or judicial concessions, or both, in exchange for a guilty plea.⁷⁹ Specifically, common concessions include a lesser charge, the dismissal of other pending charges, a recommendation by prosecutors for a reduced sentence, or some combination.⁸⁰

Several legal factors affect prosecutor plea bargaining decisions. Perhaps the greatest legal influence on the decision to negotiate a plea is the strength of the case.⁸¹ Other legal variables include the prior record of the defendant,⁸² the seriousness of the offense,⁸³ and the defendant's detainment status.⁸⁴

There are also several non-legal factors that affect whether prosecutors will negotiate a plea. Some are associated with the defendant's characteristics, such as socioeconomic status⁸⁵ and race.⁸⁶ Other factors are associated with the attorneys involved in the plea negotiation. These include caseload pressures,⁸⁷ the attorneys' experience,⁸⁸ the re-

77. Spears & Spohn, *The Genuine Victim and Prosecutors' Charging Decisions in Sexual Assault Cases*, *supra* note 60, at 197–202; see THOMAS W. MCCAHILL, LINDA C. MEYER, & ARTHUR M. FISCHMAN, *THE AFTERMATH OF RAPE* 239 (1979); Barbara F. Reskin & Christy A. Visher, Research Note, *The Impacts of Evidence and Extralegal Factors in Jurors' Decisions*, 20 *LAW & SOC'Y REV.* 423, 431 (1986) (discussing evidence that indicates that jurors are less likely to find a defendant guilty when the victim is of poor moral character).

78. See JOHN N. FERDICO, *FERDICO'S CRIMINAL LAW AND JUSTICE DICTIONARY* 327–28 (1991).

79. *Id.* at 327.

80. *Id.*

81. See Dean J. Champion, *District Attorneys and Plea Bargaining: An Analysis of the Prosecutorial Priorities Influencing Negotiated Guilty Pleas*, 20 *PROSECUTOR*, Spring 1987, at 25; David Pritchard, *Homicide and Bargained Justice: The Agenda-Setting Effect of Crime News on Prosecutors*, 50 *PUB. OPINION Q.* 143, 155 (1986); William M. Rhodes, *The Economics of Criminal Courts: A Theoretical and Empirical Investigation*, 5 *J. LEGAL STUD.* 311, 313, 337 (1976).

82. WILLIAM F. McDONALD ET AL., *The Prosecutor's Plea Bargaining Decisions*, in *THE PROSECUTOR* 151, 155 (William F. McDonald ed., 1979); Champion, *supra* note 81, at 27; see Marty Lieberman, *Investigation of Facts in Preparation for Plea Bargaining*, 1981 *ARIZ. ST. L.J.* 557, 568 (1981).

83. MILTON HEUMANN, *PLEA BARGAINING: THE EXPERIENCES OF PROSECUTORS, JUDGES, AND DEFENSE ATTORNEYS* 103 (1978); McDONALD, *supra* note 82, at 157; Champion, *supra* note 81, at 27; Jon'a Meyer & Tara Gray, *Drunk Drivers in the Courts: Legal and Extra-Legal Factors Affecting Pleas and Sentences*, 25 *J. CRIM. JUST.* 155, 160 (1997).

84. Ilene Nagel Bernstein et al., *Charge Reduction: An Intermediary Stage in the Process of Labeling Criminal Defendants*, 56 *SOC. FORCES* 362, 379 (1977).

85. Champion, *supra* note 81, at 27.

86. Meyer & Gray, *supra* note 83, at 157; Pritchard, *supra* note 81, at 150, 156.

87. McDONALD, *supra* note 82, at 159–60; Bernstein et al., *supra* note 84, at 374; see Rhodes, *supra* note 81, at 133.

88. Champion, *supra* note 81, at 30.

lationship between the prosecutor and defense attorney,⁸⁹ the reputation of the opposing attorney,⁹⁰ how the judge views plea bargaining,⁹¹ the skills and preparation of the attorney,⁹² and political ideology.⁹³ Victim reluctance also affects the prosecutorial decision to enter into a plea agreement.⁹⁴ Finally, the length of newspaper articles pertaining to the case affects prosecutorial decision-making in plea bargains.⁹⁵

Prosecutors reject a significant percentage of cases during the initial screening process.⁹⁶ Prosecutors initially reject cases that contain legal and non-legal factors that are thought to cause uncertainty because such cases are less likely to result in a conviction.⁹⁷ Prosecutor performance is measured by a ratio of convictions to acquittals.⁹⁸ Reducing uncertainty about successful prosecution stacks the deck in the prosecutors' favor, thus, increasing their chances of upward mobility.⁹⁹ There are several other reasons that could motivate prosecutors to reject cases that pose a risk. First, a high conviction rate helps prosecutors promote themselves as the "community's legal protector."¹⁰⁰ Second, a pattern of not guilty verdicts is seen as an indicator of prosecutorial incompetence.¹⁰¹ Third, prosecutors are given credit for the number of cases they reject as recognition for their commitment to the organizational goal of reducing the caseload of an overcrowded court system.¹⁰² Finally, pursuing a case that should have been rejected might lead judges to question prosecutors' competence as members of the court.¹⁰³

The prosecutors' concerns for convictability creates a downstream orientation in which their decision-making is based on how a judge

89. HEUMANN, *supra* note 83, at 120; Lieberman, *supra* note 82, at 567–68; *see* Pritchard, *supra* note 81, at 155.

90. HEUMANN, *supra* note 83, at 121, 124; McDONALD, *supra* note 82, at 159–60; Lieberman, *supra* note 82, at 567–68.

91. Champion, *supra* note 81, at 27.

92. *Id.* at 30.

93. *See* Jacqueline E. Ross, *The Entrenched Position of Plea Bargaining in United States Legal Practice*, 54 AM. J. COMP. L. 717, 723 (2006).

94. Champion, *supra* note 81, at 27.

95. Pritchard, *supra* note 81, at 154–55.

96. *See* MATHER, *supra* note 55, at 45 (noting prosecutor's decision-making process in deciding which cases to prosecute); Patricia A. Frazier & Beth Haney, *Sexual Assault Cases in the Legal System: Police, Prosecutor, and Victim Perspectives*, 20 LAW & HUM. BEHAV. 607, 618 (1996) (discussing a study of cases presented for prosecution in which twenty-four percent of the cases presented to prosecutors were rejected during the initial screening phase); Stanko, *supra* note 63, at 226.

97. Albonetti, *Prosecutorial Discretion: The Effects of Uncertainty*, *supra* note 3, at 310–11.

98. *Id.* at 311.

99. *Id.*

100. Lisa Frohmann, *Discrediting Victims' Allegation of Sexual Assault: Prosecutorial Accounts of Case Rejections*, 38 SOC. PROBS. 213, 215 (1991).

101. *Id.*

102. *Id.*

103. *Id.*

and jury will draw assumptions based on victim characteristics.¹⁰⁴ Since prosecutors are concerned with assumptions that can be drawn from victim characteristics, they use strategies to detect and reject cases in which the victim gives discrepant accounts or appears to have ulterior motives.¹⁰⁵

III. MODELS OF THE CRIMINAL JUSTICE SYSTEM

A. *Due Process and Crime Control Models*

The Crime Control and Due Process Models demonstrate the tension between the two purposes of the criminal justice system—controlling crime while protecting the defendants' rights.¹⁰⁶ The purpose of the Crime Control Model is to efficiently control crime.¹⁰⁷ In contrast, the purpose of the Due Process Model is to deal with criminal defendants in a just manner according to constitutional standards.¹⁰⁸

Under the Due Process Model, the primary utility of the criminal justice system is to protect the individual defendant from the government's authority over its citizens.¹⁰⁹ Under this model, the criminal justice system is comparable to an obstacle course,¹¹⁰ each successive stage of the criminal process is designed to present formidable impediments to carrying the accused any further along in the process.¹¹¹ Under the Due Process Model, the criminal justice system insures a reliable determination of guilt.¹¹²

According to the Crime Control Model, the efficient suppression of crime is the primary utility of the justice system.¹¹³ Whereas the Due Process Model describes the criminal justice system as an obstacle course, the Crime Control Model describes the criminal justice system as an assembly line conveyor belt.¹¹⁴ The finished product of the criminal justice system, according to this model, is the conviction of a guilty defendant with crime being controlled in the process.¹¹⁵

B. *Victim-Oriented Models*

Victim participation is not addressed in either the Due Process or the Crime Control Models because their creators were unable to an-

104. *See id.* at 218–19, 224.

105. *See id.* at 215–17, 221–24.

106. *See* Herbert L. Packer, *Two Models of the Criminal Process*, 113 U. PA. L. REV. 1, 9–23 (1964) (discussing the attributes of the Crime Control and Due Process Models).

107. *See id.* at 10.

108. *See id.* at 22.

109. *See id.* at 14.

110. *See id.* at 13.

111. *Id.*

112. *See id.* at 15.

113. *See id.* at 10.

114. *Id.* at 11.

115. *See id.*

ticipate laws of formal victim participation.¹¹⁶ Therefore, the Victim Participation Model complements the other two models.¹¹⁷ The Victim Participation Model expands on the assembly line analogy, and it includes a participatory role for victims in the judicial system.¹¹⁸ Under this model, victims track their own cases down the assembly line, communicate informally with the police and prosecutors, and address the court in formal proceedings.¹¹⁹ Thus, under the Victim Participation Model, the victims' role in the criminal process is extended beyond that of a witness to more of an active participant.¹²⁰

There are also two victim-oriented models of the criminal justice system based on the punitive and non-punitive purposes of the criminal justice system.¹²¹ Under the Punitive Model, the purpose of the criminal justice system is to assess criminal sanctions and punish convicted offenders for retributive purposes.¹²² In contrast, the Non-Punitive Model displays skepticism about the ability of the criminal justice system to control crime and views its purpose as administering restorative justice.¹²³

The Punitive Model provides that victims' rights are worthy of respect, placing them equal with the due process rights of the defendants.¹²⁴ Like under the Crime Control Model, the purpose of the justice system under the Punitive Model is to assess the criminal sanction's ability to reduce crime.¹²⁵ The Punitive Model, however, modifies the Crime Control Model by making victims equal to defendants and then using victims' rights to defeat defendants' due process rights.¹²⁶

The Non-Punitive Model approaches the criminal sanction from a different angle.¹²⁷ It questions the ability of the criminal sanction to control crime.¹²⁸ In addition, the Non-Punitive Model acknowledges that victims' rights should not defeat defendants' due process rights, but it allows victims to have some decision-making power in the judicial process through the process of restorative justice.¹²⁹

116. Douglas Evan Beloof, *The Third Model of Criminal Process: The Victim Participation Model*, 1999 UTAH L. REV. 289, 291 (1999).

117. *See id.* at 292.

118. *See id.* at 292–96.

119. *Id.* at 296.

120. *See id.* at 296–98.

121. *See* Kent Roach, *Four Models of the Criminal Process*, 89 J. CRIM. L. & CRIMINOLOGY 671, 699 (1999).

122. *See id.*

123. *See id.* at 699–700.

124. *See id.* at 700–01.

125. *See id.* at 699.

126. *See id.* at 703.

127. *See id.* at 706–07.

128. *See id.* at 707.

129. *See id.* at 699–700.

C. Victim Satisfaction Model

The criminal justice system, under Stickels's Victim Satisfaction Model, seeks to satisfy victims through the course of the prosecution and relegates defendants to a secondary status.¹³⁰ The Victim Satisfaction Model is different because it focuses solely on victims¹³¹ through three primary characteristics:

- (1) The crime victim has become a *de facto* party to the prosecution and takes an active role in the criminal case, moving the criminal justice system in the direction of the civil system;
- (2) The prosecutor assumes the role of representing the victim and makes decisions to satisfy the victim's interests; and
- (3) The attempt to satisfy the victim's interests becomes the primary determinant of the criminal justice system.¹³²

1. Victims are *De Facto* Parties to the Prosecution

The law recognizes only the government and defendants as parties to criminal cases.¹³³ Prosecutors represent the government, and they have the duty to ensure that "justice is done."¹³⁴ Defense attorneys represent defendants, and they are required to vigorously represent their client within the bounds of the law.¹³⁵ Therefore, victims are not legal parties to criminal cases, and they do not have standing to require a particular resolution.¹³⁶

Based on observations and interviews with prosecutors, defense attorneys, and judges, Stickels found that victims consistently act as parties to prosecutions and affect the outcome of criminal cases, similar to the way parties in civil cases affect those outcomes.¹³⁷ As a result, victims have become *de facto* parties to the prosecutions and take an active role in criminal cases.¹³⁸ This result's major significance is that as *de facto* parties to criminal cases, victims acquire new rights and remedies that victims do not have when they are treated as non-parties.¹³⁹ Also important is that the victims' party status serves as the foundation for the Victim Satisfaction Model of the criminal justice system.¹⁴⁰ This party status is the vehicle that enables prosecutors to make decisions that satisfy victims' interests and, as a result, makes the victims' interest the primary goal of the criminal justice system.¹⁴¹

130. Victim Satisfaction Model, *supra* note 11, at 60.

131. *Id.* at 11.

132. *Id.* at 12.

133. TEX. CODE CRIM. PROC. ANN. art. 3.02 (Vernon Supp. 2005).

134. art. 2.01.

135. Victim Satisfaction Model, *supra* note 11, at 60.

136. *Id.*

137. *Id.* at 126.

138. *Id.*

139. *Id.* at 59.

140. *Id.*

141. *Id.*

Evidence has shown that victims are treated as parties to the prosecution in plea negotiations.¹⁴² For example, field data collected by Stickels indicates that prosecutors routinely allow victims to appear to be in control of plea bargains.¹⁴³ For example, prosecutors' survey responses indicate that often they will condition a plea agreement upon the victims' consent.¹⁴⁴ Requiring the victims' consent gives them control of the plea decision and, as a result, strengthens their *de facto* party status.¹⁴⁵ The victims' dissatisfaction with the plea agreement is typically cited as the reason for a case being tried instead of being disposed of through a plea.¹⁴⁶

2. Prosecutors Assume the Role of Representing the Victim

The second major characteristic of the Victim Satisfaction Model is that prosecutors assume the role of representing victims and make decisions to satisfy their interests.¹⁴⁷ In surveys and interviews with these Authors, many prosecutors indicated that they represent the crime victims in a prosecution.¹⁴⁸ Taking this position approaches the prosecutorial process with the goal of obtaining a result that satisfies victims.¹⁴⁹ This situation further creates an unofficial attorney-client relationship between prosecutors and victims, with victims deciding the direction of the case based on guidance from prosecutors.¹⁵⁰ This unofficial relationship is a natural extension of the victims' *de facto* party status, evident in charging decisions, bond decisions, and plea bargaining.¹⁵¹

3. Satisfying the Victims is the Primary Determinant of the Criminal Justice System

The final characteristic of the Victim Satisfaction Model is that the goal of satisfying the victim is the primary determinant of the criminal justice system.¹⁵² This characteristic is a logical extension of the findings that victims are *de facto* parties to the prosecution and that prosecutors assume the role of representing victims by filing and resolving cases in an attempt to achieve victim satisfaction.¹⁵³

142. *Id.* at 76.

143. *See id.* at 76–77.

144. *See id.* at 77.

145. *Id.* at 76.

146. *Id.*

147. *Id.* at 12.

148. *Id.* at 91.

149. *Id.*

150. *Id.*

151. *Id.* at 91, 97–98.

152. *Id.* at 112–22.

153. *Id.*

IV. CASE STUDY RESULTS

A. Methodology

A cross-sectional, one-shot case study was used to ascertain elected Texas District and County Attorneys' perceptions of victim involvement in charging decisions and plea bargaining. A twenty-two-question, self-administered survey was distributed by mail to every elected District and County Attorney in Texas, in an attempt to identify and measure prosecutors' perceptions of crime victims in prosecutions. Additionally, a section of the survey was designed to obtain respondents' demographical information.

Of the 275 surveys mailed, 102 were returned, yielding a return rate of 37%. Power sampling provided the number of subjects required to ensure 95% accuracy. The researchers employed Cohen's power sampling¹⁵⁴ to conclude that a sample of 102 would be a sufficient number of subjects to insure a 0.05 level of confidence. According to Cohen, a power of 0.8 is desired to have a high confidence level of predictability, with a minimum of 44 people needed for a 0.05 level of significance and a minimum of 62 people needed for a 0.01 level of significance.¹⁵⁵ Since there are 102 respondents in this study, this minimum requirement is fulfilled.

B. Findings

The survey used closed-ended questions, using a combination of five-point and seven-point Likert Scales.¹⁵⁶ The Likert Scale questions took two different forms. The first, a five-point form, was used to analyze respondents' perceptions of crime victims' influence in charging decisions and plea bargains. In these questions, prosecutors selected one of the following responses: "none," "too little," "about right," "too much," or "complete." The second form, consisting of seven-point Likert Scale questions, determined how much weight prosecutors perceive victims have in charging decisions and plea bargains.

1. Demographical Information

The last section of the survey instrument collected respondents' personal and professional demographical information, consisting of gender and political affiliation. Of the 102 elected District and

154. GEOFFREY KEPPEL ET AL., INTRODUCTION TO DESIGN AND ANALYSIS 30 (2d ed. 1992).

155. *Id.* at 155–56.

156. See EARL BABBIE, THE PRACTICE OF SOCIAL RESEARCH 169–70 (10th ed. 2004) (describing the Likert scale as a type of composite measure that attempts to improve the levels of measurement in social research through the use of standardized response categories in survey questionnaires that allow researchers to determine the relative intensity of different items).

County attorneys who responded, 76% were male, 19% were female, and 4 respondents chose not to reveal their gender. In regard to political affiliation, 47% of the respondents reported that they were Republicans, 37% indicated that they were Democrats, and 16% did not respond.

The professional demographical questions gauged the respondents' prosecutorial experience, what type of crimes they prosecuted, and whether they considered themselves professional prosecutors. The respondents reported prosecutorial experience ranging from 1 to 34 years, with:

- 39% reporting less than 10 years of experience;
- 40% reporting 10 to 20 years of experience;
- 13% reporting 21 to 29 years of experience;
- 4% reporting more than 30 years of prosecutorial experience; and
- 5 respondents failing to answer this question.

In regard to the types of crime the respondents prosecuted:

- 28% of the prosecutors indicated that they handle only felony-level crimes;
- 36% of the respondents reported that they prosecute only misdemeanor-level crimes;
- 33% of the respondents indicated that they handle felony and misdemeanor crimes; and
- 2% of the respondents chose not to respond to this question.

Finally, 75 respondents reported being professional prosecutors, 22 respondents reported that they were not, and 5 respondents did not answer the question.

2. Weight and Influence

The variables of interest in this section are: (1) the weight given to victims in charging decisions and plea bargains and (2) victims' influence in various stages of the criminal process. As previously noted, the weight given to crime victims in charging decisions and plea bargains was designed using a seven-point Likert scale. Each respondent selected the percentage of weight they believed victims have in charging decisions and plea bargains. The seven percentages included in this scale were 0%, 10%, 25%, 50%, 75%, 90%, and 100%.

The two questions that measured respondents' perception of the victims' influence in charging and plea bargains were constructed using a five-point Likert scale. In these two questions, prosecutors were given the opportunity to select whether the influence of victims in charging decisions and plea bargains were "none," "too little," "about right," "too much," or "complete." The number of responses and percentages are displayed in Table 1.

The findings represented in Table 1 demonstrate that victim participation influences prosecutions. As noted above, prosecutors review

Table 1 – Distribution of the Victim’s Weight and Influence in Charging Decisions and Plea Bargains		
Question: “If the victim insists on a jury trial, despite your desire to enter into a plea bargain, you are more likely to abide by the victim’s wishes despite the uncertain outcome of a trial.”		
Variable	Selection	Percentage
How much weight is given to the victim’s preference in the charging decision?	90%	8.0%
	75%	16.0%
	50%	20.0%
	25%	28.0%
	10%	15.0%
	0%	13.0%
In your opinion, the influence victims have in the charging decision is:	Complete	0.0%
	Too Much	4.0%
	About Right	86.0%
	Too Little	0.0%
	None	10.0%
How much weight is given to the victim’s preference during plea negotiations?	90%	11.2%
	75%	26.5%
	50%	21.4%
	25%	22.4%
	10%	15.3%
	0%	3.1%
In your opinion, the influence victims have in plea negotiations is:	Complete	0.0%
	Too Much	4.0%
	About Right	88.9%
	Too Little	3.0%
	None	4.0%

the facts of each case, apply the facts to the law, and determine the appropriate charge to file against the defendant. In addition, prosecutors make decisions about plea bargaining based on the facts of each case, the culpability of the defendant, the anticipated outcome, and the “costs” of a trial. According to the findings, 44% of the prosecutors indicated that the victims have 50% or more influence over the charging decision, and 58% of the prosecutors indicated that the victims have 50% or more influence over plea negotiations.

When prosecutors consider victim input in charging and plea bargaining decisions, they treat victims like parties to a lawsuit. Parties to a lawsuit have the right to direct their attorneys about major decisions in the litigation; and the attorneys, after giving advice to their clients,

follows those decisions.¹⁵⁷ In effect, prosecutors confer *de facto* party status on victims when they consider and act on the victims' input during these important stages of the prosecution.

In addition, prosecutors act as attorneys for victims when they take action based on the victims' wishes in the charging and plea bargaining decisions. Again, in a normal attorney-client relationship, attorneys are obligated to follow the clients' directions about major decisions during the course of the litigation.¹⁵⁸ By acting upon the victims' input into the charging decision and plea bargaining, prosecutors are acting as *quasi* attorneys for victims similar to the way a defense attorney or a civil attorney acts on the client's wishes.

Finally, by considering and acting upon the victims' input in the charging and plea bargaining decisions, prosecutors are taking the victims' desires into consideration and attempting to achieve victim satisfaction in the prosecution. Thus, the victims' *de facto* party status and the prosecutors acting as the victims' *quasi* attorney have the effect of granting the victims power to significantly influence the prosecution.

The two questions measuring respondents' perception of victim influence over the decision on whether to take the case to trial or "plead-out" are shown in Table 2. In this section of the survey, prosecutors selected whether they would proceed to trial or agree to a plea bargain if victims wanted a jury trial, despite the uncertain outcome involved in a trial. The number of responses and percentages are displayed in Table 2.

The findings in Tables 1 and 2 demonstrate the Victim Satisfaction Model in practice. For example, the results indicate that prosecutors will often proceed to trial even when a conviction or sentence is in doubt simply because the victim desires a trial. These results show that prosecutors attempt to achieve victim satisfaction during the course of the prosecution by allowing victims to give significant input into the plea-negotiation process and to exert significant control over the course of the prosecution.

The desire for victim consent before prosecutors will enter into plea negotiations is comparable to the way attorneys represent their clients in the ordinary course of events. Each attorney has the responsibility to keep her client reasonably informed and explain matters "to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."¹⁵⁹ Attorneys are also required to abide by their clients' decisions about whether to accept an offer of settlement.¹⁶⁰

157. See TEX. DISCIPLINARY R. PROF'L CONDUCT 1.02(a), reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Vernon 2007).

158. See *id.*

159. TEX. DISCIPLINARY R. PROF'L CONDUCT 1.03.

160. TEX. DISCIPLINARY R. PROF'L CONDUCT 1.02(a)(2).

Table 2: Jury Trial or Plea Bargain			
Question: "If the victim insists on a jury trial, despite your desire to enter into a plea bargain, you are more likely to abide by the victim's wishes despite the uncertain outcome of a trial."			
		Percentage	Cumulative Percentage
Valid	Agree strongly	4.0%	4.0%
	Agree	14.1%	18.1%
	Neutral	28.3%	46.4%
	Disagree	34.3%	80.7%
	Disagree strongly	19.2%	100.0%
Question: "If the offense is a sexual assault of a female victim and if the victim insists on a jury trial, despite your desire to enter into a plea bargain, you are more likely to abide by the victim's wishes despite the uncertain outcome of a trial."			
		Percentage	Cumulative Percentage
Valid	Agree strongly	9.7%	9.7%
	Agree	26.9%	36.6%
	Neutral	28.0%	64.6%
	Disagree	21.5%	86.0%
	Disagree strongly	14.0%	100.0%

The need for victim consent is also comparable to the special relationship a defense attorney has with the accused. In a criminal case, the defense attorney is required to abide by her client's decision about whether to waive a jury, the plea to be entered, whether to accept a plea offer, and whether to testify.¹⁶¹ Ultimately, the decision of how to defend a criminal case is made by the client with the advice and consent of the attorney.¹⁶²

The necessity for victim consent prior to an agreed resolution through a guilty plea makes the plea bargaining process very similar to an agreed disposition of a civil case, where all parties must agree before a case can be resolved through an agreement. If the parties to a civil dispute reach an agreed resolution, the parties and the lawyers sign the agreement and enter a judgment based on it.¹⁶³ If there is no agreement, the civil case proceeds to trial.¹⁶⁴ Requiring victim consent as a prerequisite to a guilty plea makes the victim a party to the prosecution in the same way that a plaintiff in a civil case is a party to the lawsuit.

161. TEX. DISCIPLINARY R. PROF'L CONDUCT 1.02(a)(3).

162. *Id.*

163. *See* Tex. R. Civ. P. 11.

164. *See id.*

When prosecutors evaluate a case to determine an appropriate resolution, they consider several factors including the evidence, the criminal record of the defendant, and the nature of the crime.¹⁶⁵ However, the data supports the conclusion that victims' desires have become more important than these traditional factors. It appears as though prosecutors have relinquished a significant portion of the decision-making authority to victims, acting mainly as advocates of the victims' positions. This creates a *quasi* attorney-client relationship between victims and prosecutors where victims become parties to the prosecution, prosecutors become the victims' *quasi* or "unofficial" attorney, and the prosecutors' attempt to achieve victim satisfaction guides the prosecution.

The question that measured the respondents' own views about victim participation in the prosecution is shown in Table 3. In this part of the survey, the respondents indicated whether a prosecutor should represent the victim during the course of the prosecution. The percentages are displayed in Table 3 below:

Table 3: Victim Representation			
Question: "The prosecutor <i>should</i> represent the interests of the victim during the course of the prosecution."			
		Percentage	Cumulative Percentage
Valid	Agree strongly	26.0%	26.0%
	Agree	26.0%	52.0%
	Neutral	30.0%	82.0%
	Disagree	12.0%	94.0%
	Disagree strongly	6.0%	100.0%

The findings in Table 3 indicate how prosecutors combine their prosecutorial duties with representing victims. Fifty-two percent of the respondents either "agree strongly" or "agree" that prosecutors should represent the interests of victims during the course of the prosecution, while 30% were "neutral" on this question. Only 18% of the respondents either "disagree" or "strongly disagree" with this idea. These responses are material, because in Texas, it is the primary duty of prosecutors not to convict, but to see that justice is done.¹⁶⁶ These results indicate that the majority of respondents believe that representing the victim is a part of "doing justice."

165. See NEUBAUER, *supra* note 56, at 233–35 (discussing the effect of evidence sufficiency and the defendant's conduct and background); Albonetti, *Toward A Theory of Discretionary Decision Making in Felony Case Processings*, *supra* note 55, at 637 (discussing nature of offense).

166. TEX. CODE CRIM. PROC. ANN. art. 2.01 (Vernon Supp. 2005).

When prosecutors represent victims' interests, they likely attempt to resolve the criminal case with the goal of achieving victim satisfaction. With such an approach, victim satisfaction becomes the primary determinant of the criminal justice system. Admittedly, victims are not satisfied with the result of every plea bargain or jury trial. Whether victims are satisfied with the outcome of the prosecution, however, is not the primary issue in the Victim Satisfaction Model. The utility of the Victim Satisfaction Model is that the attempt to satisfy victims is the significant determinant of the criminal justice system.

V. THE VICTIM SATISFACTION MODEL OF THE CRIMINAL JUSTICE SYSTEM

A. *Stage One: The Victim is a De Facto Party to the Prosecution*

The first stage of the Victim Satisfaction Model is that victims are *de facto* parties to the prosecution.¹⁶⁷ As previously noted, victims become *de facto* parties to criminal cases when the primary actors in the criminal justice system treat victims the same way parties in a civil case are treated.¹⁶⁸ This notion that victims are *de facto* parties in prosecutions is supported by participants' responses to several variables in the study.¹⁶⁹

The policy variables, "It is the policy of my office to talk to victims before the case is indicted or a complaint and information is filed," and, "It is the policy of my office to talk to victims before a plea offer is made," support the conclusion that victims are *de facto* parties to prosecutions. Talking to victims during the charging decision or before a plea offer is made is an indication that prosecutors treat victims like a party to the criminal case. It opens a line of communication that gives prosecutors the opportunity to acquire the victims' point of view regarding these critical stages of the criminal process.

These findings also suggest that many Texas District and County attorneys' offices have implemented policies that require their prosecutors to talk to victims during the charging decision and plea bargains. This discovery explains why the practice of talking to victims during critical stages of the criminal process is prevalent among prosecutors in Texas. These policies could also explain why prosecutors perceive victims to be parties to the prosecution.

The variable, "How much weight is given to the victim's preference in the charging decision?" also supports the conclusion that victims have become *de facto* parties to prosecutions. In response to this variable, 87% of the prosecutors perceived that the victims' preferences are given some sort of weight in the charging decision; 44% of the

167. See Victim Satisfaction Model, *supra* note 11, at 12, 60.

168. *Id.* at 60.

169. *Id.* at 59–60.

prosecutors indicated that the victims' preferences are weighted 50% or more in charging decisions; and 24% of the respondents reported that the victims' preferences are weighted 75% or more in charging decisions.

An analysis of prosecutors' reported perceptions of the weight that is given to the victims' preferences in plea bargains yields similar results. Despite the fact that crime victims have no legal standing in prosecutions, 96.9% of the respondents perceived that the victims' preferences are given some sort of weight in plea bargains, 59.2% of the respondents indicated that the victim's preference is given 50% weight or more in plea bargains, and 37% of the prosecutors reported that the victim's preferences are weighted 75% or more in plea bargains.

These findings give insight into the conversation that occurs between prosecutors and victims prior to the charging decision and plea bargain. Specifically, the results suggest that the purpose of the interaction between prosecutors and victims goes beyond informing the victims of the case's status. Additionally, one can infer that prosecutors interact with victims before these critical stages of the criminal process in order to get their input. Furthermore, the findings indicate that prosecutors, at the very least, try to incorporate the victims' point of view into the charging decision and plea bargain. In fact, this behavior indicates that prosecutors treat victims as if they were parties to the criminal case, thus giving victims *de facto* party status in prosecutions.

B. *Stage Two: The Prosecutor Assumes the Role of Representing the Victim*

The second stage of the Victim Satisfaction Model, in which the prosecutor assumes the role of representing the victim, is also demonstrated by the findings in the current study.¹⁷⁰ Many prosecutors feel that they should represent the interests of the victims.¹⁷¹ This creates a relationship between the prosecutors and victims that is similar to the traditional attorney-client relationship, with victims making the major decisions about the prosecution's direction based on the prosecutors' guidance.¹⁷²

The analysis of prosecutors' perception of victims' weight in charging decisions and plea bargains also shows that prosecutors assume the role of representing the victims. Most notably, the findings indicate that 44% of the respondents perceive that the victims' preferences are given at least 50% weight in charging decisions. Additionally, 24% of respondents reported that victims' preferences

170. *Id.* at 91.

171. *Id.*

172. *Id.*

are given 75% or more weight in the charging decision. In regard to plea bargains, 59% of the respondents indicated that victims' preferences are weighted at least 50%, and 38% of the respondents reported that victims' preferences are given 75% or more weight in plea bargains.

These findings demonstrate that prosecutors take the victims' point of view into account during the charging decision. The findings also suggest that in some cases, victims are the primary decision-makers in charging decisions and plea bargains. These findings are consistent with the model's conclusion that prosecutors represent the interest of victims and this relationship is similar to the traditional attorney-client relationship.

C. *The Final Stage: Satisfying the Victim is the Main Determinant of the Criminal Justice System*

The final stage of the Victim Satisfaction Model is that the goal of satisfying the victim is the main determinant of the criminal justice system.¹⁷³ As previously noted, one of the prosecutors' main objectives in pursuing a criminal case is victim satisfaction.¹⁷⁴ There are two variables from the current study that support this idea. Eighteen percent of the respondents either "agreed" or "strongly agreed" with the question, "if the victim insists on a jury trial despite your desire to enter into a plea bargain, you are more likely to abide by the victim's wishes despite the uncertain outcome of a trial." In response to the second question, "if the offense is a sexual assault of a female victim and if the victim insists on a jury trial, despite your desire to enter into a plea bargain, you are more likely to abide by the victim's wishes despite the uncertain outcome of a trial," 37% of the respondents indicated that they either "agreed" or "strongly agreed."

These findings are significant. In answering these questions, the respondents were presented with a conflict between their desire to enter into a plea bargain and the victims' demand to go to trial. Given the fact that victims have no legal standing in criminal cases, and considering prosecutors' legal education and experience, one could reasonably expect that prosecutors would give little weight to victims' opinions in such situations. However, the results suggest that a significant number of prosecutors consider the victims' position when they are involved in a plea bargain. One could reasonably conclude that prosecutors' consideration of the victims' position is an attempt to satisfy the victims. As previously noted in the literature review, the primary utility of the Victim Satisfaction Model is that prosecutors attempt to achieve victim satisfaction, not whether victims are satis-

173. *Id.* at 112.

174. *Id.*

fied with the outcome of the case.¹⁷⁵ Therefore, the findings in this section are consistent with the model's conclusion that criminal cases are resolved in an attempt to achieve victim satisfaction.¹⁷⁶

Another reason why these variables are noteworthy is that they are in stark contrast with literature¹⁷⁷ that asserts prosecutors' decisions are solely made in the attempt to avoid uncertainty during the course of a criminal prosecution. The results of this study suggest the contrary conclusion: that a sizeable number of prosecutors actually abide by the victims' desires despite misgivings about the uncertain outcome. The contrast between previous literature and the findings in this study might be explained by a change in prosecutorial philosophy over the past two decades. Today, prosecutors may be more willing to risk uncertain outcomes in a criminal case in order to satisfy the victims.

VI. CONCLUSIONS AND IMPLICATIONS FOR CRIMINAL JUSTICE PUBLIC POLICY

The Victim Satisfaction Model has several implications for the criminal justice system. These include: (1) crime is no longer considered as merely a violation of society's laws; (2) the criminal justice system has become pseudo-civil; and (3) crime is defined as any harm that victims convince prosecutors should be prosecuted, instead of being pursued civilly.¹⁷⁸

One implication of the Victim Satisfaction Model is that crime is no longer considered merely a violation of society's laws.¹⁷⁹ Instead, crime is also an offense against the individual victim and society.¹⁸⁰ Because the victim was violated by a crime, she is allowed to participate in the prosecution, thereby making victim satisfaction the main objective of the criminal justice system.¹⁸¹

A second implication of the Victim Satisfaction Model is that the criminal justice system is pseudo-civil.¹⁸² Field observations and the results of this study have shown that prosecutors treat victims the same way private attorneys interact with their clients.¹⁸³ The pseudo-civil characteristic of the criminal justice system is based on this close relationship between prosecutors and victims.¹⁸⁴

175. *Id.* at 116.

176. *Id.*

177. Albonetti, *Prosecutorial Discretion: The Effects of Uncertainty*, *supra* note 3, at 293; Frohmann, *supra* note 100, at 215.

178. *See* Victim Satisfaction Model, *supra* note 11, at 126–36.

179. *Id.* at 127.

180. *Id.*

181. *Id.* at 128.

182. *Id.*

183. *Id.* at 128–29.

184. *Id.* at 129.

The pseudo-civil nature of the criminal justice system benefits victims.¹⁸⁵ More specifically, the attorney-client relationship between victims and prosecutors allows victims to utilize the government's unlimited resources in pursuing the case against defendants.¹⁸⁶ Criminal defendants do not receive the same resources or financial help that victims receive from the government and are limited to personal assets in building a defense.¹⁸⁷ Consequently, this increases the likelihood that criminal defendants will be convicted and further burdened by the associating stigma.¹⁸⁸ This is important because society commonly shuns convicted offenders and shuts them out of rights and benefits of ordinary society.¹⁸⁹

The final, major implication of the Victim Satisfaction Model is that it creates a new theory of crime.¹⁹⁰ Specifically, under this model, crime is defined as "any harm a victim convinces a prosecutor should be prosecuted, instead of being pursued civilly."¹⁹¹ This approach is a new way to define crime because it focuses on both the harm to the victims and the victims' ability to sway prosecutors.¹⁹² This theory creates two major problems for criminal justice policy. First, only those victims who can communicate effectively will be able to convince prosecutors that the harm they experienced is a crime.¹⁹³ Second, defining crime this way may create disparity in punishment based on a victim's "worth."¹⁹⁴

The findings in this study provide support for all three stages of the Victim Satisfaction Model of the criminal justice system. The results also indicate that prosecutors are satisfied with the current state of victim involvement in prosecutions. Finally, the findings demonstrate that there is no significant difference between Republican and Democratic prosecutors' views toward victim policies and victim participation in criminal cases. Future studies examining this model should focus on jurisdictions in which there are no elected District or County attorneys. This assessment would demonstrate if the model can be applied to all jurisdictions or only to jurisdictions in which the District or County attorney is an elected public official. Future research should also assess other criminal justice participants' perceptions of victim involvement in prosecutions.

185. *Id.* at 133.

186. *See id.* at 132–33.

187. *Id.*

188. *See id.*

189. *Id.* at 133.

190. *Id.* at 134.

191. *Id.*

192. *Id.*

193. *See id.* at 135.

194. *Id.*